[ENGLAND, 1607, 1676] [1]

[George Duke's 1676 summary of Sir Francis Moore's 1607 reading on the 1601 statute of charitable uses]

[1]

THE L A W of Charitable Uſes

Reviſed and much Enlarged; With many CASES in LAW BOTH *ANCIENT* and *MODERN*:

Whereunto is now added, the Learned READING [2] OF

Sr Francis Moor, Kt. [3]
Sergeant at Law. 4 *Jacobi*, [4]
in the *Middle Temple Hall*,

Upon the Statute of 43 *Eliz*. concerning *Charitable Uſes*, (who was a Member of that PARLIAMENT when that Statute was made, and the Penner thereof.) [5] Abridged by himſelf, and now Printed by his own Original Manuſcript. [6]

TOGETHER,

With the manner of Proceedings in Chancery, by Information, in the name of the King's Attorney-General, for Relief on divers Caſes, wherein the Aid of this Statute is not required.

Neceſſary for all Biſhops, Cathedrals, Colledges, and all Pariſhes in *England*, for Recovery and Setling of CHARITABLE Donations.

Methodically Digeſted,

By **GEORGE DUKE**
of the Inner Temple, Eſq; [7]

London, Printed for *Henry Twyford*, and are to be ſold at his Shop in *Vine-Court*, *Middle Temple* 1676

[1] This early charity lawbook (cited here as "Duke (1676)") contains a summary of Sir Francis Moore's 1607 reading on the 1601 statute of charitable uses, at pp 129-188 (without a chapter number). The summary is described as an "abridgment", "collection" or "exposition". It was reprinted many years later, with modernized spelling and omitting Duke's marginal notes, in

- *Duke's Law of Charitable Uses* by Richard W. Bridgman (London: W. Clarke and Sons, 1805), chapter 7, pp 122-191 (cited here as "Bridgman (1805)");
- *A Practical Treatise of the Law of Charities* by William R. A. Boyle (London: Saunders and Benning, 1837), appendix, pp 465-505 (cited here as "Boyle (1837)").

[2] A "reading" was a series of lectures offering elaborate arguments on a legal subject, given by a prominent lawyer in front of the judges, members and students of his legal fraternity—the Middle Temple in Sir Francis Moore's case; followed by debates and expensive feasts. The lawyer funded the ostentation, thereby proving his wealth, and got to show off his learning too. Giving a reading was the honour of a lifetime, usually preceding promotion to senior rank or judicial office.

[3] From Wikisource, *Dictionary of National Biography*, 1885-1900, Volume 38:

> "Moore, Sir Francis (1558–1621), law reporter, . . . After attending Reading grammar school he entered St. John's College, Oxford, as a commoner in 1574, but did not graduate . . . He subsequently became a member of New Inn, and entered himself of the Middle Temple on 6 Aug. 1580, being chosen autumn reader in 1607. One of the ablest lawyers of his day, Moore was appointed counsel and under-steward to Oxford University, of which he was created M.A. on 30 Oct. 1612. At Michaelmas 1614 he became serjeant-at-law, and on 17 March 1616 was knighted at Theobalds. He was M.P. for Boroughbridge, Yorkshire, in 1588-9, and for Reading in 1597-8, 1601, 1604-11, and 1614. In parliament he was a frequent speaker, and is supposed to have drawn the well-known statute of Charitable Uses which was passed in 1601. . . .

[More detailed accounts of Moore's career, especially in parliament, are to be found here:

- *https://www.historyofparliamentonline.org/volume/1604-1629/member/moore-francis-1559-1621* (by Andrew Thrush);
- *https://www.historyofparliamentonline.org/volume/1558-1603/member/moore-francis-1559-1621* (by Alan Harding).

These show Moore was a renowned lawyer, an influential politician and incredibly rich, and did indeed draft many bills—but NOT, apparently, the charitable uses bills.]

Moore died on 20 Nov. 1621, . . .

Moore's reports, '*Cases collect & report . . . per Sir F. Moore*,' fol. London, 1663 (2nd edit. with portrait, 1688), extend from 1512 to 1621, and have always enjoyed a reputation for accuracy. They had the advantage of being edited by Sir Geoffrey Palmer [*q. v.*], a son-in-law of Moore, and commended in a 'prefatory certificate' by Sir Matthew Hale [*q. v.*], who married one of Moore's granddaughters. There is an abridgment of them in English by William Hughes (8 vo, London, 1665). . . .

Besides his reports, Moore was the author of readings made before the Temple on the statute of charitable uses, which were abridged by himself, and printed by George Duke in his commentary on that statute in 1676, and again by R. W. Bridgman in 1805.

[4] *Sic*. Should read *5 Jacobi*. See *History of the Law of Charity 1532-1827* by Gareth Jones (Cambridge UP, 1969) (cited here as "Jones (1969)" at pp 234, 240, showing that Sir Francis Moore delivered his reading on the 1601 statute of charitable uses on 3-14 August 1607, which was in James 1's fifth regnal year as king of England, not his fourth. This is one of several problems occurring in Duke's title page.

[5] The claim that Sir Francis Moore was the "penner", *i.e.* the legislative drafter, of the 1601 statute, is also a problem. See Jones (1969), at pp 23-25. He was indeed a member of parliament when the 1597 and 1601 statutes of charitable uses were passed. But, as mentioned in note [3] above, no parliamentary records corroborate that he drafted either bill; nor does he claim it in his own reading on the very statute. It would certainly have been within his line of business to write or help write one or both charity bills; but if he did, it must have been unofficial.

[6] The claim that Sir Francis wrote this English abridgment of his own reading is also problematic. His personal manuscript of his original reading survives in Cambridge University Library, CUL MS Hh III 2(c) (per Jones (1969) p 27 n 1). It is in Law French, the peculiar language of English lawyers in this era, and has never been fully translated or published (except limited passages by Jones).

Why Sir Francis would have abridged his reading in English is unclear. His audience were other lawyers and students who already knew Law French. They would have had no need for a translation and would have been more interested in the legal argumentation of his reading than in a summary abridgment of his conclusions.

Moreover, the abridgment presented here, many years later, by George Duke in his 1676 book, does a lot more than merely recapitulate the original reading. It refers to cases and statutes published after 1607—and even some published long after Sir Francis died in 1621; and it occasionally refers to him in the third person; see places in the text marked with note [110]. It seems probable, then, that someone other than Sir Francis either wrote this summary of his reading or added updates to what Sir Francis might, perhaps, have originally written. The most obvious possibility is the (otherwise unknown) author of the whole book in 1676: George Duke.

[7] Jones (1969) p 233: "Who George Duke was is a mystery. There is no reason to think that he was a member of Moore's family. In all probability he was a competent legal hack. His book on the law of charity, with the exception of the extracts from Moore's Reading, was largely a faithful reproduction of John Herne's The Law of Charitable Uses, first published in 1660 with a second, more comprehensive edition in 1663. Both Herne's and Duke's books were published by the well-known legal publishers of the name of Twyford . . . ."

From The Chancery Reports of John Herne and of George Duke (1599 to 1674) by W. Hamilton Bryson (Buffalo, NY: William S. Hein & Co., Inc., 2002) (cited here as "Bryson (2002)", p 14): "George Duke of Wandsworth, Surrey, the son and heir of George Duke, was admitted to the Inner Temple in November 1634 and called to the bar in 1654. 1 Students Admitted to the Inner Temple 1547-1660, p. 282 [1877]. No other publication is attributed to Duke; perhaps he was hired by Twyford to enlarge the earlier editions of this book."

[. . .]

[p 129]

Collections
Out of the Learned
READINGS
OF
Sr *FRANCIS MOORE*, Kt.
SERJEANT at LAW.

Upon the Statute of 43 *Eliz*. Entituled, *An Act to Redreſs Miſimployment of Lands, Goods, and Stocks of Money, heretofore given to Charitable Uſes*.

[TABLE OF CONTENTS]

The Heads and Contents of the ſeveral Diviſions.

[8] The wording of issue 1 here in the initial table of contents omits a certain part of the same issue 1 as shown further on in the list of issues at the start of division 4 [decrees]. There issue 1 reads: "What Commissioners may make a Decree, [132] and what Decree, Order, and Judgment, shall be said to be good, and warranted by this Statute." [133]

[9] A further mistake of omission occurs at this point. There is another issue 2 shown further on in the list of issues at the start of division 4 [decrees]: "2. What decree shall be said to be made, according to the intent of the Donor, [134] and what persons shall be bound by such a Decree". [149] The issues numbered 2, 3 and 4 below are there numbered 3, 4 and 5.

[p 131]

EXPOSITIONS.

Upon the firſt Branch of the Statute. [CHARITABLE USES]

I [10] ſhall begin with the Words, and upon that Branch of this Statute, which relates to Gifts, Limitations, Aſſignments, and Appointments. And to Lands, Tenements, Rents, Annuities, Profits, Hereditaments, Goods, and Chattels, Money, and Stocks of Money, given, or aſſigned to Charitable Uſes, [11] and in my [10] Diſcourſe, conſider,

Four Points.

1. What ſhall be a Charitable Uſe [11] within the intent, and meaning of this Statute. [14]
2. What a Gift, Limitation, Appointment, or Aſſignment of ſuch a Charitable Uſe. [11] [75]

[Issue 3 of division 1 in the main table of contents earlier is here split into 3 and 4.]

3. What ſhall be ſaid to be Lands, Tenements, Rents, Annuities, Profits, Hereditaments. [95]
4. What Goods and Chattels, Money, and Stock of Money, Aſſigned, or Aſſignable, are within this Statute. [95]

And upon theſe Points declare my [10] opinion, and I [10] take it to be Law.

Reſolve

That no uſe [11] ſhall be taken by Equity, [12] to be a Charitable Uſe [11] within the meaning of this Statute, *&c. fol.* 2. 3. 4. 5. 6. 7. [13]

[10] Here and in other places in the text marked with note [10], the writer/editor uses the first person "I" or "my" thus referring to himself as if he were Sir Francis Moore. Contrast with places in the text marked with note [110].

[11] A "use" was the former word for what we today call a trust. "A concept of mediaeval English law whereby property could be held by one person to the use of, *i.e.* for the benefit of, another."—*Oxford Companion to Law* (1980). A "charitable use" was a use where the benefit was not for another specific person or persons but for a more generalized purpose benefiting the public in ways considered by the law to be charitable.

[12] Here Sir Francis Moore was not using the word "equity" in its usual sense—a parallel sub-branch of the law.[91] He was instead using phraseology about the "equity of a statute" commonly used by lawyers of his time; in other words what we today would call the statute's original intent or purpose: "the construction of a statute according to its reason and spirit, so as to make it apply to cases for which it does not expressly provide."—*OED*

[13] These folio citations at the end refer to the page numbers of an original manuscript that Duke had of this English abridgment of Sir Francis Moore's 1607 reading—a source document now lost. See further discussion in note [101].

[14] The following section within division 1 [CHARITABLE USES] appears to deal with issue 1, "***What shall be said to be a charitable use within the intent and meaning of this Statute***."

Nota.

NO Uſe [11] ſhall be taken by Equity [12] to be a Charitable Uſe [11] within the meaning of this Statute, if it be not within the Letter or Words of the Statute. [15] But a Uſe [11] may be conſtrued to be within the Statute by Equity [12] taken upon the Letter of the Statute, and ſo within the words, *Repair of Churches*, Chappels [16] may be taken by Equity, [12] and under that word *Church*, all convenient Ornaments, and Concurrents convenient for the decent, and orderly Adminiſtration of Divine Service (as for the finding of a Pulpit or a Sermon-Bell *&c.*) may be comprehended. For Reparations of Churches are but preparations for the Adminiſtration of Divine Service.

Equity.
Church.
Chappel.
Finding of Ornaments.
Pulpit.
Sermon-Bell.

[15] Boyle (1837) p 466 n (*a*): "This is obviously incorrect." [Boyle does not elaborate. But for one thing, isn't Moore's first sentence immediately contradicted in substance by the next?

Furthermore, from about 1800 on, and especially in the case of *Morice v Bishop of Durham* (1805) per Lord Chancellor Eldon, 10 Ves Jun 521 at 541, 32 ER 947 at 954, it has been accepted as a fundamental principle of charity case law that a purpose is charitable if it is analogous to or even just within the spirit of any trust type described in the preamble of the 1601 statute—quite the opposite of Moore's position taken here, which advocated for strict literal interpretation not based on the "equity of the statute", [12] i.e. not intention or purposive interpretation.]

[16] The Law of Charitable Bequests by Amherst D. Tyssen, London, 1888 (cited here as "Tyssen (1888)", p 93): "The chapels here mentioned appear to mean only chapels used for service according to the established religion, as no others existed at the time. But as other forms of religion have been legalized, their chapels have been placed in the same position as chapels of the established religion, so far as regards the principle that trusts for their repair are good charitable trusts."

And as upon the words of the Statute, 5 *Ed.* 6. *cap.* 4, againſt fighting or ſtriking in Churches, or Churchyards, [17] it hath been taken, That if any ſtrike another in a Church, Chappel, or Churchyard, he ſhall be Excommunicate, *ipſo facto*, [18] by Equity [12] of the ſaid Statute, upon the word *Church* and *Churchyard*. So upon the words *Repair of Churches*, may Chappels be taken by like Equity [12] in this Statute.

[17] "*An Acte agaynste fightinge and quarelinge in Churches and Churcheyardes*", UK 5 & 6 Ed c 4 (1551); repealed in 1963.

[18] *ipso facto*: Latin, by the fact itself

But a Gift of Lands, *&c.* to maintain a Chaplain or Miniſter, to celebrate Divine Service, is neither within the Letter, nor meaning of this Statute; for it was of [p 132] purpoſe omitted in the penning of the Act,

A Gift to maintain a Chappel or Miniſter, to do Divine Service, is not within this Statute.

leſt the Gifts intended to be imployed, upon purpoſes grounded upon Charity, might, in change of times (contrary to the minds of the Givers) be confiſcate into the Kings Treaſury. [19] [20] [21] For Religion being variable, according to the pleaſure of ſucceeding Princes, that which at one time is held for Orthodox, may at another, be accounted Superſtitious, [22] and then ſuch Lands are confiſcate, as appears by the Statute of Chanteryes, 1 *E*. 6. *cap*. 14. [23]

[19] This opinion of Sir Francis Moore has sometimes been taken to mean that religion is, or was in his time, entirely excluded from charity. Not so: his literal words above were, and the prevailing view in his time probably was, that religion was excluded from "this Statute"; that is, from the charities covered by the 1601 act—but not from charity in general.

—Except for the repair of churches (a legal burden of the parishioners), religion was not mentioned in the preamble of the 1601 act.

—As well, cathedrals and the "jurisdiction of the ordinary" (the bishop) were specifically excluded by s 2 and 4 of the 1601 act.

This is all explicable. The 1601 act's purpose was to establish locally-based community courts to protect what we today would call secular charities. But the last thing the country's leadership wanted was for those local courts to have power over religious institutions. The country was in religious ferment. Local communities and their leaders were resisting the "established" church everywhere. Giving them authority to decide what was or was not a valid religious charity would have subverted the "top-down" mechanisms which the central government used to enforce religious conformity—the bishops, the court of high commission [62] and the lord chancellor's court of chancery. So it was mainly the latter, chancery, that was directly regulating religious charities under its general jurisdiction in equity, [91] not the local charity commissioners under the 1601 act.

There might have been some confusion on this in subsequent sources. Seven decades later, Duke, elsewhere in his book, seems to contradict Moore's position when he cites several cases either accepting religious purposes as charitable or, conversely, rejecting cases as superstitious [22] or contrary to the statute of chantries: [23] Duke (1676) pp 69 (case 7), 71-72 (case 10), 80 (case 26), 82 (cases 35, 36), 105-113. Likely most of these were decided by the lord chancellor under his general chancery jurisdiction, and not under the 1601 act; if so, that would be consistent with Moore's opinion.

Usage of the 1601 act died out after about 150 years. Charity law was taken over entirely by the general chancery jurisdiction. This exclusion of charitable uses commissioners under the 1601 act from dealing with charities for religious purposes became irrelevant and was forgotten.

[20] Boyle (1837) p 467 n (*a*): "Not now law."

[21] See Tyssen (1888) p 119; and more detailed accounts in Jones (1969) pp 30-37, 51, 57-58, 75-87.

[22] "Superstition" can have different meanings but here it meant what the law considered to be false religion, especially those Roman Catholic beliefs rejected by the prevailing Protestant church of England.

[23] This was *An Acte wherby certaine Chauntries Colleges Free Chapelles and the Possessions of the same be given to the Kinges Majestie*, UK 1 Ed. 6 c 14, later given the short title "*The Dissolution of Colleges Act*, *1547*" by the *Statute Law Revision Act*, *1948*, s 5, Sch 2, and often called the statute of chantries. It expropriated the assets of all uses and trusts for religious purposes that were deemed superstitious; [22] especially "chantries". These were endowments through which priests and clerics were paid to pray for deceased persons long after they had died (whose souls were thought by the rejected Roman Catholic doctrine to still be in purgatory and therefore still able to benefit from such prayers). The statute of chantries was eventually repealed by the *Charities Act*, *1960* (c 48), s 39(1), Sch 5.

Upon theſe words, *For relief of Aged, Impotent, and Poor People*; Poverty is the principal and eſſential Circumſtance to bring the Gift within the compaſs of this Statute, for a Gift to the Aged of ſuch a Pariſh, or to the Impotent of ſuch a Pariſh, without expreſsing their Poverty, is not within the reach of this Act, becauſe they may be rich. [24]

Poor. For relief of Aged, Impotent, and Poor. Poverty is the eſſential circumſtance. Gift to the Aged, without ſaying Poor, is not within this Act.

[24] Boyle (1837) p 467 n (*b*): "Needy persons would now be considered as intended." [Boyle's comment is not clear. The essential issue is, what did the parliament of 1601 mean by the "relief of aged, impotent AND poor people"? Taken literally, the "and" would be conjunctive and only a person who is all three—aged (old) and impotent (disabled) and poor—could be a valid object of charitable relief. Sir Francis Moore offers a slightly more flexible interpretation above—that poverty is the main requirement for charitableness, either by itself or combined with agedness or disability. But this would reduce the words "aged" and "impotent" to irrelevant surplusage, a no-no under the usual rules of statutory interpretation. The courts wrestled with this ambiguity for a long time until finally in the case of *Re Glyn's Will Trusts*, *Public Trustee v AG*, [1950] WN 373, 66 (pt. 2) TLR 510, [1950] 2 All ER 1150n, Chancery Division, a prominent charity law judge, Danckwerts J, ruled that the only sensible interpretation was that the "and" is disjunctive, equivalent to "or"; and therefore relief of the aged and relief of the disabled are separate charitable purpose categories from relief of poverty. The aged and the disabled do not have to be poor to qualify (though modern case law nevertheless requires that they suffer from some sort of need connected with agedness or disability, if not financial deprivation). It is clear, then, that by the lights of more modern case law, Sir Francis's opinion above is wrong.]

But a Gift to the Poor without expreſsing Age or Impotency, is good enough; for poverty, without further regard, is ſubject, ſufficient, for Charity to work upon.

So a Gift to all the Aged or Impotent of ſuch a Pariſh, not aſſeſſed in the Subſidy, [25] is good, for thoſe which are not aſſeſſed in the Subſidy [25] are poor within the intent of this Statute.

So to the Impotent, without ſaying Poor, is not.

[25] In the later middle ages and early modern era, the two main taxes most frequently imposed by parliament were the "subsidy" and the "fifteenth". See generally Jurkowski & al, 1998, pp xxvi-xxxiii, xli-xlv. Both were wealth taxes fixed as a percentage of the assessed value of the individual's personal possessions, or sometimes the greater of his personal possessions or his land. There was a minimum value below which the tax did not apply, which varied but was usually a middle-class level of wealth. The assessment and collection of the subsidy was in the hands of a hierarchy of officials temporarily appointed by and reporting to the central government (the "exchequer"). These parliamentary collectors, it appears, actually followed the assessment rules (for the most part) including the rule exempting those below the minimum level. Thus, those "not assessed in the subsidy" were mainly

the poor, and therefore the subsidy was generally accepted as a tax the poor never had to pay. It was different for the fifteenth; see note [143].

So a Gift of Money to make a Stock to bind Apprentices, the Children of ſuch Men as are not in the Subſidy of Goods, [25] to relieve

Baſtard.

Baſtards, is a Charitable Uſe, [11] becauſe they are like Orphans (having by intendment of Law) no Parents to relieve them.

To find Bows and Arrows for the Children of poor Men.

To find Bows and Arrows for the Children of poor Men, in ſuch a Pariſh, is good alſo, becauſe it is an eaſe to their Fathers, which are poor, and yet are bound to find them.

Relief.

(*Relief*) Under this word are comprized,

Meat, Drink, Apparel,

Meat, Drink, and Apparel, wherein three things are conſiderable in the Gift,

for neceſſity,

1. That it be for neceſsity only, not for ornament or ſuperfluity.

2. That it be according to the Laws, not againſt the Law.

not given to do an Act againſt Law.

3. That it be not given to do ſome act againſt the Law.

A Gift to build Houſes for the Poor, with four Acres to a Cottage.

To make Conduits to ſuch Alms-Houſes, to maintain a common Landreſs for the Poor of ſuch Houses.

To maintain one to read Prayers to the Poor of ſuch a Houſe.

To build a Houſe for the Poor to reſort unto, to receive their Alms, Penſions, or Payments.

To provide them weapons for the defence of their Houſes, not to wear abroad for oſtentation.

[p 133]

To increaſe the Dyet of Alms-men upon Feſtival days.

But to make Seats for poor People to beg in by the High-ways, is no Charitable Uſe [11] within this Law, for charity muſt concurr with the Law, and the Law prohibits begging, therefore it is no charity to maintain begging.

King *Hen*. 7. erected certain Alms-houſes at *Weſtminſter*, for a certain number of poor people, whereof one ſhould be a Prieſt, who at certain times was to go about certain places, and pray for the Souls of the King and his Anceſtors. Now although the Gift to the poor might ſeem Charitable, yet becauſe it would not conſiſt without a Prieſt to pray for Souls, which is Superſtitious, [22] it was decreed in the *Chancery* 27 *Junii*, *ann*. 30 *R*. *Jac*. [26] That it was no *Charitable Uſe* [11] within the Statute. *Simon Peters* Caſe. [28]

[26] Tyssen (1888), p 45: "Obs. 30 Jac. is an impossible date, [27] and this whole statement looks like an incorrect recollection of the case of *Simon Pits v. James* (Hob. 121)." [28]

[27] The regnal year "30 Jac." is impossible because James 1 became king of England on 24 March 1603 and died on 27 March 1625 in his 23rd regnal year. So in England he had no 30th regnal year. Perhaps this was a reference to his Scottish regnal years. He had become king of Scotland as James 6 on 24 July 1567 (in infancy), so his 30th Scottish regnal year was 24 July 1597 to 1598; the cited date "27 *Junii*, *ann*. 30 *R*. *Jac*." could in that case be 27 June 1598. Another possibility is that "30 *Jac*." is a misprint for "3° *Jac*", his third regnal year (in England), so the cited date could be 27 June 1606. Neither possibility is likely given the various dates indicated for *Simon Peter*'s or *Pitt*'s case. [28]

[28] "*Simon Peter*'s case" is not otherwise reported under that name. But as Tyssen suggests, a similar case has been reported several times under similar names:

- *Simon Pits versus Richard James & al* (Tr. 12 *Jac*. [=1614], *Rot*. 2187), Hobart 121 (published 1641), 80 ER 271. This is the case report cited by Tyssen.
- *Pits versus James* (Mich. 12 *Jacobi* [=1614], *rotulo* 2155), 1 Brownl & Golde 178 (published 1651), 123 ER 740.
- *Le Case de Donnington Hospitall* (Hillar. 20 *Jacobi* [=1623]), Benloe 117 (apparently published 1661), 73 ER 982.
- *Pits vers James* (Mich. 12 Jac. [=1614], *rot* 1255), Moore (KB) 865 (1st ed. published 1665; 2nd 1688), 72 ER 959. The reporter here was Sir Francis Moore himself. As noted earlier, his actual law reports were published posthumously, and were not part of his reading.
- *Pitts versus James* (Mich. *xiv Jacobi* [=1616]), 1 Rolle 416 (published 1675), 81 ER 576.

These case reports are mostly in Law French. To be further researched (per *The History of Donnington Hospital* by Cecilia Millson). The above reports' various dates for when the case was decided (1614, 1616, 1623) all occur after Sir Francis Moore gave his 1607 reading. Moreover, these reports were all in books published many years after he died in 1621. So this paragraph on "*Simon Peter*'s case" could have been added by someone else.

A Fine [29] was Levied [30] by a Recuſant [31] to another in Queen *Elizabeths* time, and this was in Truſt, That the Profits might be imployed upon an Hoſpital of Religious, which ſhould be renewed, when the times would ſerve; and in the mean time, the Profits to be imployed to the relief of poor people, by the diſcretion of the Conuſee [29] and his Heirs, according to the intent of the Conuſor. [29]

[29] Fine (or *finalis concordia*): In this era a "fine" could not only mean a fee or monetary penalty as it does today; "levying" a fine in court was also a procedure for conveying [119] land that was easier and kept a better record of the transaction than the more usual "feoffment". [40] "In mediaeval English law an action compromised in court and by leave thereof on terms approved, utilized as a means of conveying [119] land. . . . It was a simple and speedy form of conveyance [119] and an easy

way of effecting a family settlement. Fines were abolished in 1833."—Walker, *Oxford Companion to Law* (1980).

Conusee: the person receiving land by means of a fine. Conusor: the person transferring land by means of a fine.

[30] Meaning that the recusant transferred land to another by means of a fine.

[31] Recusancy: "Refusal, especially on the part of Roman Catholics, to attend the services of the Church of England; from *c* 1570 to 1791 this was punishable by a fine, and involved many disabilities." Recusant: "One, especially a Roman Catholic ("Popish recusant"), who refused to attend the services of the Church of England."—*OED*

In this Caſe, becauſe it was apparent, that the Donor was a Recuſant, [31] and the Imployment muſt be according to his intent, and his intent could be to no other then the relief of poor Recuſants, [31] which is not agreeable to the Law, therefore Term *Hill*. 3 *Jac*. [32] The Land was decreed to the Heir at the Common Law, becauſe the Uſe [11] was not Charitable within the meaning of this Statute-Law. Lady *Egertons* Caſe. [33] [34]

[32] 1606.

[33] The case is otherwise unreported. The following article from the website *A Who's Who of Tudor Women*, compiled by Kathy Lynn Emerson, http://www.kateemersonhistoricals.com/TudorWomenG.htm, may refer to the lady in question:

> Mary Grosvenor (d. March 26, 1599). Mary Grosvenor was the eleventh child of Richard Grosvenor of Eaton, Cheshire (*c*. 1477-July 27, 1542) and Catherine Cotton. She married first Thomas Legh of Adlington, Cheshire (1527 - May 17, 1548), by whom she had a son, Thomas Legh (1547-1601) and then Sir Richard Egerton of Ridley (d. November 1579), and was the mother of his only legitimate child, Dorothy (1565-1639). She lived at Adlington during her son's minority. As the widowed Lady Egerton, she was a well-known recusant, [31] imprisoned at least once in Manchester for her religious beliefs. Her sufferings for her faith are often mentioned but in fact she was spared some of the worst treatment because her second husband's illegitimate son, Thomas Egerton, was an important figure in the government of Queen Elizabeth. Her will, dated October 18, 1597, names him as one of her executors and refers to him as her son. Portraits: effigy on her monument in Astbury Church.

[34] Boyle (1837) p 468 n (*a*): "But see *Adams and Lambert*'s case, 4 Co. 96, 104. b." [The difference Boyle seems to allude to was apparently this: In the above paragraph about (the otherwise unreported) *Lady Egerton*'s case, the gift to a superstitious [22] use failed and the property went to the heir at law; whereas in *Adams and Lambert*'s case (1598, 1602), 4 Co Rep 96 a, 104 b, 76 ER 1079, 1091, the gift did not fail, it was still charitable in principle but misdirected to a superstitious [22] use and the issue was referred to the Crown for the property to be redirected rightly.]

Soldiers. Voluntary or Preſt, are within this Act, but not voluntary Victualers, nor the Wives, Children, or Servants of Soldiers.

(*Soldiers*) Under this word are contained every one, whether voluntary or Preſt, that hath ſerved in any band as a Common Soldier, or Captain; but no voluntary Victualers; nor the Wives, Children, or Servants of maimed Soldiers, becauſe they cannot participate of their Mayms. If an Alien be maimed in Engliſh Service, he is relievable by this Statute. But if an Engliſhman ſerve in the Wars of an Alien, he is not a Soldier within the meaning of this Act.

(*Mariners.*) By this word are underſtood all neceſſary ſervants in a Ship, as well as the Maſter or Pilate; ſo are Victualers; ſo are Artificers; and ſo are Mariners in Merchants ſhips, as well as in the Kings, or in ſhips of War, becauſe the Merchants are imployed in ſervice of the Realm; as well as Men of War; but neither the Owners, nor Paſſengers, nor Barge-men, nor Wherry-men, [35] nor ſuch as ſerve in the ſhips of Aliens, or ſuch [p 134] ſhips as go to Sea without Letters of Mart, [36] are no Mariners within the intent of this Law.

[35] wherry: a small boat or barge used in a harbour.—OED

[36] mart: amongst other things, a synonym of "marque". A letter of marque (in full *letter of marque and reprisal*) was originally: "a licence granted by a monarch authorizing a subject to take reprisals on the subjects of a hostile State; later, legal authority to fit out an armed vessel and use it in the capture of enemy merchant shipping and to commit acts which would otherwise have constituted piracy"—*OED*. Such letters were normally only used in time of war; thus Sir Francis Moore was confining the term "mariners" to those serving in war.

Soldiers ſick, or maimed.

(*Sick and Maimed*.) Theſe words muſt be taken diſjunctively, and dividedly, ſo that (*AND*) muſt be conſtrued for (*OR*) For if the party be either Sick or Maimed, he is relieveable: but if he be ſick, his relief muſt laſt no longer than the time of his ſickneſs, and the ſickneſs muſt be ſuch as ariſeth by reaſon of Service, as of Fluxes, Conſumptions, &c. A Maime is a hurt that diſables him for ſerving any more, as a Soldier or a Mariner.

If the Maim happened in lawful ſervice, the party is relievable, and therefore if in Conductions, or in Camp, a Soldier be maimed by miſ-adventure, he is relievable, although he depart from Service without Licence, after the Maim taken, becauſe the Maim was lawful. But if one ſerve an Enemy, and be there maimed, although he be after pardoned, yet he is not to be relieved by this Law. So if his hand be cut off for an offence, though he were in an English Band, because it was not in Service.

Schools of Learning. As of writing, Reading, or any Mathematical Science.

[*Schools of learning*.] Such are Schools of Writing, Reading of Languages, Muſick, or any Mathematical Sciences,

Playing of Organs by Men are within this Act.

Playing of Organs by Men, because ſuch Muſick is uſed in Churches.

But not of Dancing or Fencing.

But no Schools of Dancing or Fencing, are within the intent of this Law, becauſe they are matters of Delicacy, not Neceſsity.

No Schools for Catechiſing, [37] becauſe Religion is variable, and not within this Statute. [38]

[37] catechize: to instruct orally in the elements of the Christian religion by repetition or by question and answer.—*OED* (A "catechism" was the book or course containing the sequence which students had to memorize.)

[38] Boyle (1837) p 469 n (*a*): "Not now law." See note [19].

Free-Schools. Grammar-Schools, and all Requiſites to it.

[*Free schools*.] Theſe are to be underſtood, Grammar-Schools, [39] and all things requiſite thereunto, as Proviſion for the Room, for the School, the Maſter, and Uſher, and the Lodgings, *&c*.

[39] In this era, grammar-schools were usually endowed schools founded in or before the 16th century originally for teaching Latin.—*OED*. (The curriculum expanded several centuries later in history.) They were also called "free schools" because the terms of their endowments typically forbade the charging of tuition fees and required students to be admitted on the basis of ability (but this too changed later in history).

Scholars in Univerſities of Oxford or Cambridge, and ſuch Students as ſtudy Divinity, Law, or Phyſick, not Popery.

[*Scholars in Univerſities*.] Theſe general words muſt be reſtrained to the particular Univerſities of *Oxford* and *Cambridge*; and to ſuch Students that ſtudy Divinity, Phyſick, or Law, not Students in Arts only, nor to any Students of Divinity in Popery, *&c*.

A Recuſant [31] made a Feoffment [40] of certain Lands to divers others, upon hope, that they would imploy the Profits of the Land to the uſe [11] of poor Scholars in *Oxford* or *Cambridge*, or elſewhere, being ſuch as ſtudied Divinity, and took Holy Orders, according to the diſcretion of the Feoffees, [40] and agreeable to the intent of the Feoffor, [40] in this case, becauſe the party was a Recuſant, [31] and his [p 135] intent by the words might appear to be, that the miſimployment ſhould be upon poor Popish Prieſts (for the words elſewhere in their meaning, is ſome foreign Univerſity, and the Holy Orders they intend, are Popiſh.) Therefore, 16 *Nov*. 3 *Jac*. [41] It was decreed, That the Heir ſhould have the Land, becauſe the Uſe [11] and Imployment was not Charitable, but Superſtitious, [22] and not upon Scholars, within the meaning of this Law. [42]

[40] In this era, a feoffment, more formally known as "feoffment with livery of seisin", was the usual ceremonial method to convey [119] land from one person to another. "In mediaeval English law the normal and regular mode of creating or transferring a freehold interest in land of free tenure. The essential part of it was the livery of seisin . . . or delivery of corporeal possession by giving a clod or twig as symbol of the land, made with the intention of transferring part of the granter's interest. At first writing was unnecessary, but after the Norman Conquest became more frequent, and there developed the elaborate charter or conveyance [119] as a record of the transaction. After the Statute of Frauds of 1677 writing was necessary in every case and transfer by livery of seisin became obsolete."—Walker, *Oxford Companion to Law* (1980).

The verb for doing or making a feoffment was "enfeoff"; the person selling or giving the land was the "feoffor"; the person receiving it was the "feoffee". Other methods of conveying [119] or transferring land included the "fine". [29]

In several places in this summary, Sir Francis Moore referred to just "feoffees" without more but likely meant feoffees to charitable uses. [77]

[41] 1605

[42] Boyle (1837) p 469 n (*b*): "This is the case of *Croft v. Evetts*, stated *ante*, p. 265." [*Croft vers Jane Evetts & auters* (16 November 1605), Moore KB 784 (1st ed. published 1665; 2nd 1688), 72 ER 904; abridged, Hughes (1665) p 232]

If a man give a ſtock of Money to be put out to young Tradeſmen, at 5 *l. per* 100 *l*. [43] the Intereſt-Money to be imployed upon young Students in Divinity, to provide them Living withal; this Uſe [11] to the Students, is not a Charitable Uſe [11], becauſe it depends upon Uſury, [44] and maintains Symony. [45]

[43] *i.e.* at 5% interest.

[44] Derived from the ancient Latin word *usura* for interest on loans, the word "usury" originally meant exactly that, any charging of interest. This appears to be the sense in which Sir Francis Moore used the term, condemning as he does in several places here any involvement of charities with interest. Interest was in general allowed by original Roman law. But devout Christians were against usury in any form, regarding it as incompatible with the Christian way of life to love your neighbour. Church law strongly condemned usury starting with the Council of Arles in 314, and various secular laws punishing it had also been passed in England during the middle ages. However, by the time of the Reformation, with the growth of capitalism, the government's position became more nuanced. Laws were passed that allowed the charging of interest below a set maximum rate; and the word "usury" acquired its modern meaning of excessive, exorbitant or illegal interest. By the time of Sir Francis's reading (1607), two "Usury Acts" were in force, from 1545 (27 Hen 8 c 9) and 1571 (13 Eliz 1 c 8). These set the maximum interest rate at 10%. Thus, when Sir Francis maintained that trusts receiving interest at 5% or 10% could not be accepted as charitable because all usury is "unlawful", he was ignoring then current statute law and following longstanding canon law.

[45] Simony denotes religious corruption: the buying or selling of church offices, benefices, services, privileges, pardons or other spiritual things (*OED*; *Oxford Dictionary of the Christian Church*). The word derives from Simon Magus, *i.e.* Simon the magician, a charlatan mentioned in the New Testament (*Acts* 8: 9-24) (and elsewhere) who offered to buy spiritual power from Saint Peter. Simony has been a huge issue for Christianity throughout its history—but just internally: church authorities dealt with it (or not) under canon law; the royal or civil government

and courts and the secular law were not involved. So again, Sir Francis Moore was applying canon law to charities. The trust here was not only charging interest on the loans made to young tradesmen—usury—but that interest was being used to support students in divinity, allowing them to obtain church offices later—simony.

If a poor Scholar be married, or be placed in the Colledge of Phyſitians, he is not to be relieved by this Statute, becauſe it is preſumed, he hath competent advancement. [46]

[46] Boyle (1837) p 469 n (*c*): "Not the view which would be taken at the present day."

Bridges for publick paſſage, not private eaſe.

[*For repair of Bridges*], Such only as are for publick paſſage, not private eaſe.

Ports and Havens, as tending to ſafety of Ships for Sails, not other Veſſels, and Creeks for Harbor, to find Lights, to guide Ships into the Haven.

[*Ports and Havens*.] Such onely as tend to ſafety of Ships of ſail, not other Veſſels; and Creeks for Harbor, which are imployed to find Lights to guide ſhips into the Haven, is a Charitable Uſe [11] within theſe words. An Impoſition granted upon Commodities Imported or Transſported, to be imployed upon repair of Ports or Havens, where they ſhall Land, is a Charitable Uſe, [11] and within this Statute.

Common Ponds, as Watering places.

[*Common Ponds*] Or Watering places, are within the Equity [12] of theſe words.

Sea-Banks.

[*Sea banks*.] only where the Sea Ebbs and Flows. And a Gift to repair Sea-Banks is good, notwithſtanding others ſtand bound, by Covenant and Preſcription, to repair them, becauſe it is a common good, in preventing a common danger. *vide Rooks* Caſe, *in fine Cook* 5. 14. [47]

[47] *Rooke's Case*, Hill. 40 Eliz [1598], 5 Co Rep 99 b [published in 1605], 77 ER 209; also reported and translated by Sir John Baker for the Selden Society vol 139 for 2022, *Reports from the Notebooks of Edward Coke*, vol IV pp 844-846, *sub nom Wythers v Rookes and Smythe*. This case was not itself about any charitable purpose but about the ordinary common law on who was responsible for repairing a riverbank—the riverbank's owner of course, but as well, could other property owners whose properties might be damaged if the riverbank failed, also be required to share in the cost? Apparently yes.

Moore simply used this case to illustrate what we today call public benefit in charity law: Such repairs are a common (*i.e.* public) good, even if it happens that the need might otherwise be covered under the law; and therefore, he argued here, if a gift were given to fund such repairs, that would be "good" as a charitable purpose.

But, although Moore invoked this riverbank case for that principle, he confined the scope of this charitable purpose only to seabanks, presumably because only seabanks are mentioned in the 1601 preamble. So it would seem he did not consider repair of riverbanks to be charitable.

Orphans. Baſtards.

[*Orphans*.] Are thoſe that are Poor and Parentleſs, and ſuch [as] are Baſtards after the death of their Mother, and are to be relieved, until by intendment they are able to get their living, which is the age of 21 years.

If a Parentleſs poor Child be married under 12 years of age, it continues an Orphan, until the age of Aſſent, no Servant or Apprentice is an Orphan within this Statute, becauſe they have Maſters, which are in lieu of [p 136] Parents to provide for them; but a Scholar may be an Orphan untill 21 years of age.

Education and Preferment of Orphans, Lands given to buy Horſes, and to provide a Rider, to teach Orphans, to ride, which hold by Knights ſervice, is within this Law.

Houſes of Correction.

[*Houſes of Correction*.] Cannot be Founded by Charter without an Act of Parliament, becauſe it tends to Corporal puniſhment, [48] which cannot be inflicted without Parliament; but Juſtices at their Seſsions, may find one, by vertue of the Act of Parliament, made 39 *Eliz*. [49]

[48] A house of correction was a building where "rogues" and the "idle poor" could be confined and forced to work while subject to corporal punishment (*i.e.* whipping). There had been earlier laws that forced people to work, but the specific idea of tax-funded houses of correction was enacted as a key enforcement component of the poor laws, by *An Acte for the setting of the Poore on Worke, and for the avoyding of Ydlenes*, UK 18 Eliz 1 c 3, often simply called the Poor Relief Act of 1575 (or 1576). There, s 5 authorized each county's justices of the peace, acting together in their general sessions of the peace, to make orders providing for such institutions.

[49] By the time Sir Francis Moore gave his reading, the above 1575 legislation had been superseded by *An Acte for punyshment of Rogues Vagabondes and Sturdy Beggars*, UK 39 Eliz 1 c 14, often simply called the Vagabonds Act of 1597. As before, s 1 authorized each county's justices of the peace, acting together in their quarter sessions of the peace, to make orders for erecting and maintaining houses of correction. This act was repealed more than a century later by what is commonly called the Vagrants Act of 1713, 13 Anne c 26 s 28.

A Gift of Money to erect a Houſe of Correction, [48] [49] is good and within the meaning of this Law.

Marriage of poor Maids.

[*For Marriages of poor Maids*.] Theſe words extend not to ſuch as have Parents able to give Portions with them, nor to ſuch as have Legacies given them, [50] nor to ſuch as are incontinent, [51] nor ſuch as marry without, or againſt the conſent of their Parents: [52] But though they have Uncles, and able to give portions, yet they are poor within this Law. [53] To provide them Wed-

ding Apparel, or an Offering-Dinner, is a good Uſe; [11] but not to provide them Wedding Rings, becauſe that is the Husbands part.

[50] Then as now, the word "maid" could mean what we tend to think today: a girl, young woman, or even virgin. But in this context "maid" was being used in its more technical legal meaning—any unmarried woman. In this era, women were almost completely subjugated by and dependent upon men. They were not "persons" in law and thus they lacked contractual capacity. Their incomes and property, if any, belonged to their fathers or husbands and their ability to get a job or operate a business was entirely under their fathers' or husbands' control. Women without fathers or husbands faced insuperable challenges in supporting themselves. As Moore indicates, the only women who could live independently were—

- beneficiaries of inherited wealth, such as
  - legatees under wills or survivors under jointures, [84] in which cases their income came from uses [11] (*i.e.* trusts) controlled by (male) executors, *etc*;
  - widows with dower [84] rights ("dowagers"); or
  - "coparceners" of an estate that lacked a male heir; or
- those who enjoyed some other unusual advantage or opportunity, such as employment or support by a wealthy or noble patron, or who lived in circumstances or places where the law had little or no application and business could be carried on effectively by her or under her control via informal arrangements with others.

Otherwise, an unmarried fatherless woman faced either a life of poverty, misery, degradation, prostitution and crime—or a not much better life of quasi-slavery under the Poor Law.

[51] Incontinence is largely used today as a medical term for inability to control one's bodily functions. In earlier times, it meant inability to control one's sexual appetite. We would say "promiscuous" today.

[52] So, even if the parents, and therefore their daughter the maid, were poor, it would still not be a charitable purpose to support her marriage if they did not consent. If they wanted (or needed) to keep her in domestic servitude to them, they could.

[53] Only parental wealth was relevant in determining whether a maid was poor. The wealth of other relatives such as uncles had no bearing.

Young Tradeſmen.

[*Young Tradeſmen*.] Not after five years continuance in Trade.

Bankrupts, and perſons decayed.

[*Perſons decayed*] Bankrupts are within theſe words, if they lye in Priſon, not if they keep their Houſes, becauſe they have ſubmitted themſelves to the Law. And the Statute for *Charitable Uſes*, was made after the Statute of *Bankrupts*. [54]

[54] Boyle (1837) p 470 n (*a*): "In both these instances a different construction would probably prevail at the present day."

Such as are decayed by negligence, of Fraud of Servants, or caſualty of Fire, &c. are within this Law, but ſuch as are decayed by Suretyſhip, are not relievable by this Act.

Uſury.

To lend to young Tradeſmen under 10 *l.* the 100 *l.* [55] is Charity, but to imploy the Intereſt, is not within this Statute, becauſe no Charity can ariſe out of Uſury, [44] all Uſury [44] being unlawful.

[55] *i.e.* at 10% interest.

Priſoners or Captives.

For relief or redemption of Priſoners [56] or Captives, [57] to Priſoners upon *Premunire*, [58] or upon Executions upon Condemnations, [59] are relievable.

[56] The word "prisoners" appears to be used by Sir Francis Moore, and probably by most people in this era, for prisoners for debt, and not for those incarcerated while awaiting criminal trial or being punished for criminal offences. No one imagined the latter could be entitled to "relief", but persons in debtors' prison were. Debtors were imprisoned not as a punishment but as security for repayment of their debts. It was widely recognized even at this time that this was utterly perverse, since imprisoned persons would obviously be unable to pursue their gainful occupations through which their debts could be repaid! But the justice system of this era could not think of any other way to secure repayment, and it would be another couple of centuries before imprisonment for debt disappeared. The operation of these prisons and the sustenance of the prisoners was seen as a heavy and unnecessary cost to the public. So, throughout this era the relief of these prisoners either by providing necessities to them and their families while in prison, and often even by paying or settling with their creditors to get them released and back to work, was accepted as a valid charitable purpose under the logic of public benefit. This was recognized not only in the 1601 preamble, but also in the Vagabonds act of 1572 (14 Eliz 1 c 5 s 38), in a proclamation of 29 September 1596 (Steele 887; Hughes and Larkin vol 3 no 783), and in later statutes such as the Insolvent debtors relief act of 1670 (22 & 23 Ch 2 c 20 s 9-11) and that of 1728 (2 G 2 c 22 s 7); and there are examples of legacies in trust for this purpose in Lady Bergavenny's will of 1434 (para 15) and Thomas Guy's will of 1724 (para 54).

[57] The word "captives" referred to something entirely different: the ransoming of merchants, mariners and others captured by pirates, particularly pirates of "Barbary" (now the countries of north Africa). From the late middle ages to the late 1700s was an era of Islamic piracy, marauding, slaving, terrorism and organized crime—significantly assisted by European, including English, crews employed on the pirates' ships—and by European financial middlemen facilitating the "redemptions". This empire of crime was not put to an end until a series of naval expeditions by Britain and other countries somewhat before and after the year 1800. In the meantime, the record is full of statutes, proclamations and wills raising or providing moneys for the charitable purpose of paying for the release of these captives.

[58] Prisoners upon *praemunire*: This was a special legal procedure available under statutes of 1353, 1393 and 1532 to be used against anyone who flouted the king's privileges. It was begun by issuing a writ with the (late corrupt) Latin words *praemunire facias* ordering the sheriff to "cause" someone to be "forewarned" or "admonished" that he was in royal trouble and summoned to court. Originally directed against anyone suing in a foreign court on a matter belonging to English law, it became the main tool against those asserting or maintaining papal jurisdiction in England (without royal consent); and after the reformation, against anyone denying the ecclesiastical supremacy of the monarch—*OED*. History tells us of several powerful personages such as Thomas Wolsey and Thomas Cromwell whose fall from power was begun by a *praemunire* proceeding. It was further extended later against anyone questioning or diminishing any royal jurisdiction, including (from 1605 on) anyone refusing to take the oath of allegiance. There is only one (early modern) law report of a *praemunire* case against an ordinary person: *R v Crook & al* (1662), 6 St Tr 202. This occurred at a time when Quakers were being viciously persecuted, and in this case,

praemunire, though nearly obsolete, was revived to get at several prominent Quakers for refusing to swear the oath of allegiance. (Quakers, *i.e.* the Christian denomination called the Society of Friends, refuse in general to swear any oath, thinking that this is the sin of taking the Lord's name in vain.) The revived procedure worked; Crook and the others were sentenced to forfeit all their property as well as to indefinite imprisonment. But public opinion was so offended by this unusual abuse of an out-of-date power that it was apparently never used again, and some years later Quakers themselves were made respectable by one of the Toleration acts. The *praemunire* procedure was accepted as obsolete for the next three centuries until the statutes of *praemunire* were finally repealed in 1967.

It is hard to see why Sir Francis Moore would have mentioned this subject in his 1607 reading, since at that time *praemunire* seems to have been little more than a curiosity from legal history. But it is easier to see why George Duke would have added this unusual type of prisoner to the summary of Moore's reading in his 1676 book, since by then the use of *praemunire* had regained controversy as a result of the 1662 case.

[59] "Executions upon condemnations": I have not been able to find any source that explains what this apparently technical expression meant. The context hints at some special type of prisoner, so the following may be a reasonable guess, albeit unprovable so far as I know: It appears that the Court of High Commission [62] had a very ill-defined but wide power of arbitrary imprisonment. Essentially, the high commissioners could imprison anyone they wanted for as long as they wanted, either while under their investigation or after they found an ecclesiastical offence; and they could prolong a person's imprisonment as the spirit moved them. There was no proper conviction, sentence or appeal. (See Stedman, *op cit* [62] at pp 4-5.) This court was still very much in operation in Sir Francis Moore's time, and widely viewed as a seriously abusive institution. So it's not hard to imagine that he might have wanted to include these unique prisoners as proper objects of charitable relief. But this is pure speculation. Who knows what "executions upon condemnations" really meant?

Seminaries.

But Seminaries [60] committed [61] by the High Commiſsioners, [62] are not, [63] becauſe the ground of their reſtraint, is a Contempt.

[60] Boyle (1837) p 471 n (*a*): "*Sic* in Duke." [Boyle must have been thinking this was an odd use of the word "seminary" since then as now this normally meant a school for priests, typically Roman Catholic. How could a building, collectivity or corporation such as a school be "committed"? It looks like Boyle was unaware that "seminaries" could also mean the individual priests themselves, namely as teachers of Roman Catholic doctrine. From the *OED*: "Seminary. 5. Roman Catholic Church. A school or college for training persons for the priesthood. In 16-17th centuries often used with reference to those institutions engaged in the training of priests for the English mission. . . . 7. Short for seminary priest . . . Often . . . with the sense 'one who sows the seed' (of Romish doctrine)." So, what was being indicated in this paragraph was that Roman Catholic priests arrested and imprisoned in England were not the sort of prisoners who could be proper objects of charitable relief. They were not like prisoners for debt, [56] pirate captives, [57] persons trespassing on the monarch's privileges [58] or persons in trouble with the religious authorities [59]—all of whom could be regarded not as criminals but in some sense as accidental unfortunates. Instead, in these virulently anti-Catholic times, "seminaries" were regarded as treasonous criminals.]

[61] *i.e.* committed to prison for religious offences against the prevailing Protestant church of England.

[62] The Court of High Commission was a court for administering the ecclesiastical laws of the prevailing Protestant church of England, Originating in 1547, it was abolished in 1641, re-established in 1686, finally abolished in 1689. See Walker, *Oxford Companion to Law* (1980), pp 566-567; further detail in *Uncommon Justice: The court of High Commission in the early 17th century* by Annika Stedman, published online by Canterbury University Press, https://doi.org/10.26021/15195.

[63] *i.e.* are not proper objects of charitable relief/

An enemy taken Captive by another Chriſtian, not relievable. But if a Christian be Captive to a Turk, he is [**p 137**] relievable, becauſe he was taken priſoner, in defence of a common Cauſe; For the Turk is *Hoſtis Communis* [64] to all *Chriſtians*. [65]

[64] Latin, common enemy.

[65] Bridgman (1805) p 131*n*: "Turks and infidels are not *perpetui inimici* [66], nor is there a particular enmity between them and us, but this is a common error founded on a groundless opinion of Justice Brooke; [67] for although there be a difference between our religion and theirs, that does not oblige us to be enemies to their persons, they are the creatures of God, and of the same kind as we are, and it would be a sin in us to hurt their persons. Littleton's Readings on statute 27 Edw. III. 17. MS. [68] Salk. 46. [69] *Vide Calvin's case*, 7 Rep. 17. [70] Stat. 21 *H.* VIII. [71] *Omychund v. Barker*, 1 Atk. 21." [72]

[66] Latin, perpetual enemies

[67] It appears that the "groundless opinion of Justice *Brooke*" was in the case of *Fyloll v Assheleygh* (1520-1521), YB Trin 12 H 8; reported and translated by Sir John Baker for the Selden Society vol 119 for 2002, *Year Books 12-14 Henry VIII, 1520-1523*, pp 14-20. There, what Broke J actually said (in *obiter* at p 15) was:

Auxi home puit faire damage et injurie et ne serra punishe, come si le seignior batera son villen, ou le baron son feme, ou home batera un home utlage ou traytor ou pagane: ilz naveront action pur ceo que ilz ne sont pas able de suer action.	Also, one can cause damage and injury and still not be punished. For example, if a lord beats his villein, or a husband his wife, or someone beats an outlaw, traitor or heathen: these people shall have no action, because they are unable to sue.

So, what Broke J was pointing out was that under English law (as it was then) there were types of people such as the "heathen" who could suffer damage and injury even from being beaten, yet had no standing to sue, at least in the English royal courts. Nearly ninety years later, Sir Edward Coke invoked Broke J's statement in *Calvin*'s case (cited below in note [70]) in support of a more far-reaching argument (albeit in *obiter*):

> [p 17] . . . But a perpetual Enemy (though there be no Wars by Fire and Sword between them,) cannot maintain any Action, or get any Thing within this Realm. All Infidels are in Law *perpetui inimici*, perpetual Enemies (for the Law preſumes not that they will be converted, that being *remota potentia*, a Remote Poſſibility) for between them, as with the Devils, whoſe Subjects they be, and the Chriſtian, there is perpetual [p 17*b*] Hoſtility, and can be no Peace; for as the Apoſtle ſaith, 2 *Cor.* 6. 15.
>
> | | |
> |---|---|
> | *Quæ autem conventio Chriſti ad Belial, aut quæ pars fideli cum infideli,* | Can Christ agree with Belial, or a believer join hands with an unbeliever? [*New English Bible*] |
>
> and the Law ſaith,

Judæo Chriſtianum nullum ſerviat mancipium, nefas enim eſt quem Chriſtus redemit blaſphemum Chriſti in ſervitutis vinculis detinere. [A Jew should not enslave a Christian; it is wrong, indeed a blasphemy of Christ, to hold in bonds of servitude those whom Christ has redeemed.]

Regiſter 282. *Infideles ſunt Chriſti & Chriſtianorum inimici.* [Infidels are the enemies of Christ and Christians.]

And herewith agreeth the Book in 12 *H.* 8. *fol.* 4. where it is holden that a Pagan cannot have or maintain any Action at all. [*Quære.*]

That last reference to "the Book in 12 *H.* 8. *fol.* 4." is to *Fyloll v Assheleygh*. So it appears that it was the famous Sir Edward Coke who expanded the law from denying infidels standing to sue, to declaring them perpetual enemies; and Sir Francis Moore agreed. Sadly, this was the prevailing point of view in their time, which saw the height of the Islamic piracy mentioned earlier. By Bridgman's time, two centuries on, Islamic piracy was nearly eliminated and attitudes had changed somewhat.

[68] Bridgman cites a reading given in 1632 by Sir Edward Littleton, later a judge, briefly Lord Keeper, a less than successful moderate in the English civil war, and apparently a person of considerable legal scholarship. See The Newe Littleton by J. H. Baker, Cambridge Law Journal, 33(1), April 1974, pp 145-155 at p 146 n 11, where we are told of Littleton's "Inner Temple reading of 1632 on the statute of merchant strangers", findable at "Brit. Lib. MS.Harg. 372 (3), f. 90; MS.Add. 42117, f. 1; Salk. 46, pl. 2. [69] The statute is 27 Edw. 3, cap. 1." The whole reading by Littleton has apparently not been published; but as Bridgman and Baker note, a passage from it was included in Salkeld's Reports; see next note [69].

[69] *Reports of Cases in the Court of King's Bench* by William Salkeld (1671-1715), London 1718, vol 1 p 46 note (2); also 91 ER 46:

(2) Turks and Infidels not *perpetui inimici*.

TUrks and Infidels are not *perpetui inimici*, [66] nor is there a particular Enmity between them and us; but this is a common Error founded on a groundleſs Opinion of Juſtice *Brooke*; for tho' there be a difference between our Religion and theirs, that does not oblige us to be Enemies to their Perſons; they are the Creatures of God and of the ſame kind as we are, and it would be a Sin in us to hurt their Perſons. *Per Littleton* (afterwards Lord Keeper to King *Charles I.*) in his reading on the 27 *E.* 3. 17. *M.S.*

The citation "*M.S.*" at the end indicates that Salkeld was quoting *verbatim* from Littleton's manuscript; and Bridgman in note [65] above was likewise quoting from Salkeld. All three rejected Coke's blanket condemnation of infidels.

[70] *Calvin*'s case (1608), also known as the case of the "*Postnati*", was about the legal status, in England, of persons born in Scotland after their King, James, became King of England. In a widely reported decision, the judges of England—including Coke, then chief justice of the court of common pleas—concluded that such Scottish-born persons acquired English rights. In his report, Coke's comments about infidels occurred at 7 Co Rep 1 at 17-17b, 77 ER 377 at 397.

[71] *Sic*. Bridgman appears to misprint Coke's case reference "12 H. 8. fol. 4." as "Stat. 21 H. VIII". However, there was indeed an act dealing with the rights of aliens passed as 21 H 8 c 16; but it did not refer to infidels, pagans or the heathen.

[72] In *Omychund v Barker* (1744), 1 Atk 21, 26 ER 15, 1 Wils 84, 95 ER 506, Willes 538, 125 ER 1310, the Lord Chancellor with all the Chief Justices unanimously held that any evidence given under oath by non-Christians was to be accepted. They all explicitly rejected Coke's thesis that non-Christians were perpetual enemies. We can therefore safely agree with Littleton, Salkeld and Bridgman that Moore's position here in his reading is incorrect.

A Gift was made to relieve ſuch as were impriſoned for their Conſcience ſake. It was agreed in *Throgmorton* and *Grayes* case, 41 *Eliz*. [73] That if they were in priſon, in ſubjection to the Law, upon Condemnation, [59] they were relievable, if upon obſtinacy, not to be relieved by the Charity of this Law. P. for Conſcience.

[73] *c.* 1598-99. The case cannot be found. There were several notable Throgmortons or Throckmortons in this period, but no case involving both that name and the name Gray as imprisoned for conscience' sake (recusants, [31] presumably). Nor is it clear what court made this decision about whether and when the relief of such prisoners could be charitable. Chancery perhaps? To be researched.

The Wives and Children of Priſoners are not within the Equity [12] of this Act.

Taxes, Subſidies, [25] are not within the meaning of this word, becauſe poor men pay them not, and ſee no eaſe to diſcharge them of that Taxe. [74] But all Taxes, where with the poor as well as rich, are chargeable, are within the intent of this Law: as keeping of Watches, purſuing of Hue-and-Cries, *&c*. But fines for Eſcapes, for Robberies are not within this Act. Taxes.

[74] Boyle (1837) p 471 n (*c*): "*Quære*, and see the words of the act."

Penalties of Statutes, *non obſtantes*, Monopolies, and ſuch kind of priviledges, cannot be granted to a Charitable Uſe. [11] Penalties of Statutes.

[p 138]

[75] The following section within division 1 [CHARITABLE USES] appears to deal with issue 2, "***What shall be said to be a gift, limitation, appointment, or assignment of such a charitable use***."

Upon the Firſt Diviſion

AS in all other Grants, ſo in a Gift to a Charitable Uſe, [11] theſe four things are principally conſiderable: Four neceſſary Incidents to a Cha. Uſe.

1. The Ability of the Donor. Ability of the Donor.
2. The capacity of the Donee. Capacity of the Donee.
3. The inſtrument or means whereby it is given. The Inſtrument.
4. And laſtly, the thing it ſelf, which is or may be given, to a Charitable Uſe. [11] The thing given.

Thoſe perſons which are diſabled to be Donors by the Common Law, or by Statute, are diſabled to give to a Charitable Uſe, [11] ſuch are Infants, Married Women, Ideots, Madmen, Lunaticks, Accomptants to the King, [76] Bankrupts, *&c*. Perſons diſabled to be Donors. Infants, Married Women, Ideots, Madmen, Lunaticks, Accomptants to the King, Bankrupts.

[76] "accompt", "accomptant"—old spelling of "account" and "accountant". In this era these words were often used as equivalent to "debt" and "debtor"; but here an "accountant to the King" (or the Crown) meant anyone, for instance, a tax collector, who collected money for the royal government. Oxford Companion to Law (1980): "Accountant to the Crown. Any person who has received money for the Crown and is accountable therefor." Such persons were under onerous restrictions as to what they could do with even their own money as well as money belonging to a charitable trust, since debts owing to the Crown had priority over all others. In several places in this summary, Sir Francis Moore spoke of accounts or accountants without more but likely meant such accountants to the king.

An Infant may make a Feoffment to Cha. Uſe, with a Letter of Attorney to deliver Seiſin. If he give Seiſin, or Levy a Fine, theſe are only voidable.

If an Infant make a Feoffment to a Charitable Uſe, [77] with a Letter of Attorney, to deliver Seiſin, this is merely void;

But if he Levy a Fine, [29] or make Livery himſelf, theſe are but voidable. So,

[77] A "feoffee to a charitable use" was a feoffee [40], someone who had been conveyed [119] land by feoffment, upon condition that he or she use the revenue from it for a charitable use; [11] in other words, what we today would call a charitable trustee. A "donee" to a charitable use [11] meant the same, the feoffment being without consideration, *i.e.* a gift.

If a Feme covert Levy a Fine to a Cha. Uſe, and ſurvive the Baron, it is good; if the Husband ſurvive, it is void. A married Wom-an Executrix, may give the Goods of the Teſtator to a Cha. Uſe.

If a Married Woman levy a Fine [29] to a Charitable Uſe, [11] this is good until it be reverſed; If the Husband and his Wife levy a Fine [29] of the Wives Land, and the wife onely declares the Uſe: [11] If the Husband ſurvive, the Uſe [11] is void: but if the Wife ſurvive, the Uſe [11] is good. A married Woman, Executrix to another Man, may give the Goods which ſhe hath as Executrix, to a charitable use. [11]

An Ideot, Madman, Lunatick,It make a Gift to a Cha. Uſe, and good, till Office found.

If an Ideot, Madman, or Lunatick, make a Gift to a *Charitable Uſe*, [11] it is good, until an Office be found of their Ideocy, *&c*.

A Bankrupts Gift to a Cha. Uſe, is good till a Commiſſion of B. executed.

If a Bankrupt make a Gift to a *Charitable Uſe*, [11] it is good, until a Commiſsion be awarded and executed.

An Accomptant may do the like and good, till he be found inſufficient.

So, if an Accomptant [76] make a Gift, it is good, until it appeareth, he is not ſufficient otherwiſe to make ſatisfaction.

May be Donees, Feoffees, &c.

Perſons diſabled to be Donors, may be Donees, or Feoffees to Charitable Uſe; [77] and ſuch as cannot be Feoffees to other Uſes, [78] may have Lands to a Charitable Uſe. [11]

[78] A feoffee to uses was a feoffee [40], someone who had been conveyed [119] land by feoffment, upon condition that he or she use the revenue from it for a use [11] or trust; in other words, what we today would call an ordinary trustee. Feoffees to *charitable* uses [77] were a subcategory of this. In several places in this summary, Sir Francis Moore spoke of feoffees to uses but likely meant feoffees to charitable uses.

Feoffment to Dean and Chapter, to perform a Cha. Uſe, good.

If a Feoffment [40] be made to a Dean and Chapter, upon condition to perform a Charitable Uſe, [11] it is good, though they cannot be ſeiſed to another man's uſe. [11]

Bankrupt, Accomptant, Recuſant, may be Feoffees to a Charitable Uſe.

A Bankrupt, an Accomptant, [76] a Recuſant [31] may be Feoffees, or Donees, to a Charitable Uſe. [77]

Daughter and Heir gives Land, &c. and then a Son born, the Son ſhall avoid the Gift.

If the Daughter being Heir, gives the Land, deſcended to a Charitable Uſe, [11] and then a Son be born, The Son ſhall avoid the Gift.

The Father Feoffee upon conditions, gives to a Charitable Uſe.

But if the Father had been a Feoffee, [40] upon condition, that he or his Heirs ſhould give the Land to a Charitable [**p 139**] Uſe, [11] and the Daughter had made ſuch a Feoffment [40] before the birth of the Son, that ſhould have bound the Son; becauſe it was no more than the Son himſelf ſhould have performed, by reaſon of the condition.

Shall bind the Son

A Gift to a Parſon and his Suceſſors, to the uſe of a Pariſh, good.

A Gift was made to a Parſon and his ſucceſſors, to the uſe [11] of the poor of the Pariſh: the Parſon made a Leaſe for 30 years, The Leſſee did not perform the Uſe, [11] and the poor made an Entry; In this caſe it was reſolved, That the Gift was good: and that the Lease for ſo many years was good alſo. Notwithſtanding the Statute 13 *Eliz. Cap.* 10. [79] And the Reaſons,

1. Becauſe it was not ancient Glebe of the Church.
2. Becauſe it could not tend to the impoveriſhment of the Succeſſor; inſomuch as it was given to a Charitable Uſe. [11] *Baniſters* Caſe in the *Star-Chamber*, 44 *Eliz*. [80]

[79] *An Acte against Fraudes, defeating Remedies for Dilapidations, &c.*, UK 13 Eliz 1 c 10. To prevent abusive transactions involving church land, this act (amongst other things) placed a limit of 21 years on leases of such land. It was given the short title *The Ecclesiatical Leases Act, 1571*, in 1948; and finally entirely repealed in 1998.

[80] *c.* 1601-2; otherwise unreported. There are a number of Star Chamber case records dated about then, having the name "Banister" amongst the litigants. These are indexed by UK National Archives in record group "STAC 5". To be researched. It appears, from Moore's short summary above, that although this lease was for longer than 21 years, it was nevertheless not caught by this act because the property was not original church property ("glebe") but a gift of property for a charitable purpose; and the revenue from the long lease was intended for the same.

Lands given to an Ideot, good, till Ideocy is found.

Lands are given to an Ideot for a *Charitable Uſe*, [11] this is good, until an Office find him an Ideot; but after Office found, it ſhall be

void, during his life; and then after his deceaſe, it ſhall be revived in his heir.

A Gift to a Married Woman, void, if her Husband diſ-agree.

A Gift made unto a married Woman, if her Husband diſagree. The Gift is void.

Deviſe by Will, granted by Deed, compellable to perform the Cha. Uſe.

If Lands or Goods be deviſed to one by Will, or a Remainder [81] limited to one by Deed, to perform a *Charitable Uſe*. [11] If the Deviſee will refuſe the Legacy, or the Grantee wave his Remainder, [81] and that by Fraud or Covin, they are compellable to take the Land, and to perform the Uſe. [11]

[81] Remainders and reversions: These were and still are terms in technical property law. They mean nearly the same thing. If the owner of a longer or higher level estate in land conveys [119] a temporary or lesser estate of the land to another person, then, when that interim estate comes to an end, the previous estate resumes and is owned by—someone. If that someone is the original owner (or his heir), then he is a "reversioner" and his right to resume ownership is called a "reversion". If, on the other hand, the original owner arranged things so that someone else, other than he, will become the owner when the interim estate ends, then that new owner is a "remainderman" and his right to take ownership is called a "remainder". The typical reversioner is the landlord who rents out his land to a tenant and will get it back when the tenancy ends. The typical remainderman might be created under a property owner's will which, first, gives a surviving spouse a right to own and inhabit the property for life, and second, designates another person, a child say (or a charity), who will receive the "gift over" of the property once her life ends. Sir Francis Moore was very preoccupied with the many ways in which remainders and reversions could be engineered or misused to deprive a charity of the property it was given.

Where a Corporation, which was none before, ſhall continue for a Cha. Uſe only.

The King gives Land *Probis hominibus de D*. [82] (which was no Corporation before) rendring a certain Rent, and the reſidue of the Profits, to repair a Bridge, *&c*. and after the King releaſes the Rent or Farm; in this Caſe, though the reſervation of the Farm was the cauſe of their corporation and capacity, which being releaſed, their capacity ſhould ſeem determined; yet for the preſervation of the *Charitable Uſe*, [11] they ſhall continue a Corporation for that purpoſe only.

[82] Latin, to the good men of (the place) D.

A Gift to a Pariſh by Deed, to a Cha. Uſe, is void. A Deviſe by Will, good.

A Gift to a Pariſh by Deed to a *Charitable Uſe*, [11] is void, but a Devise by Will is good; and the Church-wardens, and Overſeers, ſhall take it in ſucceſsion. And in *London* the Mayor and the Commonalty. 40 *Aſſ*. 26. [83]

[83] This appears to be a case reported in *Liber Assisarum*, 40 Edward 3 (1366) pl 26, printed in the Year Books Vulgate Edition, vol 5 pp 245-246, and given Seipp no 1366.143ass; including a translation by Prof. David Seipp. Very difficult; to be further researched.

A Cha. Uſe cannot be limited, upon an Eſtate in Dower.

A *Charitable Uſe* [11] cannot be limited upon an Eſtate in Dower, [84] nor upon a Gift in frank Marriage; nor upon exchange made of Lands.

But it may be charged upon a Joynture,

But a Joynture [84] may be made to a *Charitable Uſe*, [11] becauſe it may be upon condition; *Vernons* Caſe, *Coke* 4. 2. [85]

[84] Dowers and jointures. A dower was—

> "The share of a dead man's estate that was formerly allowed to his widow for life."—*OED*.
>
> "In mediaeval English law, the right of a wife on her husband's death, to a third of the land of which he was seised for her life, of which she could not be deprived by any alienation [119] made by him but only in certain defined and limited ways. . . . The rules later developed that a jointure (*q.v.*) would bar dower, [146] and dower was not allowed out of a trust. After 1833 a husband could deprive his wife of dower, and it arose only where he died intestate. Dower disappeared in 1925 [in England]."—*Oxford Companion to Law* (1980).
>
> "It took the form of a life estate that vested in the widow at the time of the death of her husband, and that attached to one-third of all real property that the husband had owned during his lifetime. . . . The widow could draw on this entitlement for an income for the remainder of her life."—*Encyclopedic Dictionary of Canadian Law* (2021).

Jointure: ". . . an estate settled on a wife for the period during which she survives her husband."—*OED*.

> "Typically, such an estate was made in consideration of marriage in lieu of dower, [146] and was intended to provide a more secure (and usually larger) income for the wife should she survive her husband. Generally, in such a case, the wife exchanged her dower rights for the provision made for her in jointure."—*Encyclopedic Dictionary of Canadian Law* (2021).
>
> ". . . a jointure could formerly be either legal, or equitable, in the latter case generally consisting of a rentcharge or annuity payable by the trustees of a marriage settlement to the wife if she survived her husband."—*Oxford Companion to Law* (1980).

[85] *c*. 1572. 76 ER 845 at 847; not a charity case.

[Whereſoever a condition is limitable, there a Cha. Uſe is appointable.] [88]

And whereſover a Condition is limitable, there a *Charitable Uſe* [11] is appointable.

Gift in Tail, by render by Fine, upon a Gift, *cauſa Matrimonii prælocuti*, Releaſe of right of action, Entry, *&c*. or any thing valuable.

It may be limited upon a Gift in Tail, by a Render by Fine, [29] upon a Gift, *Cauſa Matramonii prælocuti*, [86] upon a Releaſe of Right, Action, Entry, *&c*. or any [p 140] thing valuable

[86] Latin, by reason of pre-arranged marriage.

Upon bargain and ſale: it may be averr'd

upon a bargain and ſale of Land, it may be averred, that it was to a Charitable Uſe [11]

Upon a Feoffment without Liver.

upon a Feoffment [40], without Livery,

Upon a Reverſion without Attornment.

upon a Grant of a Reverſion, [81] without Attornment, [87]

upon a Bargain and Sale without Inrollment.

Upon a Bargain and Sale, without Inrollment.

[87] attorn; attornment:

> "To agree to be the tenant of a new landlord"—*Black's Law Dictionary*, 7th ed. (1999).

"In English law, the agreement of the owner of an estate in land to become the tenant of one who has acquired the estate next in reversion or remainder. . . , Formerly attornment was necessary in most cases to complete the grant of a reversion or remainder, but since 170[6] such grants are effectual without the attornment of any tenant."—*Oxford Companion to Law* (1980). (*Administration of justice act of 1705*, 4 & 5 Anne c 3 s 9)

Whereſoever a condition is limitable, there a Cha. Uſe is appointable.

[88] This marginal note was mislocated in Duke's print and belongs as shown above.

Coppyholder ſurrenders to the uſe of a Grammar-School

The Lord is compellable to admit the Tenant.

If a Copyholder ſurrenders to another, to the uſe [11] of a Grammar-School, [40] the Lord of the Mannor is compellable to admit the Tenant, becauſe it is not prejudicial to the Lord; inſomuch, as he hath but one Tenant, after whoſe death, his Fine is due, as it was before, and the uſe [11] of the Land is only in the Corporation. *Ranſhaw & Robottom*'s Caſe at *St. Albans*, Dower [84] in the *Chancery*, 43 *Eliz*. [89]

If Surrender had been to a Corporation, the Law is otherwiſe.

Otherwiſe, if the Surrender had been made to a Corporation; for then the Lord ſhould have been prejudiced in his ſervices; ſo if the cuſtom of the Mannor be to deviſe to one only, and to have a Harriot after his death; the Tenant may not ſurrender to two perſons to a Charitable Uſe, [11] becauſe the Lord is delayed of his Harriot.

[89] *c*. 1600-1. Otherwise unreported.

Coppyholder ſurrenders to the uſe of his Will. Deviſeth Land to be ſold for a Cha. Uſe.

A Copyholder ſurrenders to the uſe [11] of his laſt Will, and thereby deviſes, that the Parſon, the Churchwardens, and four honeſt Men of the Pariſh of *Alhallows*, ſhould ſell his Copyhold, to be imployed to a *Charitable Uſe*. [11] The Copyholder dyeth, his Heir is admitted, the Parſon, *&c*. ſell the Copyhold to *J. S.* the Heir was compelled to ſurrender to *J. S. T. H. Guiddys* Caſe decreed, 4 *Jac*. in the *Chancery*. [90]

The Heir compelled to ſurrender accordingly.

[90] *c*. 1606-7. Otherwise unreported.

A Leaſe rendring Rent to a common Midwife, for poor Women, good,

A Leaſe for years is made, rendring Rent to a common Midwife, for poor Women: the Rent is limited, by reaſon of the *Charity*, though a reſervation of Rent cannot be appointed to a ſtranger, by the Common Law.

Two Joynt Tenants one releaſes to a Cha. Uſe, the Uſe is well limited.

If there be two Joynt-Tenants, and one releaſe to the other; to a *Charitable Uſe*, [11] the Uſe [11] is well raiſed; but if two Joynt-Tenants of a Rent, and one grants his part to the other to a *Charitable Uſe*, [11] that is void, for one Joynt-Tenant cannot grant to the other.

But a Grant from one to his fellow is void.

Land ſold to a Cha. Uſe, after a Feoffment, with power of Revocation, the uſe is well raiſed.

If a man make a Feoffment, [40] with a power of Revocation, and afterwards he ſells the Land to a *Charitable Uſe*, [11] the Uſe [11] is well limited, and he cannot revoke. If a man deviſe a term for years, to a Woman, during her life, the remainder [81] to another to a *Charitable Uſe*, [11] though the remainder [81] which is limited, be void, yet the Executors of the Woman, which ſhall have the reſidue of the term, ſhall be charged with the Uſe. [11]

Reſidue of a term charged with a Charitable Uſe.

Three Pariſhes. Money given to be Lett out by the Churchwardens at Intereſt. Relievable in Chancery, but not by this Statute.

If a man bequeath 300 *l*. to three Pariſhes, equally to be Lett out, at 5 *l*. *per* 100. [43] by the Churchwardens of each Pariſh, this Legacy is not within this Statute; but yet the Chancellors may give remedy by Equity [91] in *Chancery*.

[91] Here the word "equity" is being used in its usual sense—a system of principles and case law separate from and parallel to the ordinary law that that was developed by the chancery court to make the latter "fairer" or more just.

[p 141]

Intereſt of Money given to a Cha. Uſe, not Charity, becauſe grounded upon Uſury, which in itſelf is unlawful.

If Money be given to be put out at 5 *l*. *per Cent*. [43] and the Intereſt to be given amongſt the Poor, this is no *Charitable Uſe* [11] within this Statute, becauſe it depends upon Uſury, [44] which is unlawful.

A Deviſe to charge the Executors, *&c*. of a Feme-Covert, with a Charity, is void. If that Feme take another Husband, & he have Aſſetts of the firſt Teſtator, it is good, as to the Aſſets.

If a man deviſe that the Executors or Adminiſtrators of his wife, ſhall pay 100 *l*. to be Lett out to young Tradeſmen, this Deviſe is void, becauſe he cannot charge the Executors or Adminiſtrators of his wife. But if that Wife take another Husband, and he hath Aſſets in his hands, of the Goods of the former Husband, thoſe ſhall be lyable to the *Charitable Uſe*; [11] and theſe obſervations be made upon a Decree, in *Jo. Howard*'s Caſe, 40 *Eliz*. [92]

[92] *c*. 1597-98. Otherwise unreported. The online catalogue of the National Archives, Kew, shows a record C 4/55/61 "John Howard and his wife Elizabeth v. William Vaughan: demurrer" from the court of chancery. To be researched.

A Charity given to the poor of an Hoſpital, being no Corporation, decreed to the Mayor and Burgeſſes, in whoſe Precincts the Hoſpital was, to the uſe of the èpoor of that Hoſpital.

G. gave Lands to the Poor of the Hoſpital of *Reading*, 44 *Eliz*. [93] now the Hoſpital was no Corporation, and ſo not capable; but the Mayor and Burgeſſes were Governors, and Surviſors of the Hoſpital, the Land upon Equity, [12] decreed to the Mayor and Burgeſſes, to the uſe [11] of the poor to that Hoſpital.

[93] *c*. 1601-2.This appears to be a case that has been reported elsewhere several times:

- *Major & Burgesses de Reading contra Lane* (43 *Eliz*. [=1600-1]), Tothill 94 (published 1649), 21 ER 115:

Major & Burgenſis de Reading contra Lane, in 43 *Eliz*. A deviſe to the poor people maintained in the Hoſpital in the Pariſh of Saint *Laurence* in *Reading* for ever exception was taken that the poor were not capable by that name for no Corporation, yet becauſe the Plaintiff was capable to take lands in Mortmain, and did govern the Hoſpital: It was decreed that Defendant ſhould aſſure [119] the lands to the Major and Burgeſſes for the maintenance of the ſaid Hoſpital.

- *Major and Burgesses de Reading, contra Lane* (43 *Eliz*. [=1600-1], Herne 99 (published 1660), text nearly identical to Tothill above.
- 2nd ed. of Herne 172 (case 30) (published 1663), identical text.
- 2nd ed. of Tothill 94 (published 1671), identical text.
- Duke (1676) 81 (case 30), nearly identical text copied from Herne. (So, in addition to the above paragraph in this his summary of Moore's reading, Duke shows this same case in another part of his book.)
- *Mayor, &c. of Reading v. Lane* (1601 Canc.), Bridgman (1805) 361, nearly identical text copied from Duke. (So likewise, in addition to the above paragraph in his reprint of Duke's summary of Moore's reading (at p 136), Bridgman shows the same case in another part of his book.)
- Additional information on this case is given in *Reports of the Commissioners for inquiring concerning Charities*, vol. 32, Part I (1837), at p 57 (http://parlipapers.chadwyck.com):

  Lane's Charity.—By deed-poll, [94] under the hand and seal of Thomas Lane, bearing date 20th January, 44 Elizabeth, 1602 (enrolled in the Court of Chancery 13th June following),

  reciting that his father, George Lane, whilst he lived at Reading, by his Will, bequeathed his cottage or tenement, with a croft and seven acres of land thereunto belonging, the rent whereof then was 6*s*. 8*d*., in the parish of Whitchurch, in the county of Oxford, to the poor people maintained in the hospital or almshouse of the parish of St. Lawrence, in Reading; and

  reciting that a suit had lately been commenced in the Court of Chancery between the mayor and burgesses of Reading, complainants, (being owners of the said hospital, and having the oversight thereof,) and him, the said Thomas Lane, concerning the said tenements and land,

  whereupon a decree, dated the 18th May, was passed in Easter term then last [*i.e.* 1601], for his conveying [119] the said tenement and land to the said mayor and burgesses, to the use [11] of the poor of the said hospital, not incorporate nor capable of lands by itself,—

  the said Thomas Lane, in performance of the said order and decree, and also the Will of his father, granted to the said mayor and burgesses the aforesaid tenement and lands to the use [11] of the poor of the said hospital.

- Bryson (2002) pp 21-22 (case 3), nearly identical text copied from Herne (1660) 99. The following headnote is added:

  A charitable gift that was not properly directed will be redirected by the court to a proper donee in order to effectuate the donor's charitable intent.

[94] Deed poll: a deed made and executed by one party only (so called because the paper is polled or cut even, not indented).—*OED*

A Charity may be averred, where it paſſeth without Deed. Where they paſs by Deed, *è contra.*

Where the things given may paſs without Deed, there a *Charitable Uſe* [11] may be averred by witneſſes; but where the things cannot paſs without a Deed, there *Charitable Uſes* [11] cannot be averred, without a Deed, proving the Uſe. [11]

If a Fine [29] be Levied, *Sur-Grant & Render*, a *Charitable Uſe*, [11] cannot be averred without a Deed: but if a Fine [29] be levied, and a Uſe [11] expreſſed in another Deed, That expreſſed Uſe [11] may be averred without Deed, to be a *Charitable Uſe*, [11] and upon confidence; ſo may an Averrment be taken by paroll of a *Charitable Uſe*, [11] which is agreeable to the Uſe [11] expreſſed.

A Charity cannot be averr'd againſt a Fine, Surrender, Grant, and Render. If the uſe paſs by another Deed, & upon Confidence, *&c.* an averrment is good by paroll.

A Joynture [84] made, to bar a Woman of her Dower, [84] cannot be without Deed; and therefore a Charitable Uſe, [11] limited upon ſuch a Joynture, [84] cannot be averred without a Deed.

A Charitable Uſe upon a Deed, to bar a woman of her Dower, cannot be averr'd.

If a man make a Feoffment, [40] upon condition, that the Feoffees [40] ſhall perform a *Charitable Uſe*; [11] if the Feoffor [40] himſelf re-enter for the Condition broke, the Uſe [11] is deſtroyed: but if his Heir enter for breach of the Condition, he ſhall perform the Uſe, [11] becauſe he comes in upon Confidence, and the Condition was compulſory to perform the Uſe. [11]

Upon the re-entry of a Feoffor of a Charity, after Condition broken, the uſe is deſtroyed. But if his Heir enter *ut supra*, he is bound to perform the Uſe.

A man being ſeized of two Acres of Land, the one of the nature of *Burrow-Engliſh*, the other at the Common Law, hath two Sons, and deviſeth both thoſe Acres to both his Sons, to perform a *Charitable Uſe*. [11] If the Condition be broken, the elder Son ſhall enter into the *Burrow-English*, and the younger into the *Guildable* Acre, and each ſhall hold his Acre, charged with the Uſe, [11] becauſe the condition was penal and compulſory, to perform a *Charitable Uſe*. [11]

A Deviſe to two Sons of two Acres, for a Cha. Uſe, one *Borough-Engliſh*, the other at Common Law, both are chargeable with the Cha. Uſe.

[p 142]

[95] The following section within division 1 [CHARITABLE USES] appears to deal with issues 3 and 4 combined, "***What shall be said to be lands, tenements, rents, annuities, profits, hereditaments, goods, chattels, money, and stocks of money assigned or assignable within this statute***."

There be five manner of things which cannot be granted to a *Charitable Uſe*, [11]

5 things not chargeable with a Cha. Uſe.

Firſt, things that yield no profit.

1. Things of no profit.

2. Things that are incident to others and unſeparable;

2. Things incident to others, and unſeparable.

3. Poſſibilities of Intereſt;

3. Poſſibilities.

4. Conditions;

4. Conditions.

5. Copyholds, if any way prejudicial to the Lords.

5. Copyholds, if prejudicial to the Lord.

Advowſon in groſs. A Way, Matters of Pleaſure, as Licenſe to hunt in a Park. A Seignory *pro* Fealty only, *&c.* cannot be granted to a Cha. Uſe, but may be releaſed or ſold, and the Money raiſed, diſpoſed of accordingly.

An Advowſon in groſs, a way, or paſſage, matters of pleaſure, as Licenſe to hunt in a Park, A Signory *pro* Fealty only, *&c.*, cannot be granted to a *Charitable Uſe*: [11] but they may be releaſed to a *Charitable Uſe*, [11] or ſold, and the Money provenient, diſpoſed to a *Charitable Uſe*. [11]

An Advowſon granted upon condition, when the Church is void to a Cha. Uſe, is a good limitation.

So an Advowſon may be granted, upon condition; that ſo often as the Church ſhall be void, a poor Scholar of ſuch a Colledge ſhall be preferred, and the limitation is good.

Common Appendant, and Annuity *pro conſitio*, cannot be granted.

A common Appendant, an Annuity *pro conſilio impendendo*, [96] and ſuch things not ſeparable, cannot be granted to a *Charitable Uſe*. [11]

[96] Latin, for counsel to be rendered. *Black's Law Dictionary*, 7th ed. p 1223: "Advice given could formerly serve as consideration for the grant of an annuity."

Entry upon condition broken, to perform a Cha. Uſe, the Grantee is chargeable.

If a man make a Leaſe for life, upon condition, and after grants his Reverſion, [81] upon condition to perform a *Charitable Uſe*, [11] if the Grantee enter for Conditions broken, he ſhall preſently hold as charged with the Uſe. [11]

A Condition in groſs may be releaſed to a Charitable Uſe, [11] but it cannot be granted.

The Heir not chargeable with a Cha. Uſe, after a Mortgage charged therewith.
But if the Heir redeem the Land, it is chargeable.

If one Mortgage or Deviſe, that if his Heirs redeem the Land, he ſhall perform a *Charitable Uſe*, [11] the Heir is not chargeable, for his Father had but a bare Condition; and yet if the Mortgager Deviſe, that his Executors ſhall pay the Money to redeem the Land; or if he deviſe Money to his Heir, to redeem the Land, and deviſe farther, That when the Heir hath redeemed the Land, he ſhall perform a Charitable Uſe, [11] this Leaſe, [97] is well limited, and the Heir is chargeable with it.

[97] *Sic*. For "Lease" read "Devise", per Bridgman (1805) p 138.]

The Statute of Wills binds not this Statute.
Two parts deviſed to pay debts, a third to a Cha. Uſe, the Heir charged with the Uſe by deſcent.

The Statute of Wills, binds not this Statute; for if Tenant by Knight-ſervice diſpoſe of two parts of his Lands, for the advancement of his Wife and Children, *&c.* and after deviſe by his Will, that his Heir ſhall perform a *Charitable Uſe* [11] with the third part; the Heir ſhall be charged with the Uſe, [11] becauſe he is in by diſcent.

Heir by Covin denies tender of Money, given to a Cha. Uſe, upon ſale of Land, decreed the Land charged therewith to be ſold, and debts paid.

The Mortgagor deviſes, that his Executors ſhall pay the Money to the Mortgagee, and that then they ſhall ſell the Land, to pay his debts; the Executors tender the Money at the day, the Heir by Covin denies, that they ſhall tender in his name. It was decreed 42 *Eliz*. [98] in *Chancery*, that the Mortgagee ſhould receive the Money, and that the Executors ſhould ſell the Lands, and pay the debts. *Wormeſton & Price*'s Caſe. [99] The like reaſon of a performance of a *Charitable Uſe*, [11] which is equally, if not more favoured in Equity [91] than payment of debts.

[98] *c*. 1599-1600

[99] Otherwise unreported

[p 143]

All that ſhall be recovered upon an Action of Debt, *&c.* given to a Cha. Uſe, the Uſe is well limited.

If a man appoint by his Will, that his Executors proſecute an Action of Debt, Detinue, Covenant; *&c.* and that all which they recovered in ſuch an Action, ſhall be imployed to a *Charitable Uſe*. [11] This Uſe [11] is well limited, upon ſuch a poſsibility *&c.*

Damage recovered by a Termer, in an Action of Covenant upon an Ejectment given to a Cha. Uſe, is a good limitation.

If one have a term for years to a *Charitable Uſe*, [11] and it is evicted, all the damage which the termer ſhall recover, upon an Action of Covenant, ſhall be imployed to the *Charitable Uſe*. [11]

The ſame Law, of Land recovered in value for it, ſhall be lyable to the *Charitable Uſe*; [11] ſo ſhall a Tenancy, which eſcheats to a Seniory, that was granted to perform a *Charitable Uſe*. [11]

[p 144]

Upon the Second Diviſion. [COMMISSIONS]

Upon the Second Branch.

That it ſhall and may be lawful, to, and for the Lord Chancellor or Keeper of the Great Seal of *England* for the time being. And for the Chancellor of the *Dutchy* of *Lancaſter*, for the time being, for Lands within the County *Palatine*, to award Commiſſions under the Great Seal of *England*, or the Seal of the County *Palatine*, as the caſe ſhall require, to the Biſhop of every ſe[ve]ral Dioceſe, and his Chancellor, in caſe there ſhall be any Biſhop, at the time of the awarding the Commiſſion, and to other perſons of good and ſound behaviour. [100]

[100] In the first sentence of this, the introductory paragraph for division 2 [COMMISSIONS], the editor/writer summarises the gist of that part of section 1 of the 1601 statute which authorizes the appointment of commissioners of charitable uses.

Provided, That no perſon or perſons, that hath, or ſhall have any of the ſaid Lands, Tenements, Rents, Annuities, Profits, Hereditaments, Goods, Chattels, Money, or ſtocks of Money in his hands or poſſeſſion; or doth, or ſhall pretend Title thereunto, ſhall be named a Commiſſioner or Juror, for any the Cauſes aforeſaid or being named, ſhall execute or ſerve in the ſame. [101]

[101] The second sentence recites almost verbatim the text of the proviso in section 5 of the 1601 statute.

And upon this Branch, and the Proviſo, I [10] ſhall obſerve,

4 points.

1. What Commiſſion ſhall be ſaid to be well awarded. [103] [114]
2. What Commiſſion ſhall be ſaid to be well executed. [109] [113]
3. What perſons ſhall be Commiſſioners. [105] [111]
4. What perſons may be Jurors: [105] [111]

Reſolve.

And I [10] conceive,

The King may name the Commiſſioners, &c. *ut in fol.* 7, 8. [13]

[102] Each of the seven divisions (or "branches") in Duke's summary of Moore's reading is preceded by an introductory paragraph. All of these except for division 1 [CHARITABLE USES] shown earlier are like the one above. The writer/editor:

1) recites or loosely paraphrases the relevant section or sections of the 1601 statute;

2) lists the questions or issues that will be tackled in the division;

3) quotes the first words of the ensuing analysis; and

4) cites the folio numbers of another document that is apparently the source of the analysis.

That source document is otherwise uncited. Might it be Sir Francis Moore's 1607 reading? It would seem not, at least not directly. Compare the above folio citations with the folios of Moore's own manuscript of his reading. That manuscript has no fewer than 280 folios, of which 158 (*i.e.* 316 pages) are written on (Jones (1969) p 234). Whereas, based on these folio numbers that Duke's edition cites in these introductory paragraphs, the source document seems to have had no more than 26 folios. Duke's source thus seems to be much shorter than Moore's reading—literally an abridgment of it. By Moore himself, as claimed? Perhaps but we cannot know for sure, it does not survive. Jones (1969) says at p 233: "The origins of Moore's abridged manuscript . . . appear to be as mysterious as the origins of George Duke. The preface does not mention how Twyford [Duke's publisher] acquired the manuscript and it does not now appear to exist."

[103] The following section within division 2 [COMMISSIONS], plus two paragraphs further on following note [113], appear to deal with issue 1, "***What Commission shall be said to be well awarded, according to this Statute***".

The King may name Commiſſioners, and ſeal their Commiſſion himſelf.

THe King may name the Commiſsioners, and ſeal the Commiſsion himſelf, notwithſtanding the words of the Statute; that the Lord Chancellor, *&c.* ſhall award commissions, *&c.*

Commiſſions in the vacancy of a Chancellor, cannot.

but Commiſsioners, which have the cuſtody of the Great Seal, during the vacancy of the Chancellorſhip, cannot award a Commiſsion by virtue of this Act.

A Commiſſion under the Privy Seal, gives no authority.

A Commiſsion awarded under the Privy Seal, gives no authority to proceed according to this Statute.

If the King command a Commiſſion, this ſhall be ſaid to be awarded by the Chancellor.

But if the King Command the Chancellor to award a Commiſsion, under the Great Seal, this Commiſsion ſhall be ſaid to be awarded by the Chancellor, though the King gave direction.

Under the word *Lands*, in the County Palatine, are comprehended Commons, Rents, Apprender, *&c.*

For Lands within the County *Palatine*; under the word Lands, are comprehended all things, either iſſuing out of Lands, as having dependency upon Land, as Commons, Rents, Apprendre, *&c.* the Chancellor of *England*, only, ſhall award a Commiſsion. [104]

[104] Some mistake happened here, for s 1 of the act plainly says it was to be the chancellor of the duchy of Lancaster, not of England, who had the power to issue charity commissions in respect of lands there.

[p 145]

Goods within the County Palatine, and to be imployed in ſome place out of the Dutchy.

Or if Lands given, lye without, and the Uſe within. Several Commiſſions by ſeveral Chancellors, under both Seals, muſt be awarded.

But for Goods given to Charitable Uſe, [11] within the *Dutchy*. If the Lands given to *Cha. Uſes*, [11] lye within the *Dutchy*, and the imployment be appointed in ſome place, out of the *Dutchy*; or if the Lands lye without, and the imployment is limited within the *Dutchy*, in theſe caſes, either ſeveral Commiſsions may be awarded by the ſeveral Chancellors, or one Commiſsion under both Seals, may be ſufficient.

If Rent be given out of Land in one County, with a clauſe of Diſtreſs in another, Commiſſion muſt be to the County, where the Land is charged.

But if Rent be given out of Land in one County, and a Clauſe for Diſtreſs limited in another County, there the Commiſsion muſt be to that County where the Land lies, out of which the Rent is granted.

If two Counties joyn, one Commiſſion is ſufficient, but always ſeveral Inquiſitions in each County.

Where the Counties may joyn, there one Commiſſion is ſufficient; but always there muſt be ſeveral Inquiſitions in each County.

[105] The following section within division 2 [COMMISSIONS], plus ten paragraphs further on following note [111], appear to deal with issues 3 and 4 combined, ***What persons shall (or shall not) be—3. commissioners*;—*or 4. jurors, according to this statute***.

A Biſhop Elect, is no Biſhop within this Act.

To *the Biſhop and his Chancellor*. A Biſhop elect, is no Biſhop within this Act.

If Conſecrate before the Teſte of Commiſſion ſufficient, though it be the ſame day.

But if he be conſecrate before the Teſte of the Commiſsion awarded, it is ſufficient; though it were the ſame day.

A Biſhop Suffragan not within this Act.

A Biſhop Suffragan, [106] although he hath Epiſcopal Juriſdiction, yet he is no ſuch Bishop, to be named in a Commiſsion, upon this Statute.

[106] "Bishop suffragan" or "suffragan bishop": an assistant bishop appointed to help a diocesan bishop, often in a particular part of the diocese—*OED*; *Oxford Dictionary of the Christian Church* (1990).

A Biſhops Chancellor, named after the Award, cannot meddle.

A Commiſſion is awarded to a Biſhop, and his Chancellor, whom the Biſhop names after the award; this Chancellor, cannot intermeddle in the execution of the Commiſsion; for he was not Chancellor at the time of the awarding the Commiſsion.

A Biſhop notoriouſly Criminal, may be named, unleſs depoſed.

Though a Biſhop be notoriouſly criminous, yet unleſs he be depoſed, he ought to be named in the Commiſsion.

If a party, he ought to be omitted, upon mention of the ſpecial matter.
And ſo the Commiſſion good, though the Biſhop be omitted.

But if a Biſhop be a party intereſſed, he may be omitted upon ſpecial mention of the Cauſe, and ſo the Commiſsion may be good, notwithſtanding the omiſſion of the Biſhop.

An Alien [may].

Perſons of good and ſound behaviour. An Alien of amity may be a Commiſsioner;

A perſon Fined for Ryots, &c. may.

ſo may a perſon that is Fined, [f]or Ryots; or petty-miſdemeanors;

But a Juror Fined for Acquitting a Felon againſt Evidence,

but one that was Fined for Fraud, or Couſenage, [107] or a Barritor, [108]

or one Fined for Fraud and Couſenage, nor a Barritor

and all perſons convict, cannot be of the Commiſsion.

nor any perſon convict, may not be of the Commiſſion.

[107] cozenage: a general word for cheating, trickery, deception—*OED*

[108] barratry: vexatious litigation; malicious incitement of discord—*OED*

No perſon pretending Title, may be either Commiſſioner or Juror.

No perſon that doth, or may pretend Title, ſhall be named a Commiſſioner, or Juror: This proviſo being made to corroborate a beneficial Law ſhall be taken largely: ſo that whoſoever may have any finger in the Intereſt or Titles, ſhall be excluded, from either being a Commiſsioner or Juror.

Land deviſed to be ſold for a Cha. Uſe, and none named to ſell it, the Biſhop muſt make the ſale, but muſt be no Commiſſioner.

And therefore if a man deviſe Land to be ſold for a *Charitable Uſe*, [11] and names no perſon to ſell it; In this caſe, the Biſhop ought to make the ſale, but he can be no Commiſsioner.

[p 146]

So it is with one that defrauds a Truſt to a Cha. Uſe, and dies inteſtate.

So if Goods be given to one in Truſt, to a *Cha. Uſe*, [11] and he defrauds the Uſe, [11] and dies inteſtate; becauſe the Goods are preſently in the hands of the Biſhop, until Adminiſtration be committed, he cannot be named a Commiſsioner, for the pretence of Title he hath to the Goods, unleſs the defrauders dyed in a peculiar Pariſh in the Dioceſs, exempt from the Juriſdiction of that Biſhop.

Unleſs he dies where bona Notabilia, are not to be found within the Biſhops Dioceſs,

[109] The following section within division 2 [COMMISSIONS] appears to deal with issue 2, "***What Commission shall be said to be well executed***".

All Commiſſions are to be awarded to 5 at the leaſt, Leſs than four cannot execute a Commiſſion.

The Commiſsion ought to be awarded to five at the leaſt, becauſe the words of the Statute are, *or any four of them*, and leſs then four cannot execute a Commiſſion.

All Commiſſions muſt be framed in the words of the Act. This Statute limits the form. Inquiſition muſt be joynt of Gifts and Abuſes, and not of either ſingly.

The Commiſsion muſt be framed in the very words of the Act, becauſe the Statute limits the form; and the Inquiſition muſt be according to the Commiſsion, joyntly of the Gifts, and Abuses, not of either of them alone.

And whereas it hath been doubted heretofore, whether it were not requiſite to have two Inquiſitions; the firſt, as an Indictment to accuſe the parties, the other before the parties preſent,

One Inquiſition without any Indictment, good.

the Reader [110] reſolved, That one Inquiſition is ſufficient, whereunto the parties intereſſed muſt be called.

[110] Here and in other places in the text marked with note [110], the writer/editor refers to the reader, Sir Francis Moore, in the third person, "the reader" or "he"—as if the writer/editor were someone other than Moore. Contrast with places in the text marked with note [10].

[111] The following ten paragraphs within division 2 [COMMISSIONS] appear to belong with issues 3 and 4 combined, ***What persons shall (or shall not) be—3. commissioners;—or 4. jurors, according to this statute***.

A Commiſſion to an Infant, not good.

A Commiſsion awarded to an Infant, who comes to age before Execution, he may not proceed; for the party ought to be able, at the time of the awarding of the Commiſsion.

An Outlawed perſon after Reverſal, may be named. [An erroneous Outlawry is no Outlawry.] If he purchaſe a Pardon, he is diſabled. An erroneous Outlawry is no Outlawry.

But if one that is Outlawed, be named a Commiſsioner, and he reverſe the Outlawry before Execution, he may proceed, for now upon the matter he was never Outlawed, becauſe an erroneous Outlawry, is in truth no Outlawry; but if he purchaſe a Pardon of his Outlawry, yet he remains diſabled, becauſe the Pardon affirms an offence.

An Excommunicate perſon is diſabled, though abſolved afterwards.

So if the Commiſsioner were excommunicate at the time of Award, and he afterward abſolved; yet he continues ſtill diſabled to be a Commiſſioner.

One cited and ſentenced for Symony, is diſabled *ab initio*.

If a Commiſsion be awarded to one that is cited for Simony, [45] and after the Commiſsion he is ſentenced, and thereupon excommunicate; he is a perſon diſabled to be a Commiſsioner, *ab initio*.

But if only cited, the Law is otherwiſe.

But if he had been only cited, and no further proceedings againſt him, he might have executed the Commiſsion.

One attaint and pardoned, is diſabled.

So may a man that is indicted of a Crime; but if after the Commiſsion awarded, he be attainted, though he purchaſe a Pardon, yet he is ſtill a party diſabled to be any Commiſsioner upon this Statute, and may not execute that Commiſsion.

Tenant by ſufferance. A Tutor are not excluded, but an Executor is diſabled from being either a Commiſſioner or Juror.

Neither Tenant by Sufferance, nor a Tutor, are perſons excluded, by reaſon of Intereſt or Titles; but an Executor is diſabled to be either Juror or Commiſ-miſsioner, by reaſon of his pretended Right.

[p 147]

Goods given to a Corporation generally, as to the City of *London*; yet Freemen of *London* may be of the Jury.

If the Goods be given to a general Corporation, as the City of *London*, yet Freemen of *London* may be of the Jury.

If to a Company, no Member thereof, may be either Commiſsioner or Juror.

But if the Gift were to an inferior Corporation, as to a company, as of the Mercers, *&c.* no Member of that Company or Corporation, may be a Commiſsioner or a Juror.

Donee ſuffers a Recovery to a Cha. Uſe, the Remainder cannot be either Commiſſioner or Juror.

Lands were given in Tail, in form of a perpetuity, the Donee ſuffers a Recovery to a *Charitable Uſe*; [11] he that was in the Remainder, [81] cannot be a Commiſsioner, nor a Juror, becauſe he hath a pretended right, by reaſon of the perpetuity: and ſo reſolved in Sir *William Udalls* Caſe *Mich.* 3 *Jac.* [112]

[112] 1605. Otherwise unreported. The online catalogue of the UK National Archives, Kew, shows a record of chancery pleadings C 3/287/57 for a case *Robardes v Udall*, in which the plaintiffs were "Robert Robardes and another", the defendants were "William Udall and . . . Udall his wife" and the subject was "money matters, Hampshire". To be researched.

[113] The following paragraph within division 2 [COMMISSIONS] appears to belong with issue 2, "***What Commission shall be said to be well executed***".

If a Commiſsion, 4 of 5 be without exception, the Commiſſion is good.

If a Commiſsion be executed by five, and four of the Commiſsioners be without exception, it is well executed, though the fifth were a party intereſſed, *&c.*

[114] The following two paragraphs within division 2 [COMMISSIONS] appear to belong with issue 1, "***What Commission shall be said to be well awarded, according to this Statute***".

No Commiſſion to iſſue, without a ſuppoſed negligence precedent.

No Commiſsion ought to be awarded without a precedent negligence, or miſemployment ſuppoſed.

Several Counties may be inſerted into one Commiſſion, and to one County and Franchiſe.

The Chancellor may joyn ſeveral Counties in one Commiſsion, or the County, and a Franchiſe in the ſame County together: For the words of the Statute are large. *It ſhall be lawful for the Chancellor to award a Commiſsion into all, or any part or parts of this Realm.*

[p 148]

Upon the Third Diviſion.
[INQUISITIONS]

Inquiſitions, where to be taken, &c.

Upon the third Branch.

That it ſhall and may be lawful for the Commiſſioners, or any four or more of them, calling the parties intereſſed in any Lands, &c. given to Charitable Uſes, [11] to enquire by the Oaths of 12 men or more of the ſaid County, and by all other good and lawful ways and means, whereunto the perſons intereſſed, ſhall and may have their lawful challenge and challenges.

[115] In the above introductory paragraph for division 3, the editor/writer summarises the gist of that part of section 1 of the 1601 statute which authorizes the appointed commissioners of charitable uses to make judicial inquiries ("inquisitions") by various ways and means.

I [10] ſhall offer to your conſideration,

Four points.

1. What ſhall be a ſufficient Inquiſition. [116]
2. Who a party intereſſed, that ought to be called to be preſent at the Inquiry. [120]
3. Who a party intereſſed that may have their challenge. [122]
4. What challenge is allowable, [123]

Reſolve.

and it is my [10] opinion, and I [10] conceive it Law,

That the Inquiſition ought to be taken in that County, where the Commiſſioners are appointed, &c. in *fol.* 9, 10. [13]

[116] The following section within division 3 [INQUISITIONS] appears to deal with issue 1, "***What shall be a sufficient Inquisition***."

Inquiſitions. Inquiſition muſt be taken in the County where the Commiſſioners are appointed.

THe Inquiſition muſt be taken in that County, where the Commiſſioners are appointed.

Land in ſeveral Counties, may be inquired in its proper County.

If Land lying in ſeveral Counties, be given to a *Charitable Uſe*, [11] and a Commiſsion is awarded only into one County, they may inquire for the Land in that County, and the Inquiſition is good for that Land; but they cannot inquire for that Land in the other County, by vertue of that Commiſsion, because Land is a thing local, and tyed to a certain place: yet if another Commiſsion be directed to the ſame perſons in the other County, where that other Land lyeth, they may take an Inquiſition of that alſo; and ſo upon thoſe ſeveral Inquiſitions in divers Counties, taken, by vertue of ſuch ſeveral Commiſsions (they being the ſame perſons) may make one Decree for both, and it ſhall be good.

Land is local. Several Commiſſions muſt iſſue for Lands into ſeveral Counties, and ſeveral Inquiſitions.

The ſame Commiſſioners may decree Land in ſeveral Counties.

If a Rent iſſuing out of Lands, lying in ſeveral Counties, be given to a *Charitable Uſe*; [11] there ſhall be awarded but one Commiſsion, but the Commiſsioners muſt make ſeveral Precepts, and take ſeveral Inquiſitions in each County, and yet make but one Decree for all, the Commiſsions muſt be awarded where the Land is.

Rent out of Land in ſeveral Counties, may be decreed by one Commiſſion. Several Precepts, and ſeveral Inquiſitions. Where the Land lies, Commiſſion muſt [i]ſſue.

If the Land given to a *Charitable Uſe*, [11] lye in one County, and the imployment be limited in another; if a Commiſsion be awarded into the County where the Land lies, it is ſufficient. But yet it were more Apt and Expedi-[p 149]ent to have it awarded in both Counties.

Land given in one County, & imployment in another, Commiſſion is good, if iſſued where the Land lies.

If Goods be given to a *Charitable Uſe*, [11] the Commiſsion muſt always be awarded to that County, where the imployment is limited.

If Goods be given, Commiſſion where the Imployment is.

The Commiſsioners for their inquiry are bound to the County, but not for their Decree, for that may be made in another.

Inquiſition muſt be in the proper County Commiſſioners are not bound to place for their Decree.

The Inquiſition muſt be made, both of the Gift, and the abuſe, *&c.* not of one alone, for then it is imperfect and void.

Inquiſition muſt be of the gift and abuſe.

If a Jury find the ſubſtance of the Gift, or abuſe, *&c.* it is ſufficient though they vary in ſome particulars, or find not the circumſtances. And therefore,

Subſtance of either, is ſufficient to a Jury.

If they find a Gift made *per quendam ignotum*, [116] or *quibuſdam ignotis*, [117] it is good enough, for they have found a Gift, which is the ſubſtance; ſo if the Gift were made by Fine, [29] and they find it was by Feoffment, [40] or if it were by Feoffment to Uſes, [78] and they find it was given by Will, this is good enough, for the Gift is the ſubſtance, and the form of conveyance, [119] but a circumſtance.

General Uſe. A Gift *per Ignotum*, good.

The Gift is the Subſtance.

[117] Latin, by some unknown person

[118] Latin, to some unknown persons

[119] A "conveyance" was and still is a general term for any legal mode of transferring property from one owner to the next. An "alienation" was and is the same (as is "transfer" of course). An "assurance" was the same but the term is now obsolete in that sense.

So if they find the general Uſe [11] truly, though they miſs in the particular, this is ſufficient. And therefore,

General Uſe. If Jurors find the general Uſe good, particulars ſhall not hurt.

A Gift to provide Books, and imployed in Gowns, is good. General Uſe truly found.

If they find a Gift to provide Books for poor Scholars, and the Gift was to buy them Gowns, it is good enough, becauſe the general Uſe [11] for poor Scholars is truly found, and Books, or Gowns are but particulars of the imployment.

If Gravel inſtead of Stone, it is good. Repairs was the general Uſe found.

So if they find a Gift to find Stones to repair High-ways, and the Gift was to buy Gravel to repair them, this is ſufficient: For they truly found a Gift for repair of Highways, which is the general, though they miſſed in the particulars of Stones and Gravel.

Poor Scholars, inſtead of two poor Scolars. One Uſe inſtead of two is good.

So if they find a Gift to maintain poor Scholars in an Univerſity, it is well enough, though the Gift were to find two poor Scholars, Students in Divinity, for the general, or poor Scholars, is found truly.

If the other be found after.

If there be two, or more *Charitable Uſes* [11] limited by the Donor, and the Jury find but one, yet the Inquiſition is good for that, if the other be found after.

Variance in any general Uſe.

But if the Jury vary in any general Head (from the truth of the Gift) limited in that Act, that Inquiſition is void. And therefore,

If a Gift for maimed Soldiers, be imployed for relief of poor Scholars. If for Marriage of Maids, & imployed upon High-ways theſe are void Inquiſitions, becauſe they fail in the general.

If they find a Gift for relief of poor Scholars, which was for maimed Soldiers, or for repair of High-ways, where it is for Marriages of poor Maids, *&c.* theſe Inquiſitions are inſufficient, becauſe they fail in the general, which is of the ſubſtance of the *Charitable Uſe*. [11]

[p 150]

Covyn with an Heir.

Lands are deviſed to one for a *Charitable Uſe*, [11] the Deviſee by Covin with the Heir, waives the Deviſe: this is a fraud inquirable.

The Feoffee [40] aliens in mortmain, and purchaſes the Land of the King again, *&c.* this is a fraud.

Combination by Iſſue in Tail, with the Connuſee in a Fine.

Tenant in Tail grants a Rent to a *Charitable Uſe*, [11] and levies a Fine, [29] with proclamation, the Iſſue in Tail combines with the Conuſee, [29] to bargain and ſell the Land to his father, which lay ſick, to the intent that his Father might dye ſeiſed, and the Rent might be avoided; this is a fraud.

Colluſion by the Heir, with a Mortgagee, and Refuſal of a Legacy.

A man deviſeth a ſum of Money to his Heir, to redeem certain Lands that he had Mortgaged, to the intent it ſhould be imployed to a *Charitable Uſe*, [11] the Heir refuſeth the Legacy, and, by colluſion with the Mortgagee, ſuffers the day to paſs, and then redeems the land; this is a fraud inquirable.

Covyn by Husband, and diſagreement to a Cha. Uſe.

Land is given to a Woman to a *Charitable Uſe*, [11] the Husband, by Covin, diſagrees to the Gift: this is a Fraud.

Younger Son after his Fathers and elder Brothers death, chargeable with a Cha. Uſe, though in by deſcent.

The Father gives Land to his younger Son, upon condition to perform a *Charitable Uſe*; [11] the Father dies, the elder Son dies, yet the younger Son ſhall be bound to perform the Uſe, [11] notwithſtanding the condition was extinct in him by deſcent; and though the Father had releaſed the Condition, yet the ſame had been lyable to the Uſe. [11]

Leſſor, upon a Recovery in value, chargeable with a Charitable Uſe.

Tenant for life ſurrenders with warranty in Fee to a *Charitable Uſe*, [11] the Leaſor recovers in value, he ſhall hold that Land charged with the Uſe [11] for ever.

Twelve, a good Jury.

If 16 be impannelled on a Jury, and 12 only agree, yet this is a good Inquiſition, according to this Statute.

Commiſſioners may enquire by all other lawful means, as by former Inquiſitions, Witneſſes, Rentals, Accompts, Eſtreats, their own knowledge.

Beſides this Inquiſition, by the Oaths of 12 Men, the Commiſsioners may inquire by all lawful ways and means. Such are former Inquiſitions, Witneſſes, Rentalls, Accompts, [76] Eſtreats, *&c.* and their own proper knowledge; And by theſe means they may ſupply the defects of the Inquiſition, in matters of particularity and circumſtance. As where the Inqueſt find a Gift to the Tradeſmen of *Bath*, *&c.* The Commiſsioners by ſuch further Inquiry, may ſupply the particular. To what ſort of Tradeſ-men. So where the Jury finds a miſimployment, the Commiſsioners may ſupply the time, how long it hath been miſemployed, *&c.*

By what not, *viz*, By Cancelled Deeds, Witneſſes diſabled, Records Reverſed, not upon the Parties own Oath.

But if the Commiſsioners cannot enquire by Deeds that are cancelled, nor by Witneſſes, that are diſabled, no Records are Reverſed, *&c.* neither can they examine the party upon his Oath.

[p 151]

[120] The following section within division 3 [INQUISITIONS] appears to deal with issue 2, "***Who a party interested, that ought to be called to be present at the Inquiry***."

Who to be ſummoned. Parties intereſſed in poſſeſſion, which have Right or Title. Pocket Titles may be omitted.

The Commiſsioners cannot proceed without ſummoning the parties intereſſed to be preſent. Thoſe parties only who are in poſſeſsion ought neceſſarily to be ſummoned; and thoſe which have Rights, Titles, Pretences, (or pocket Titles,) may be omitted, and yet the Inquiſition is good enough.

Leſſee of a Remainder, over.

Leſſee for years, the Reverſion [81] for life, the Remainder [81] over, the Leſſee muſt be ſummoned, and ſhall be bound by the Decree, but thoſe in remainder, [81] ſhall not be bound, unleſs they were ſummoned.

In Remainder not.

Guardian by Knight-Service.

If a Guardian by Knight-ſervice be ſummoned, and the Ward omitted, yet the Guardian ſhall be bound.

Infant in Soccage, and his Guardian.

If an Infant in ſoccage and his Guardian be ſummoned, both ſhall be bound by the Inquiſition, for an Infant is not excepted out of this Law.

Non compos.

His Heir relievable upon Petition.

Like Law of an Ideot.

So if a man that is not *compos mentis*, be ſummoned, he ſhall be bound by the Decree, becauſe he is not excepted, but his Heir, by Petition, by ſhewing of his Right, may be relieved, becauſe his Anceſtors were not *Compos mentis*, like Law of an Ideot.

Two Joynt-Tenants.

One ſummoned, binds a Moyety.

If there be two Joynt-Tenants, parties intereſſed, and one of them only is called, this ſhall bind the Moiety only, during the life of the other Joynt-Tenant: But if he was ſummoned, and fortune to ſurvive the other, then the Inquiſition ſhall bind him for the whole.

An Occupant,

But not the Reverſion.

An Occupant is a party intereſſed, that muſt be ſummoned, and he ſhall be bound by the Inquiſition, but the Decree ſhall not bind him in the Reverſion, [81] but that he may avoid all without complaining, by Bill.

Tenant by Eſtoppel, But not the true owner.

Tenant by Eſtoppel is a party intereſſed, but the calling of him ſhall not bind the true owner, for any longer time, than the Stoppel ſhall continue.

Tenant in Tail. Succeſſor by ſummons of his Predeceſſor.

If Tenant in Tail be called, his Iſſue ſhall be bound, ſo ſhall a Succeſſor, by the ſummons of his Predeceſſor, until the Decree be reverſed by Bill before the Chancellor.

Mortgager and Mortgagee.

If there be Mortgagers, and Mortgagees of Land given to a *Charitable Uſe*, [11] it is the ſafeſt way to ſummons both.

Leaſee bound for his Term.

Leſſee for years, upon condition to have the Fee to a *Charitable Uſe*, [11] the Leſſee is ſummoned, he ſhall be bound for the term. But if he in the Reverſion [81] be ſummoned, the Leaſe ſhall be bound for the Fee-ſimple, and his State increaſing, not for the term.

Daughter and Heir by diſcent. And Son born after.

The Daughter and Heir hath ſuch Lands by diſcent, and ſhe is ſummoned, then a Son is born, and after the Decree is made, the Son, though he be Heir *ab initio*, yet he ſhall be bound by the Decree, becauſe the Daughter was the party intereſſed, ſummonable at the time.

[p 152]

Grantee of a Reverſion before Attornment, &c.

If a Reverſion [81] given to a *Charitable Uſe*, [11] be granted over, the Grantee, before Attornment, [88] is no party intereſſed to be called, yet the Reader [110] made ſome doubt of this point.

Summons binds him, that is abſent from the Inquiry.

If the party be ſummoned, the Decree ſhall bind him, though he were abſent from the Inquiry.

Executor and Legatory.

A Legacy is bequeathed to a *Charitable Uſe*, [11] the Executor refuſeth to aſſent to the Legacy, both the Executor and the Legatee ought to be ſummoned.

Obligor and Obligee.

If a ſtock of Money be given, to be put out upon ſecurity, both the Obligor, and the Obligee muſt be called.

Ordinary of one inteſtate, having Goods to a Charitable Uſe.

He that hath Goods to a *Charitable Uſe*, [11] dies inteſtate, the Ordinary ought to be ſummoned, unleſs he hath committed the Adminiſtration.

A married Woman.

A married Woman that is intereſſed, ought to be ſummoned, and her default ſhall bind her Husband.

He that hath the nomination of an Almsman.

He which hath the nomination of the perſons, upon whom the Alms ought to be imployed, is a party intereſſed to be called.

Perſons receiving Alms, if the Charity be miſimployed.

The perſons which ought to receive the Alms, are not perſons intereſſed to be ſummoned. But if the Alms have been imployed upon ſuch as ought not to have received them, they are parties intereſſed, and ought to be called.

Every wrongful poſſeſſor. Notice what

Every wrongful Poſſeſſor is a party intereſſed to be ſummoned, and Charged. The calling is a notice given to the perſon of the party intereſſed, concerning the Inquiry to be taken before the Commiſsioners, at a certain time and place.

Notice to be given, and left, as *Subpœnas* in *Chancery*, and may be ſerved any where.

And this notice may be given as *Subpœnas* uſe to be ſerved, by leaving them at the dwelling-houſe of the party, and notice may be given him in any County, or it may be given over-Seas.

The manner of notice. Four Commiſſioners make a Precept under their Seals. May be ſent to the Sheriff.

The manner of the notice muſt be thus, Four of the Commiſsioners, at the leaſt, muſt make a Precept, under their Seals, commanding the party, to be before them at ſuch a place, upon ſuch a day, about ſuch a buſineſs, *&c.* And this Precept may be ſent

to the Sheriff, to give notice thereof to the party.

If read in the Church where the party lives, it is good. If generally publiſhed. Notice of Adjournment.

If the Precept be read in the Church, where the party is preſent, it is a ſufficient notice and calling, if it be generally publiſhed in a Church, at Prayer, that all ſuch as have intereſt in ſuch Lands, ſhall be before the Commiſsioners, appoint another day of ſetling, and give him notice thereof, this is a ſufficient calling.

Examination to be made, of notice before they proceed to Inquiſition, upon Oath, ought to be entred.

It is good diſcretion in the Commiſsioners before they proceed to make Inquiſition, to examine the Notice given, and the execution of their Precept, upon Affidavit, and to enter the ſame, to avoid a counter-averment.

[p 153]

Decree againſt one not ſummoned, but preſent at the Inquiſition.

A party intereſſed, not being ſummoned, was preſent at an Inquiſition, and gave in evidence, the Decree was made againſt him, and upon ſuggeſtion, after made by himſelf in the *Chancery*, that he was a party intereſſed, and not ſummoned, the Decree was avoided, and a new Commiſsion awarded, *Viners* case. [121]

[121] Several reported cases involve the name Viner, Vyner or Vynior but none seem relevant. There is an unreported Chancery case, *Lord Brooke & al v Sir Thomas Vyner & al* (1655) available at the UK National Archives, C 7/403/49; to be researched.

Why parties intereſſed are to be ſummoned. To give in Evidence. To take his challenge to the Jurors.

The party intereſſed is ſummoned for two purpoſes,

1. To give in evidence.

2. To take his challenge to the jurors.

[122] The following section within division 3 [INQUISITIONS] appears to deal with issue 3, "***Who a party interested, that may have their Challenge***."

A party not ſummonable, may have his challenge.

A party remotely intereſſed, may challenge a Juror, though he be not ſummonable.

Challenge not allowable, yet allowed by the Commiſſioners, doth not vitiate the Decree.

If the Commiſsioners allow a Challenge, which is not allowable, yet that will not vitiate their Decree.

But *è contra*, if they diſallow what is allowable.

But if they diſallow that, which is allowable, that will make their Decree void.

Two Joynt-Tenants, firſt takes his challenge it ſhall bind his partner. Challenges by Statute, vary from thoſe of the Common-Law Thoſe which muſt joyn in action, muſt joyn in challenge. Commiſſioners may diſcharge a Juror without challenge.

If there be two Joynt-Tenants, and one of them will take a Challenge, this ſhall be good, and bind his companion, though he would releaſe it, and herein the Challenges upon this Statute, vary from the Rules of the Common-Law, for that ſaith, that thoſe which muſt joyn in Action, muſt joyn in Challenge.

The Commiſsioners may, by Information, put out a Juror without Challenge, by the party,

[123] The following section within division 3 [INQUISITIONS] appears to deal with issue 4, "***What challenge is allowable***."

Criminous things a principal challenge.

Criminoſity is a principal Challenge.

Challenges by favour if denyed, yet the Decree is good.

Challenges by favour are tryable, but if ſuch a Challenge be denyed, yet the Challenge is good.

Juror *non* reſident in the County, a good challenge.

That he was ſworn upon a former Jury.

That the Juror is not Inhabitant in the County, is a principal Challenge.

So is it, that he was ſworn upon a former Inqueſt.

No challenge to the array is compulſory.

No Challenge to the Array, is Compulſory.

If an alien challenge, *propter medietatem lingue*, it is not allowable for the Statute of 27 *Edw*. 3 *cap*. 8 & 28. *Edw*. 3. 13. Are reſtrained to Inqueſts, to try Iſſues, between party and party.

If an Alien challenge the Jury, *propter medietatem linque*, [124] becauſe the one halfe of the Jury are not Aliens, according to the Statute 27 *E*. 3. *Cap*. 8. & 28 *Ed*. 3. 13 *Ed*. 1. [125] This Challenge is not allowable, becauſe that Statute is re-ſtrained to Inqueſts, taken to try iſſues, between party and party, and not to Inquiſitions of this nature.

[124] Latin, literally: "on grounds of half language"; see next note [125].

[125] The three cited statutes are: *The Ordinance of the Staples* (1353), 27 Edw 3 Stat 2 c 8; a statute passed the next year (1354), 28 Edw 3 c 13, confirming and amending the earlier; and the basic act, *The Statute of Merchants* (1285), 13 Edw 1. The basic act had set up legal procedures to enable foreign merchants to recover debts owed by English persons. The two acts of 1353 and 1354 added special juries known as inquests *de mediatate linguae*—"of half language". They would be composed of one-half English jurors and one-half jurors either from the foreign party's country or speaking his language. Sir Francis Moore was saying here that this special process for foreign parties was not available for juries summoned by commissioners of charitable uses.

That challenge muſt be taken before the *Ven. facias*. Where no *Ven. fac*. no challenge lies.

Beſides, that Challenge muſt be taken before the *Venire facias* [126] awarded, and therefore where no *Venire facias* [126] is to be awarded, there the Challenge cannot be taken.

[126] The name of a writ sent by a court to the local sheriff ordering him to summon a jury; so-called from Latin words in it, meaning that "you" (the sheriff) "cause" (*facias*) (several persons) "to come" (*venire*).

Summons to one Joynt-Tenant intereſſed, ſhall bind bold.

Two Joynt-Tenants, parties intereſſed, one of them only is ſummoned; if the other be preſent at the day, this ſhall be accounted a good Summons of them both.

A party intereſſed, ſummoned to be of the Jury, is no good Summons.

If a party intereſſed be ſummoned to be of the Jury, this is no good Summons of him, as a party intereſſed, becauſe he is ſummoned being a party intereſſed, that he may come provided with Counſel to give in Evidence.

[p 154]

Upon the Firſt Part of the Fourth Diviſion. [DECREES]

And after Hearing, and Examination, it ſhall and may be lawful for the Commiſſioners, or any four or more of them, to ſet down ſuch Orders, Judgements, and Decrees, as that the Lands, Tenements, Rents, &c. given to *Charitable Uſes*, [11] may be duly and faithfully imployed, to, and for the Uſe, [11] for which they were given, and not being repugnant, or contrary to the Orders, Statutes, or Decrees, or founders, which Decrees ſhall ſtand firm and good, and be executed accordingly, until the ſame ſhall be undone, and altered by the Lord Chancellor of *England*, or Lord Keeper, or Chancellor of the Dutchy of *Lancaster*, upon complaint to be made to them.

[127] In the above introductory paragraph for division 4 [DECREES], the editor/writer summarises the gist of the last part of section 1 of the 1601 statute, which authorizes commissioners of charitable uses, having made their inquisitions, to then issue decrees.

And herein are obſervable, five Points,

Five points.

1. What Commiſſioners may make a Decree, [132] and what Decree, Order, and Judgment, ſhall be ſaid to be good, and warranted by this Statute. [133]

The following issue 2 is not in the initial table of contents; see note [9].

2. What Decree ſhall be ſaid to be made, according to the intent of the Donor, [134] and what perſons ſhall be bound by ſuch a Decree. [149]

3. How ſuch a Decree may be executed. [159]

4. What Decrees may be undone, or altered by the Lord Chancellor, upon complaint, either before or after execution. [160]

5. What Adnullation, Alteration, &c. of ſuch Decrees by the Lord Chancellor, ſhall be good and firm within this Statute. [163]

Reſolve.

Thoſe Commiſſioners that made the Inquiry, may make the Decree, &c. *ut* in *fol.* 12, 13, 14, 15, 16, 17, 18, 19. [13]

UPon this fourth Point, are conſidered.

What Commiſſioners may make a Decree.

1. What Commiſsioners may make a Decree according to their Commiſsion, [132] and warranted by this Statute. [133]

[128] The following considerations 2 and 3 in this list are shown combined into one issue 2 in the list of issues at the start of division 4 [DECREES] above.

2. What decree shall be said to be made, according to the intent of the donor. [134]

What Decree according to the Donors intent.

3. What persons shall be bound by such a decree. [149]

What perſons are bound by Decree.

[129] This list omits issue 2 in division 4 [DECREES] in the initial table of contents, which is issue 3 in the list of issues at the start of division 4 above: "How such a decree may be executed". This subject is covered later in division 4; see after note [142].

4. What decree shall be avoidable before execution, and what after execution? [158]

What Decree avoidable, before or after execution.

[130] The above consideration 4 in this list is not shown in the initial table of contents, nor in the list of issues at the start of division 4 [DECREES] above.

[131] This list of considerations omits—

- issue 3 in division 4 [DECREES] in the initial table of contents, which is issue 4 in the list of issues at the start of division 4 above: "What Decrees may be undone, or altered by the Lord Chancellor, upon complaint, either before or after execution". The subject is covered later in division 4, after note [160].
- issue 4 in division 4 [DECREES] in the initial table of contents, which is issue 5 in the list of issues at the start of division 4 above: "What Adnullation, Alteration, &c. of such Decrees by the Lord Chancellor, shall be good and firm within this Statute". The subject is covered later in division 4, after note [163].

[132] The following section within division 4 [DECREES] appears to deal with the first part of issue 1, which is likewise the first part of consideration 1 in the opening text of division 4: "***What Commissioners may make a Decree . . .***"

None but ſuch Commiſſioners as were upon the Inquiry, may make the Decree.

Thoſe Commiſsioners that made the Inquiry, may make the Decree, and none other, becauſe the words of the Statute are in the Copulative (ſhall make inquiry, and upon ſuch inquiry) and herein he [110] compared this Case to a Bailment of a Priſoner; for if two Juſtices, upon [p 155] examination, commit a perſon ſuſpected to priſon;

If two Juſtices commit one ſuſpected, & other two bail him, it is finable.

If other two Juſtices, which never heard of the examination, will bayl him, this is more than they ought to do, and by the opinion of the Juſtices, it is an indiſcretion Finable;

The like Law in Commiſſioners, not preſent at the Inquiry.

So if thoſe Commiſsioners, which were not preſent at the Inquiry, will take upon them to make a Decree upon the Matter, this is a point beyond their authority.

[133] The following section within division 4 [DECREES] appears to deal with the other part of issue 1, likewise the other part of consideration 1 in the opening text, "***. . . what Decree, Order, and Judgment, shall be said to be good, and warranted by this Statute***."

If a Biſhop intermeddle in a Decree not being preſent at the Inquiry, it is void.

A Bishop is named with other four Commiſsioners, the other four inquire, and at the making of the Decree, one of thoſe four is abſent, but the Biſhop is preſent, and joyns, yet this Decree is void, becauſe the Biſhop was not at the inquiry.

Four of eight Commiſſioners may Inquire and Decree.

If there be 8 Commiſsioners, and four make the Precept, the other four may inquire, and decree; for the Decree is not depending on the Precept, but on the Inquiry.

If three make the Precept, and four inquire, all is void.

Yet if three only make the Precept, though four Inquire and Decree, yet all is void, becauſe the Precept cannot be made by a leſs number than four, and then the ground failing, the building must fall.

If four of ſix are without Exception, and make a Decree, it is good.

If ſix make inquiry, whereof four only are without exception, thoſe four muſt make the Decree, otherwiſe it will be void.

If one of four be preſent at part of the Evidence, and go out and come in again, at the giving of the Verdict, no Decree can be made.

If four of them departs, and comes again at the giving of the Verdict, they cannot make a Decree, becauſe the Inquiry was not perfect by all of them.

If four hear the Evidence, and adjourn the Jury unto another day, if any of them be abſent, another which was not there at the firſt, cannot join with the reſt, to make a good decree.

If four hear the Evidence, and adjourn, and another which was not thereat, joyn, he cannot meddle, or make the Decree good.

If three only hear the Evidence, and make a Decree, and return it in the names of four, the Decree is void, and an averrment may be taken againſt ſuch a Return.

If a Decree be returned by three, in the name of four, it is void. Averment againſt ſuch a Return, is good.

[134] The following section within division 4 [DECREES] appears to deal with issue 2 in part, which is likewise consideration 2 in the opening text, "***What decree shall be said to be made, according to the intent of the donor . . .***"

Things conſidered in the 2 Point.

For the 2 Point, The Commiſsioners are reſtrain-ed to three things, in the making of their Decrees and Orders.

1. That Commiſſioners, Decress, and Orders, tend to the imployment of the things given

1. That it tend and conduce to the imployment of the things given.

2. That the imployment be due.

2. That the imployment be faithful and due.

3. That the imployment vary not from the Uſe.

3. That the imployment vary not from the uſe [11] and intent, for which the thing was given.

Five things they may do.

Theſe three things being obſerved, the Commiſsioners have power and authority to do five things more.

1. They may eſtablish the property of a thing given to the Donee, or transfer it.

1. They may eſtablish the property of the thing given, in the perſon to whom it was given, or they may tranſfer it from one perſon to another.

2. They may ſupply the defects of the Gifts, or imployment in certainties, circumſtances, and decencies.

2. They may aſcertain the thing given in ſubſtance, circumſtances, and decencies.

3. They may ordain Conveyances, or Aſſurances [119] to be made for the better imployment of the Uſe. [11]

3. Ordain Conveyances.

4. They may add decencies in the imployment for the honor of the Donor.

4. Add Decencies.

5. They may impoſe penalties for misimployments.

5. Impoſe penalties.

But

Commiſsioners, by their Decrees,

cannot confirm Leaſes, nor releaſe Debts,

cannot confirm Leaſes, nor releaſe Debts,

nor erect Corporations,

nor erect Corporations,

nor remit Arrearages,

nor remit Arrears

nor decree that the Land ſhall be Leaſed at an undervalue, either in regard of the Fine [29] or the Rent,

nor Leaſe at an undervalue, either of Fine or Rent;

neither that it ſhall be Leaſed to their friends for the apparent preſumption of favour in undervalues;

nor Leaſe to their friends,

neither can they ordain, that their own ſervants ſhall be the poor, on whom the *Charitable Uſe* [11] ſhall be imployed, eſpecially if they be able to maintain themſelves.

nor ordain their own ſervants to be poor, if able to maintain themſelves.

They may appoint Collectors to gather Rent, to allow them wages.

But if divers Rents be given to *Charitable Uſes*, [11] the Commiſsioners may appoint Collectors to gather in the money, and allow them wages.

Appoint a Scrivener to draw their Funds, and allow them Fees.

So if money be given to be put out upon ſecurity, or Lands to be Leaſed, they may appoint one to be the Scrivener to write Obligations and Conveyances, [119] and allow him Fees for his pains.

In the 11 year of King *Hen*. 6. [135] a Gift was made to the intent, to find a Chaplain, *ad Divina celebranda*, [136] until the Feoffor, [40] or his Heirs, ſhould procure a Foundation, *&c*. there was no imployment, until the third year of King *Edw*. 6. [137] And therefore in the Queens time, one *Payne* purchaſed the Land as a concealment.

Property decreed to another, from a Grantee of the Q.

After a Commiſsion, being awarded upon this Statute, the Commiſsioners enquired and found the Gift, and thereupon agreed the property, to another from *Payne*;

[p 156]

To find a Chaplain *ad Divina celebranda* no Uſe within this Statute.

But after, this Decree was made void by the Lord Chancellor, becauſe the uſe [11] limited to find a Chaplain, *ad Divina celebranda*, [136] was no Uſe [11] within the Statute, Inquirable,

Chancellors decree to the firſt Uſe, good,

But the Chancellor by his *Chancery* Authority, may, and did decree the Land to the firſt uſe. [11]

Ad Divina celebranda, in a certain Church or Chappel, no Superſtitious Uſe.

For a Gift, *cuidam Capellano ad Divina celebranda*, [138] in a certain Church or Chappel, is no Superſtitious [22] Uſe [11] within the Statute 1 *Edw*. 6. [23]

Adjudged *Paſch*. 3 *Jac*.

and ſo was the opinion of the Juſtices in the *Kings Bench*, Term *Paſchæ* 3 *Jac*. [139] and the reaſon is, becauſe it is the general caſe of all Parſons in *England*; but if the Uſe [11] had been within this Statute, the Commiſsioners might have transferred the property.

[135] *c* 1432-33

[136] Latin, for the celebrating of divine service. In other words the job of being a church minister.

[137] *c* 1549-50

[138] Latin, of some chaplain for the celebrating of divine service.

[139] Easter term 1605. Jones (1969) p 33 n 1: "This case may well have been *William Rycardes, on behalf of the Inhabitants of Rodborough v. Richard Payne*, C.2/Eliz./R.12/48, which had been presented to Sir Christopher Hatton.

[However, he was Lord Chancellor from 29 April 1587 to 22 November 1591, which seems inconsistent with both Moore's stated year 1605 and his stated court of King's Bench.]

The Bill and Replication are transcribed in appendix B [Jones (1969) at pp 215-220]. It is referred to, *sub nom*. *Payne et Ricards Case Banck le roy et Chauncery*, in Moore, fo. 18v [*i.e.* referring apparently to the original manuscript of his reading]. *Cf*. F. H. Newark, 'Public Benefit and Religious Trusts', *Law Quarterly Review*, *lxii* (1946), 234, 234-5."

Commiſsioners may decree a releaſe for aſſurances of Land, That Arrears ſhall be paid. Impoſe a penalty for non payment.

The Commiſsioners may decree that one ſhall make a releaſe for aſſurance [119] of the Land; they may decree that the party ſhall pay the Arrearages; and if they fail at the times, they ſhall pay a reaſonable penalty.

[p 157]

By addition, That a Chaplain ſhall be a Preacher. May nominate the perſon.

If the Uſe [11] were limited for a Chaplain, they may decree, by addition, that the Chaplain ſhall be a Preacher. So they may appoint the nomination of him, to a man of Science, (as a Maſter of a Colledge, *&c*. becauſe ſuch things concurr in decency and order, with the intent of the Founder, upon a Decree made, *Ann*. 40 *Eliz*. [140]

[140] *c*. 1597-98

Five things obſervable upon 5 *Jac*. *c*. 7.

Concerning a Grammar-School [39] of *Northleeche*, which is now incorporated in Parliament, 5 *Jac*. *cap*. 7, [141] he [110] obſerved five things.

[141] *An Act for the foundinge and incorporatinge of a Free Grammar Schoole in the Towne of Northleech, in the Countye of Gloucester*, 4 James 1 (1606), c 7; *Statutes of the Realm*, vol 4, part 2, pp 1144-1146. The Act's preamble gives a history of the founding of and litigation about the school. The Act is apparently still in force but not listed amongst the Local and Private Acts.

1. If a Grammar-School be given upon condition it be made a Corporation, though it never be a Corporation, the Profits muſt go to the School in being.

1. That if there be a Grammar-School [39] in a Town, and a man deviſe Land to certain perſons, upon condition that they ſhall procure that Grammar-School [39] to be incorporated, and to find that Grammar-School [39] in ſuch caſe, though the Corporation be not procured, yet the Profits muſt be imployed upon the School in being.

2. An Heir chargeable with the Uſe, though he enter for default of imployment.

2. Though the Heir enter for fault of imployment, yet he ſhall be charged with the Uſe. [11]

The Decree good.

3. If they decree the Land to the Heir, which hath entred, or might enter, by vertue of ſuch condition, the Decree is good, becauſe he had colour to defeat the Uſe [11] by Entry; but becauſe the Uſe [11] thereby ſeems better eſtabliſhed, the Decree is good,

3. A Grant to one that had a right, ſhall bind the Iſſue in Tail.

as if Tenant in Tail, Grants a Rent unto one which had a right for a Releaſe of his right, that Grant ſhall bind the Iſſue, in Tail, becauſe it ſtrengthens his poſſeſsion.

4. Commiſsioners may increaſe a Gift.

4. If a Founder appoint the uſe [11] of the Land to be for a certain number of the poor, and that every one ſhall have 12 *d*. The Commiſsioners may appoint, by way of increaſe, that every one ſhall have 20 *d*.

But not the number of poor, appointed by the Founder.

But if the number of the Poor be limited in certain, by the Founder, the Commiſsioners cannot add any more poor to that number, upon whom the Uſe [11] ſhall be imployed.

5. May nominate a School-maſter to be a man of Science.

5. If a man Found a Free-School, [37] and appoints the nomination of the Maſter to his Heir, the Commiſsioners may decree it to be a man of Science, becauſe it concurrs with the intent of the Founder, to have one of ſufficiency.

The Commiſsioners may appoint one to nominate the number of Poor, in caſe of the death of one appointed by the Donor.

In the time of King *R*. the 2. one *Adderbury*, by Licenſe Founded an Alms-houſe in *Dennington* in *Berkſhire*, conſiſting of a certain number, appointing, that his Heirs ſhould have the nomination of the Poor; and after, in the Reign of King *H*. 7. his Heir dyed without Heir;

The authority of nomination, cannot Eſcheat to the Lord.

now although the Corporation was determined for want of a Nominator; and the Commiſsioners may not erect or revive a Corporation, yet they, upon Commiſsion awarded, did, and might decree, who ſhall be a nominator; for the authority of nomination, could not Eſcheat to the Lord. [142]

[142] The "almshouse in Dennington" mentioned here may be Donnington Hospital, the same charity at issue in case reports cited at note [28]. However, the above must be a different case involving that charity, one apparently decided by charitable uses commissioners, not chancery. The *List of Proceedings of Commissioners for Charitable Uses* (available elsewhere on this website) at p 5 shows several proceedings in Berkshire in 1652 about Donnington Hospital: inquisition bundle 21 No 26, deposition bundle 6 No 16, deposition bundle 14 No 24, and confirmations roll 10; and at p 6 a further confirmations roll 22 dated 26 Charles 2 in 1674-75. Those years 1652 and 1674-75 were long after Sir Francis Moore's 1607 reading and his 1621 death; so it may be that the above paragraph was added to this summary by someone else. To be further researched (per *The History of Donnington Hospital* by Cecilia Millson).

Commiſſioners cannot alter the Sex, or Quality, Nation, Trade, or Profeſſion, or transfer a Gift to another Sex, &c.

If the Donor limit the Imployment of the Profits to perſons of one ſex, Quality, Nation, Trade, or Profeſsion, the [p 158] Commiſsioners cannot decree the imployment to perſons of another Sex, Quality, Nation, Trade, or Profeſsion.

Nor from one Pariſh to another. Nor from priſoners of one, to thoſe of another Goal.

So if the imployment be appointed to be upon the poor of one pariſh, or the pariſhioners of one pariſh, or the priſoners of one priſon; or the Scholars of one Grammar-School; [39] in certain; the Commiſsioners power cannot decree it to the Poor of another pariſh, to the Priſoners of another Gaol, nor to the Scholars of another School, for that were contrary to the intent of the Donor.

Nor a Uſe for divers purpoſes. As for the Poor, and mending the Highways of one to another Pariſh. But the time and place of payment, and performance they may.

So if the Uſe [11] be limited for the uſe [11] of divers purpoſes, or for relief of the Poor, and amending High-ways, *&c*. The Commiſsioners (cannot interleaſing one) decree the imployment of the whole upon the other only; but they may by their Donor, appoint the time when, or the place where it ſhall be paid.

A Chyrurgion or Phyſitian, may be added to maimed Soldi-ers, by Commiſ-ſioners, and Fees allowed them.

If the Uſe [11] be limited for relief of many Soldiers, they may by Decree, add a Chyrurgeon, or Phyſitian, and allow them Fees for curing ſuch Soldiers.

They cannot tranſfer a Gift, for eaſe of Fifteens, to eaſe the pariſh of Baſtards.

But if the Uſe [11] be to eaſe a Pariſh of Fifteens, [143] the Commiſsioners by their Decree cannot extend this to eaſe the Pariſh of Charges for Baſtards born in the Pariſh.

[143] The "fifteenth" was a parliamentary tax similar in principle to the "subsidy". [25] However, starting in 1334, the fifteenth was imposed at the community level, collectively not individually. Each parish, township, town and city was informed of the global amount of the fifteenth tax it had to pay, based on amounts collected from it in previous taxations. It was left up to the leadership of the community—parish churchwardens, mayor, reeve, aldermen, councillors—to determine what each individual in the community had to pay as part of the community's tax burden. While they were supposed to observe the assessment rules, in fact they did not:

> "since there was now no supervision to ensure that the poorest were exempted from taxation, those in charge of assessing and collecting the tax within each township, being the wealthier and more influential members of the community, tended to exempt or undervalue their own property and shift a larger proportion of the tax onto the shoulders of the poor, who had previously enjoyed some protection." (Jurkowski & al, 1998, p xxxiii)

The fifteenth was therefore widely regarded as a tax that unfairly impinged upon the poor. The house of commons stopped authorizing it after 1624 for that very reason.

The 1601 preamble's list of charitable purposes specifically included the giving of aid to the poor to pay the fifteenth.

Despite this, Sir Francis Moore did not cover the fifteenth in this summary of his reading. In mentioning the fifteenth in the above paragraph, all he said was that the charitable use commissioners did not have the power to convert a charity to help the poor pay fifteenths to a different purpose, relief of "bastards" (fatherless children, a Poor Law responsibility of the parish).

May order a Stock, to ſet the Poor on work, if the Uſe be limited to the Poor.

Yet if it be for relief of Poor, the Commiſsioners may ordain, that it ſhall be a ſtock of Money to provide Hemp, Iron, *&c*. to ſet the poor in work upon.

If the Gift be for Money, Meat, or Apparel, Commiſſioners cannot alter it.

If the Donor appoint the imployment to be in Money, Meat, or Apparel, the Commiſsioners cannot change the imployment.

Nor decree the forfeiture of an Obligation, but may impoſe a Fine for non-payment.

The Commiſsioners cannot decree the forfeiture of an Obligation to be taken, but they may impoſe a reaſonable penalty for not paying at the day;

They cannot commit to priſon, but the Lord Chancellor, after a Writ awarded, and an Attachment, may.

they cannot, by their Decree, commit any man to priſon, nor decree that he ſhall be priſoned; yet upon execution of their Decree, after the Writ awarded, and an Attachment ſerved, the Lord Chancellor may impriſon the party for execution of the Decree.

An Eſtate decreed void, is ſo in Eſtate and Intereſt, but the Lord Chancellor may reſtore the Eſtate.

If the Commiſsioners decree an Eſtate or Term to be void, they ſhall be void both in Eſtate and Intereſt; yet if the Lord Chancellor repeal that Decree, the party ſhall be reſtored to his Eſtate or Intereſt.

They may order the building of a Houſe of Correction, and 20 *l. per Ann.* by Deed inrolled.

The Commiſsioners may decree, That a Houſe of Correction [48] [49] ſhall be erected by Deed inrolled, allowing 20 *l. per ann.* according to the Statute of 39 *Eliz. cap.* 5. [144]

[144] *The Hospitals for the Poor Act, 1597*; which, however, set an upper limit of £200 a year, not £20, on the annual value of property donated to found a hospital, measondue or house of correction.

Or a Corporation in *Eſſe*, without danger of Mortmain.

They may decree Land to a Corporation in *eſſe* [145] without danger of Mortmain.

[145] Latin, in actual existence.

They cannot decree a ſecond Leaſe, to commence before the expiration of the former.

If one that holds Land given to a *Charitable Uſe*, [11] makes a Leaſe for years, to defraud the Uſe, [11] and after grants a Leaſe in Reverſion, [81] upon conſideration *&c*. to another, to [p 159] begin after the expiration, determination, or other voydance of the former; and the Commiſsioners decree that the former Lease ſhall be void. Yet the ſecond ſhall not begin, until the years be fully expired, becauſe the Profits muſt be imployed to the *Charitable Uſe*, [11] during the time of the former Leaſe.

They cannot decree a ſecond Leaſe, to commence before the expiration of the former.

A Leaſe in Reverſion ſhall not commence upon a conditional ſurrender.

And this Caſe be compared to another, where a Leaſe in Reverſion, [81] as to commence upon the ſurrender of a former, it ſhall not commence upon conditional ſurrender.

Nota. Meſne Profits and Arrearages decreed. Pernors of Profits chargeable *pro rata*.

They may decree the payment of the meſne Profits, and Arrearages, and may charge the *pernors pro rata*, [146] Reſolved by the Judges.

[146] *pernors*, Law French from mediaeval French, modern French *preneurs*, meaning receivers;
pro rata, Latin, according to the rate, here meaning proportionally.

Lands given in Marriage to one that hath no notice of the Uſe, is void.

If a man having Lands given to a *Charitable Uſe*, [11] give thoſe in Marriage with his Daughter, to one that hath no notice of the Uſe, [11] yet the Commiſsioners may decree this Gift in Marriage to be void, and diſpoſe of it to the *Charitable Uſe*; [11]

Marriage, no valuable conſideration within this Act.

for the advancement of his Daughter in Marriage, is no valuable conſideration within this Act.

To a general limitation, a particular limitation may be added by Commiſſioners.

Unto a general limitation of the Giver, the Commiſsioners, by their Decrees, may add particular limitations, as if the Donor limit the imployment be to marry poor Maids: The Commiſsioners may decree, that ſuch Maids which marry without the conſent of their Parents, or within Age of conſent; or which marry with their Raviſhers, or which were gotten with Child before Marriage, or marry without the Orders of our Church; ſhall have no part of that Money, and ſuch a Decree is good, becauſe the additions are reaſonable.

They may apportion a ſum, given in groſs.

So when a ſum in groſs is given to marry poor Maids; they may, by their Decree, ſet down how much every one that is married, ſhall have given with her.

So if a Gift be made to redeem Captives, they may decree that no part ſhall be imployed to redeem any Traytor, that is taken a priſoner, nor any enemy that is taken priſoner, unleſs he be taken Captive by the Turk. [65]-[72]

They may limit a ſhorter time, than the Donors Gift expreſſeth, in caſe of neceſſity. As in caſe of a decayed Bridge.

A ſtock of Money is given *in depoſito*, [147] to be expended in three years, about the repairing of a Bridge, if there be apparent likelyhood, that the Bridge without imployment of the whole, in a ſhorter time, will fall down; they may decree, that the whole ſum may be beſtowed in a ſhorter time.

[147] Latin, in safekeeping

But Rent payable for that purpoſe, at a day certain, they cannot.

But if a yearly Rent had been limited to be paid yearly, for ſuch a purpoſe, though the cauſe were as urgent, they cannot decree that the Rent ſhall be paid before the day, for Rent is no duty, until the day of payment.

Commiſſioners may transfer a Term, in caſe of Fraud.

If a term to commence at a day to come, be granted to a *Charitable Uſe*, [11] and the Grantee endeavours to defraud the Uſe; [11] The Commiſsioners by their Decree, may [p 160] transfer that Term unto another, from the defrauders, for his miſ-government, although the time that it ſhould commence, be not then come; for an endeavour to defraud, is a miſ-government, and a forfeiture. As in Caſes in the Common Law, If a Guardian endeavour to diſinherit the Heir, he ſhall forfeit his wardſhip, 12 *H*. 3. *Fitz-H. Guard*. 151. [148]

Endeavour of Fraud, is a miſ government and a forfeiture. As a Guardian his Wardſhip.

A Woman by acceptance of an Eſtate from an abater forfeits her Dower.

So if a Woman take a Feoffment [40] of him that abates after the death of her Husband, ſhe hath forfeited her Dower, [84] becauſe by accepting ſuch an Eſtate from ſuch a perſon, ſhe endeavoured to diſinherit the Heir. 11 *E*. 2. *Fitz-H. Dower* 156. [148]

[148] These citations are to *La Graunde Abridgement* by Anthony Fitzherbert (1514), one of the the earliest encyclopedic dictionaries of English law, based on the reports in the Yearbooks, written in Law French. To be researched.

Goods given for a Houſe of Correction cannot be otherwiſe imployed.

If Goods be given for a Houſe of Correction, [48] [49] they cannot decree the Imployment out of the Houſe.

Lord by Eſcheats ſhall be bound, for which ſee here a little after in this page, with this mark. ☜

[149] The following section within division 4 [DECREES] appears to deal with the other part of issue 2, which appears as consideration 3 in the opening text: "***What persons shall be bound by such a decree***."

Such as have Titles paramount, are not bound by Decree, though ſummon'd and at the Inquiry. But only ſuch as the Donor, by his own Act, hath bound.

For the Third Point, *The Rule is*,

THat thoſe which have Rights, Titles, Eſtates, and Intereſt paramount, the Donor ſhall not be bound by any Decree, though they were ſummoned, and preſent at the Inquiry: But all thoſe whom the Donor might have bound by his own Act, or Conveyance, [119] ſhall be bound by the Decree of the Commiſsioners.

An Heir entring for Condition broken, is bound by Decree.

If Tenant in Fee-ſimple make a Feoffment [40] upon condition, to perform a *Charitable Uſe*, [11] and his Heirs enter for the Condition broken, the Heir ſhall be bound by Decree:

But Tenant in Tail enters for Condition broken for a Charitable Uſe is not bound.

But if Tenant in Tail, make a Gift, upon condition to perform a *Charitable Uſe*, [11] and his Heir enter for Condition broken, he ſhall not be bound by their Decree, becauſe the Donor could not bind him. Yet,

But he take another wife, and have iſſue, and this iſſue enter, he ſhall be bound till the firſt iſſue recover.

If Tenant in Tail have iſſue, and takes another Wife, and then makes a diſcontinuance, and takes back an Eſtate in ſpecial Tail to the Heirs of their two bodies, and then make a Gift to perform a *Charitable Uſe*; [11] if this Heir enter, he ſhall be bound by Decree, until the firſt iſſue recover.

☜

Lord by Eſcheat is bound.

If there be Lord and Tenant, and the Tenant make a Gift to a *Charitable Uſe*, [11] and dye without Heir, the Lord which hath the Land by Eſcheat, ſhall be bound by their Decree to perform the Uſes. [11]

If Leſſor enter for a forfeiture, he is bound to the Cha. Uſe.

If a Leaſe be made to a *Charitable Uſe*, [11] and the Leaſee commits a forfeiture by Feoffment, [40] *&c*. If the Leſſor enter for the forfeiture, he ſhall be bound by Decree, during the years to come of that Leaſe.

Nota. Charitable Uſe not to be bound by Eſtoppel. ☜

If a man diſ-ſeiſe the Feoffee to a *Charitable Uſe*, [77] and purchaſe a collateral Warranty, which deſcends upon the [**p 161**] Feoffee, [40] yet the Diſ-ſeiſor ſhall be bound by the Decree of the Commiſsioners, becauſe the collateral Warranty, is but a Bond by Eſtoppel, and a *Charitable Uſe* [11] ſhall never be bound by any Eſtoppel.

If a Tenant for Land, given to a *Charitable Uſe*, [11] levy a Fine, [29] and five years paſs, yet the Decree ſhall bind the Tenants of the Land, becauſe the Uſe [11] is no Intereſt in the Lands, and this Statute of Uſes [150] was made after theſe Statutes, which bind Rights.

Nota. A Fine levied, and five years paſs, yet the Tenant is bound. A Cha. Uſe is no intereſt in the Lands. This Statute made after thoſe which bind Rights.

[150] *Sic*. It seems clear from the context that Sir Francis Moore meant the statute of *charitable* uses here, which he would not have confused with the statute of uses. [169]

If the Heir of the Diſ-ſeiſor be in by deſcent of Lands given to a *Charitable Uſe*, [11] yet he ſhall be bound by the Decree, for no laches of Entry ſhall never deſtroy a *Charitable Uſe*, [11] nor any thing bar it, but a Conveyance [119] to one upon good conſideration, and without fraud or notice.

Nota. An Heir of a Diſſeiſor, in by deſcent, is bound to a Cha. Uſe. No laches deſtroy a Cha. Uſe. A Conveyance upon good con-ſideration, without Fraud, may.

Neither is a *Charitable Uſe* [11] bound to the times expreſſed in the Statute of Limitations, made 32 *H*. 8. *cap*. 2. [151] nor to that of 21 *Jac*. [152]

Nota. Statute of Limitations doth not extend to this.

[151] The "Limitacion of prescription" act of 1540, usually called the *Statute of Limitations*, *1540*, 32 Henry 8 c 2.

[152] The Limitation act 1623, again usually called the *Statute of Limitations*, *1623*, 21 James 1 c 16. This act did not replace the 1540 act; it simply added to the list of limitation periods. Note, it was passed sixteen years after Sir Francis Moore's 1607 reading, and two years after his 1621 death. So this note was obviously added by another hand.

Nota. A Recovery deſtroys the Remainder, whereupon a Cha. Uſe depend-eth.

If there be Tenant in Tail, and the Remainder [81] in Tail be limited over to a *Charitable Uſe*, [11] and the Tenant in Tail ſuffer a Recovery with a double voucher, and the firſt Tenant dye without iſſue, the Commiſsioners cannot make any decree concerning that Uſe; [11] becauſe, by the Recovery, the Remainder, [81] whereupon the Uſe [11] depended, was deſtroyed. But if he, in the Remainder, [81] had been party to the Recovery, the Uſe [11] had continued, and ſhould have been decreeable.

But if he in Remainder, be a party to the Recovery, the Law is otherwiſe.

Nota. Statute of Bankrupts ſubject to this.

If a Bankrupt be a Feoffee, or Donee to a *Charitable Uſe*, [77] and after upon Commiſsion his Lands are ſold to his creditors, yet the creditors ſhall be bound by a Decree of Commiſsioners upon this Statute for the Uſe. [11]

Nota. The like Law, in the Kings Accomptant, to the King.

So if an Accomptant to the King, [76] be a Feoffee, [40] the King ſhall be bound by the Decree for a *Charitable Uſe*. [11]

Nota. Commiſſion of Sewers, is preferr'd before this Statute.

A Commiſsion for Sewers, is to be preferred before a Commiſsion upon Statute of *Charitable Uſe*, if they concur not in juriſdiction, as if the Commiſsioners for Sewers decree that Land, which was given for repair of High-ways, ſhall be ſold, &c. The Commiſsioners upon this Statute cannot make a Decree for the *Charitable Uſe*, [11] becauſe they vary in point of juriſdiction, and imployment of the Uſe. [11] But if the Land decreed by Commiſsioners, for Sewers, were given for the repair of Sea-banks; the Commiſsioners upon this Statute may decree as well as they, becauſe they agree in the imployment.

But both may Decree in repair of Seabanks.

Nota. Lands extended upon a Statute, ſubject to this, notwithſtanding an Extent.

The Feoffee to a Uſe, [78] acknowledges a Statute, and the Statute is extended to theſe Lands, and other; the Commiſsioners decree, that the extent, as for the Lands given to a *Charitable Uſe*, [11] ſhall be void: It ſeems the party ſhall be driven to a new extent.

[p 162]

An Occupant is bound by this Statute.

An Occupant ſhall be bound by the Decree of the Commiſsioners.

Nota. The King bound by this Statute.

If a Feoffee to a *Charitable Uſe* [77] convey [119] the Land to one for life, the Remainder [81] to the King, the King ſhall be bound by the Decree of the Commiſsioners, becauſe the Uſe [11] was limited before the Titles of the King.

Nota. If the Kings Title commences with the Uſe, the party grieved muſt petition.

But where the Title of the King commences with the Uſe, [11] there the party grieved muſt ſue by Petition; as where Lands are given for life, the remainder [81] to the King to a *Charitable Uſe*. [11]

Nota. Lord by Eſcheats, bound for the Tenancy, not for his ſervices.

Lands given to a *Cha. Uſe*, [11] eſcheats to the Lord, the Lord ſhall be bound by Decree for the Tenancy, not for his ſervices.

Nota. Copyhold cannot be transferred by Commiſſioners. But to admittance of a Tenant, the Lord is bound.

They cannot by Decree transfer the property of a Copy hold.

But they may decree, that the Lord ſhall admit ſuch an one for Tenant, and the Lord ſhall be bound by their Decree.

Nota. Bargainee by Feoffment, with power of Revocation, is not bound, though he had notice.

The bargain amounts to a Revocation.

If a Feoffment be made to a Uſe, [78] with a power of Revocation at the Will of himſelf and his Heirs, and the Feoffor [40] ſells the Land to another, the Bargainee cannot be bound by Decree, though he had notice of the Uſe, [11] becauſe if the Feoffor [40] had made a Revocation, the Uſe [11] had been deſtroyed, and the bargain amounts unto a Revocation.

If his Heir ſell to another, with notice, the Law is otherwiſe.

But if his Heir ſell it unto another, which had notice of the Uſe, [11] that Bargainee ſhall be bound by the decree, becauſe if the Heir had revoked, he ſhould have held the Land lyable to the Uſe. [11]

Nota. An obligation to a Recuſant for a Cha. Uſe, is ſubject to this Law.

If an obligation be made unto a Recusant, [31] convict for ſecurity of money given to a *Charitable Uſe*; [11] although the obligation cannot be put in ſuit in the name of the Recuſant, [31] to whom it was made, becauſe he is a perſon Excommunicate, and ſo diſabled to ſue any Action, yet the Commiſsioners may decree the payment of the Money, and it ſhall bind the party to pay the principal, but not the forfeiture.

As to the Principal.

Nota.

A man deviſes that his Executors ſhall ſell his Land, and that the Money which ſhall be received, ſhall be imployed to a *Charitable Uſe*; [11] if the Executors refuſe to ſell it, the Commiſsioners, by Decree, may bind them to ſell it, and upon a Writ of Execution out of the *Chancery* upon the Decree, they ſhall be compelled to ſell it;

Executors may be forced to ſell Land, given for a Cha. Uſe.

and it ſeems in that caſe, if the Commiſsioners decree, that the Heir ſhall ſell that Land, the Heir ſhall be bound by the Decree, becauſe the intent of the Deviſor was, that the Land ſhould be ſold to a *Charitable Uſe*. [11]

The Heir alſo ſhall be bound by the Commiſſioners decree of ſale.

Nota. Lands given upon Confidence, to perform a Truſt, though the Deed never was inrolled.

One *Symons*, an Alderman of *Wincheſter*, ſold certain Land to Sir *Tho. Flemming*, now Lord Chief Juſtice, then Recorder of that Town, [153] and this was upon Confidence **[p 163]** to perform a *Charitable Uſe*, [11] which the ſaid *Symons* declared by his laſt Will; that Sir *Tho. Flemming* ſhould perform the bargain, was never inrolled,

Decreed in *Chancery* to the Cha. Uſe, before this Statute was made.

and yet the Lord Chancellor decreed, that the Heir ſhould ſell the Land, to be diſpoſed, according to the limitation of the Uſe; [11] and this Decree was made the 24 of Q. *Eliſabeth*, [154] before the Statute of *Caritable Uſes*,

Upon ordinary judicial proceedings in *Chancery*.

and this Decree was made upon ordinary and judicial Equity [91] in the *Chancery*; and therefore it ſeems the Commiſsioners upon this Statute, may decree as much in the like caſe.

[153] Sir Thomas Flemming was recorder of Winchester 1582-85, recorder of London 1594-95, and lord chief justice (of the Court of King's Bench) from June 25, 1607 to his death on August 7, 1613.—Wikipedia; History of Parliament Online.

[154] *c* 1581-82. Case otherwise unreported. The regnal year 24 Eliz. looks like an error, since the chancellor's decree in that year would seem to have preceded the land transaction that the case was about, when Sir Thomas Flemming was recorder of Winchester, 1582-85. Perhaps this is a misprint for 34 Eliz. (1591-92), which would still have been before both the first statute of charitable uses (1597) and the second (1601).

Nota. Particular Tenant in Reverſion, bound to Attorn.

If a Reverſion [81] be granted to a *Charitable Uſe*, [11] the particular Tenant ſhall be bound to attorn [88] by the Decree of the Commiſsioners; and he [110] ſaid, there are preſidents in the *Chancery*, where the Lord Chancellor hath decreed and compelled the Tenant to attorn. [88]

Nota. Ter-Tenant compelled to give Seiſin of a Rent-ſeck.

Sir *Tho. Bromley* [155] decreed, and compelled the Terr-Tenant, to give Seiſin of a Rent-ſeck, to the intent the party might bring an Aſsiſe.

[155] Lord chancellor from April 26, 1579 to April 29, 1587

A Leſſee for many years, at an eaſy Rent, makes a Leaſe for fewer years at a Rack-Rent, and then grants his Reverſion. The Tenant is compellable to Attorn.

One having a Leaſe for many years, at an eaſy Rent, makes an under Leaſe for leſs years, upon a rack-Rent, [156] and then grants his Reverſion; [81] the Tenant refuſes to Attorn, [88] it may be decreed that he ſhall. *Mallories* Caſe depending. [157]

[156] "Rack rent" usually means excessive, unfair or extortionate rent; but here it was being used as a legal term for the maximum economic rent under current market conditions—in contrast to the previous "easy" rent.

[157] *Mallory's Case* (1601), 5 Co Rep 111b, 77 ER 228

Nota. Executors compellable to deliver Goods given to a Cha. Uſe.

If Goods be deviſed to a *Charitable Uſe*, [11] the Commiſſioners, by Decree, may bind and compell the Executors to deliver the Goods.

[158] The following section within division 4 [DECREES] appears to deal with consideration 4 in the opening text, "***What decree shall be avoidable before execution, and what after execution***".

Upon the Fourth Point.

Nota. If three Commiſſioners only make a Decree.

IF three Commiſsioners only make the Precept, this may be ſhewed in the Court, and the Decree avoided without Bill.

If without Inquiſition, they are avoidable without Bill.

If a Decree be made without Inquiſition, it is avoidable by ſuggeſtion without a Bill.

Nota. If a Decree be made without calling the parties, not relievable but by Bill in Chancery. If the party be denyed his lawful challenge, not relievable but by Bill in Chancery.

But if a Decree be made without calling the parties, or if the party be denyed his lawful challenge, ſuch a decree cannot be avoided, but at the ſuit of the party, by ſhewing his Title, upon Bill, as a party grieved; becauſe the Chancellor is to judge of Titles.

Nota. If after judicial proceedings upon the Title, Commiſſioners decree Conveyances, or miſ-proportion allowances. The Decree muſt firſt be executed, before any relief can be had by Bill or Complaint.

If the Commiſsioners, by their Decree, miſ-proportion Allowances, or Decree Conveyances [119] to be made unto others, after precedent judicial proceedings upon the Title, the Decree muſt firſt be executed, before any as a party grieved, ſhall be admitted as a party grieved, to avoid the Decree by Bill of complaint.

[159] The following section within division 4 [DECREES] appears to deal with issue 2 in the initial table of contents, which is issue 3 in the list of issues at the start of division 4 [DECREES], "***How such a Decree may be executed***".

Upon the Second Part of the Fourth Diviſion.

[p 164]

Nota. Property transfer'd by Decree, may be entred without Writ of Execution.

IF a Decree be made to transfer property from one perſon to another, the party to whom it is decreed, may Enter, or take it, without a Writ of Execution.

Entry by a Reverſioner upon a Leaſe decreed void, is good without Writ.

So if a Lease for years, be decreed to be void, he in the Reverſion [81] may enter without a Writ.

A Releaſe decreed void, not pleadable in Barr.

If a Releaſe be decreed to be void, it cannot be pleaded in Law.

Tenant may retain his Rent.

If the Decree diſcharge a Tenant for Rent, the party may plead the decree in Barr of an Action brought for the Rent: and the Tenant ſhall execute the Decree by way of retaining.

Voluntary delivery of Evidence decreed, is good without Writ.

If the Commiſsioners decree, that Evidence ſhall be delivered, the voluntary deliverance of them is good, without Writ; but no voluntary performance, is a good performance, or execution of the Decree, without certificate by the Commiſsioners, becauſe no Decree can be made warranted by this Statute, but ſuch as may be cenſured by the Lord Chancellor; unleſs it be certified, and therefore no Decree good by this Statute, without a Certificate.

Without Certificate of Commiſſioners, no voluntary performance of a Decree, is good.

No Decree good upon this Statute, without a Certificate.

Lord Chancellors Power. Execution upon a Decree awarded, or ſtaid by Lord Chancellor.

Concerning the awarding, or ſtaying Execution by the Lord Chancellor, touching Decrees made by the Commiſsioners, he [110] conſidered three Points, upon two Branches of the Statute:

What to be awarded.

1. What Decree ſhall be ſaid to be ſo made, that the Lord Chancellor ought to award, or ſtay execution thereupon.

What to be certified.

2. What Decree ſhall be ſaid to be ſo certified, as the Lord Chancellor ought thereupon to ſtay, or award execution.

What manner of execution well made and certified.

3. What manner of Execution the Lord Chancellor may award, for execution of their Decrees, well made and certified.

Nota. If one of four be diſabled; If of any thing out of their Commiſſion. Or againſt the Common Law, or Ordinances of the Church Repugnant to the Donors intent, are good cauſes to ſtay execution.

For the Firſt,

If four Commiſsioners make a Decree, and one of them was a perſon diſabled; or if they make a Decree of any thing out of their Commiſsion, or decree any thing againſt the Common Law, or Statutes, or Ordinances of the Church, or varying, or repugnant to the intent of the Founders or Donors, *&c*. And theſe and the like be ſhewed unto the Chancellor, becauſe it appears, that the Decree was not well made, the Chancellor ought to ſtay execution.

Record of a Certificate, may be averr'd by word of mouth, and ſtay execution.

All theſe things which appear upon the Record of Certificate, may be alledged by word, to ſtay execution.

But ſuch as are not apparent upon the Record, muſt be [p 165] ſuggeſted and ſhewed in Writing.

Stay of Execution cannot be, but upon proofs of Allegations firſt made.

And whereſoever, upon ſuggeſtion, the Chancellor ſhall ſtay execution, he ought preſently to put the party, at whoſe ſuit it is ſtaid, to make proof of the truth of his allegations.

Nota. 2 Points. Four make a Decree, and four the Certificate, yet the Decree ought to be executed. The Certificate is but a ceremony.

For the Second Point.

IF four Commiſsioners make the Decree, and other four make the Certificate, yet the Lord Chancellor ought to execute the Decree, becauſe the Certificate is but a ceremony.

If a Commiſſioner diſabled, make a Decree, though deſired; The Lord Chancellor ought not to execute the Decree.

If four Commiſsioners, whereof one is a party intereſſed, or otherwise diſabled to be a Commiſsioner, to make a Certificate, although the Commiſsioner which made the Decree, deſired him that was a perſon diſabled, to make a Certificate, yet this Decree is not to be executed by the Lord Chancellor.

If a Recuſant Commiſſioner conforms after, Certify, yet the Decree is not to be executed.

If one that was a Recuſant [31] at the time of the Commiſsion awarded, and after conforms him-ſelfe, make a certificate of the Decree; the Decree ought not to be executed, becauſe he was no lawful Commiſsioner at the firſt.

If a Commiſſioner certify, and dye before it be brought into Court, the Decree ought to be executed.

If a Commiſsioner hath put his Hand and Seal to the Certificate, and dye before it be brought into Court, yet the Decree ought to be executed.

If all but three dye after a Decree, and before Certificate, yet the Decree is not executable, for three cannot certify.

If after the Decree made, and before Certificate, all the [C]ommiſsioners dye but three, thoſe three cannot certify, if they do, the Decree is not executable.

If Certificate be not made in time. Yet if voluntarily, or upon *Certiorari*, tis good. Not certifying, is but a contempt, and Finable, the time is but a circumſtance, and no condition by this Statute, to void a Decree.

If the Certificate be not made within the time limited by the Commiſsion, yet if voluntarily, or upon *Certiorari*, the Commiſsioners certify afterwards, the Decree is good, and ought to be executed; becauſe the not certifying was but a contempt, and finable, and the time of certifying is but a circumſtance, added to the Certificate, and no Condition limited by the Statute, to make the Decree void.

If all the Commiſſioners dye, and a *Certiorari* be directed, the Executor of the ſurvivor, returns the Certificate, and good, and the Decree ought to be executed.

If after the Commiſsioners have put their Seals to the Certificate, they all dye, and a *Certiorari* be directed to Executors of the ſurviving Commiſsioners, which return the Certificate; the Decree is ſo certified, that it ought to be executed.

Seals are Eſſential to a Decree, and to a Certificate.

It is of neceſsity requiſite, that both the Decree and Certificate be made, and certified under the Hands and Seals of the Commiſsioners, for their Seals are eſſential to their Decrees and Certificates.

Certificates muſt be made in ſeveral, by four Commiſſioners, and not indorſed upthe back of the Commiſſion. Commiſſioners may make a return, and keep the Commiſſion itſelf.

Every Certificate muſt be made in a ſeveral Parchment, under the Seals of four Commiſsioners, and not [p 166] upon the back of the Commiſsion, by way of Indorſement; for the Commiſsioners may make return of the Commiſsion, and yet keep the Commiſsion itſelf in their own cuſtody.

Concerning the Third Point.

Concerning the manner of execution of a Decree. Referred to the Lord Chancellor, and ought to be according to the uſual courſe of Juſtice and Equity.

The Lord Chancellors power of Execution.

THe manner of execution is deferred to the Lord Chancellor, and yet his diſcretion ſhould be limited and confined in awarding proceſs of Execution, unto the uſual courſe of Juſtice, in Courts of Juſtice and Equity. [91]

The uſual courſe is to award a Writ of Execution upon the Statute, and, upon that, Attachment and Impriſonment.

But the uſual manner is to award a Writ of Execution, framed by advice, for that purpoſe, upon the Statute; and after that, an Attachment, and then Impriſonment of the party, until performance;

Lord Chancellor may award an *Haberi facias ſeiſinam*. And a Decree to keep poſſeſſion.

And generally, the Chancellor doth award an *Haberi facias ſeiſinam*.

If for an Eſtate to be executed, then a Writ of Execution, an Attachment, Impriſonment

If for payment of Debts, an Attachment, Impriſonment, and Fine, or an *elegit*, or *fieri fac*.

Theſe three manners are warrantable.

but he may at his pleaſure award an *Habere facias ſeiſinam*, if the Decree concerned the diſpoſing of Land: and thereupon may alſo Grant a Commiſsion to keep the party in poſſeſsion.

And for the moſt part, the Chancelor uſeth,

1. If the Decree concern the realty, to award the Writ of *Habere facias ſeiſinam*.

2. If for an Eſtate to be executed, then a Writ of Execution, an Attachment, Impriſonment and Fine.

3. If it be concerning the payment of a debt, *&c*. then either an Attachment, Impriſonment and Fine, or an *Elegit*, or a *Fieri facias*,

and theſe three manners and ſorts of Executions are uſual and warrantable.

Lands and Goods liable to Execution, are only ſuch as are liable at the making of the Decree, and not at the Teſte of the Commiſſion.

Decrees upon this Statute, ſhall make thoſe Lands and Goods only lyable to execution, which the party bound by the Decree, had at the time of the making of the Decree, not at the day of the Teſte of the Commiſſion.

Nota. Bankrupts Lands given to a Cha. Uſe, ſold to one that had no notice, may be decreed to that Uſe.

If the Commiſsioners upon the Statute of Bankrupts, ſell the Land which the Bankrupt had to a *Charitable Uſe*, [11] and that to one that had not notice of the Uſe, [11] yet the Commiſsioners, upon this Statute, may decree for ſo much as is given to the Uſe. [11]

Nota. Money in a Bankrupts hands to that uſe, ſhall be liable as a Creditor, and be ſhar'd accordingly.

If Money given to a *Charitable Uſe*, [11] comes to the hands of one that becomes Bankrupt, the *Charitable Uſe* [11] ſhall come in but like a Creditor, and ſhare alike as other Creditors; otherwiſe of Land.

Nota. If a Recuſant Convict, give a Cha. Uſe, and after the offence committed, it binds the King, as to the Cha. Uſe.

If a Recuſant, [31] after the offence committed, give Lands to a *Cha. Uſe*, [11] and after be convicted, yet a Decree ſhall bind the Land for a *Charitable Uſe*, [11] becauſe the forfeiture is intended, not for any advancement of the Reve-[p 167]nue of the Crown, but for a puniſhment of the Offender.

Nota. If an Accomptant give Lands to an Uſe, [11] and after be found in Arrearages, no Decree ſhall bind the King, for the Uſe [11] in this caſe, becauſe ſuch Land was intended, part of the Kings Revenue;

A Cha. Uſe muſt give place to the Treaſure of the Crown.

and a *Charitable Uſe* [11] muſt give place to the Treaſure of the Crown.

If a man marry a Woman that hath Goods given to a *Charitable Uſe*, [11] the Goods of the Husband ſhall be bound to Execution, but neither his Body nor his Lands.

The Goods of the Husband ſhall be bound for a Cha. Uſe given to the wife before Coverture.

If a Decree be made againſt Executors, to pay certain Moneys to a *Charitable Uſe*, [11] in regard they had waſted the Aſſets that they had, and was payable to the *Charitable Uſe*; [11] In this caſe, Execution may be awarded upon their own Goods, and upon all their Land, which they had at the time the Decree was made;

Nota. Waſte of a Cha. Uſe by Executors, are chargeable upon their own Goods, and ſo are their Lands, which they had at the making of the Decree.

But if the Decree was not made upon the Devaſtment, but for contempt, or not payment, the Execution ſhall not be extended to their Lands.

If the Decree be made only upon contempt for not payment, the Lands are excuſed.

A Decree made againſt the Anceſtors, or the Teſtator, ſhall not be executed againſt the Heir, or Executor, with a *Scire facias*, firſt awarded.

A Scire facias muſt be firſt awarded, before any Decree can be executed againſt an Anceſtor, or a Teſtator.

[160] The following section within division 4 [DECREES] appears to deal with issue 3 in the initial table of contents, which is issue 4 in the list of issues at the start of division 4, "***What Decrees may be undone, or altered by the Lord Chancellor, upon complaint, either before or after execution***".

Upon the Third Branch of the Fourth Diviſion.

What compulſory power is in the Lord Chancellor.

THere is given to the Lord Chancellor, a Directory declaratory, and additionary and compulſory power by this Statute, which he may exerciſe, upon complaint by a party grieved, that the Commiſsioners have not purſued their authority.

Who may juſtly complain. Whoſoever hath *bonum omiſſum*, or *malorum Commiſſum* by the Decree.

A party grieved is, whoſoever hath *bonum omiſſum*, or *malorum commiſſum* [161] by the Decree.

[161] Latin usages meaning whoever has had to "forgo something good" or "incur harms" under the decree.

Every one intereſſed in property, to his own Uſe.

Whoſoever is intereſſed, and hath a property and ownerſhip of Goods and Lands to his own uſe, [11]

Any one that hath prejudice by the Decree in Law or Equity.

whoſoever by the Decree hath prejudice, either in Law or Equity, [91]

is *pars gravata*, [162] and may complain by Bill.

[162] Latin, an aggrieved party

Nota. Generally. Every one where the prejudice is general, may complain as *Amicus curiæ*. As for reparation of High-ways, &c.

But where the prejudice is common or general, there every man may complain as a *amicus curiæ*, not as a party grieved, as where Lands given to repair Bridges or High-ways, which are publick eaſements, there any man may complain, if the Decree limit the Uſe [11] to any other purpoſe.

If a ſtock be given to poor Tradeſmen in general, be decreed only to Clothiers, all other Tradeſmen are *partes gravatæ*.

If a Stock be given to be lent out to poor Tradeſ-men of a Town, and this be decreed only to Clothiers; the other Tradeſmen are *pars gravata*. [162] So if to Artiſans and it be decreed only to Haberdaſhers, *&c*. the other are *pars gravata*. [162]

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A Cha. Uſe charged upon a Dower, the Wife, poſt mortem, is pars gravata.

If a Decree be made againſt a Husband, of Land, whereof the Wife was Dowable; the Wife, after the death of her Husband, is a party grieved.

Nota. So of Land deſcended to a Daughter, and a Son born after, the Son is *pars gravata*.

So if a Decree be made against a Daughter for Land deſcended, the Son that is born after, is a party grieved.

Nota. The Leſſor of a termor upon condition, &c. is not *pars gravata*.

If a Termer upon a Condition, that he ſhall not alien, without the conſent of his Leſſor, deviſe that his Executors ſhall ſell it for a *Charitable Uſe*, [11] the Commiſsioners decree, that the Executors ſhall ſell it, the Leaſor is not *pars gravata*. [162]

Nota. Title paramount this Decree, is *gravata perſona*.

Every one which hath a Title, paramount the Decree, is a party grieved:

Feoffee, or Aſſignee, after Inquiſition, is not.

but the Feoffee [40] or Aſsignee, after Inquiſition, is no party grieved.

Every Creditor after a Decree againſt a Bankrupt, at the time for Goods, is *pars gravata*.

If a Decree is made againſt one that is Bankrupt, at the time for Goods, every Creditor, is *pars gravata*, [162] but not for Lands.

The Heir, Executor, or Adminiſtrator of an Anceſtor, Teſtator, or Inteſtate, is *pars gravata*.

If a Decree be made againſt an Anceſtor, a Teſtator, or one that dies inteſtate, the Heir, the Executor, or Adminiſtrator, is a party grieved;

So is every one that claims by Eſtoppel, during the time of the Eſtoppel.

So is every one that claims, by Eſtoppel, during the time of the Eſtoppel.

[163] The following section within division 4 [DECREES] appears to deal with issue 4 in the initial table of contents, which is issue 5 in the list of issues at the start of division 4, "***What Adnullation, Alteration, &c. of such Decrees by the Lord Chancellor, shall be good and firm within this Statute***".

Upon the laſt Part of the fourth Diviſion.

The Chancellors predominant Power.

IN reducing the Decree to the intent of the Donor, the Chancellor hath a predominant Power; but if the intent of the Donor was not lawful, or the Gift had no good ground, though the Decree concurr with the intent of the Donor, yet ſuch a Decree cannot be altered, but muſt be annulled; And therefore,

If the intent of Donor was not lawful, nor the Gift a good ground, though the Decree concurr with the Donors intent, yet ſuch a Decree cannot be altered, but muſt be nulled.

Nota. Where the Uſe depends upon Symony, the Decree muſt be nulled.

If a man deviſe that his Heir, as often as ſuch a Church ſhall become void, ſhall preſent a poor Scholar of ſuch a Colledge; and that the Clerk preſented, ſhall have a certain ſum of Money to the repair of High-ways; and the Commiſsioners decree accordingly: this Decree is to be annulled, and made void, although it be according to the intent of the Donor, becauſe the Uſe [11] for High-ways depends upon Symony. [45]

Nota. The Kings Grant of the penalties of Statutes, to a Cha. Uſe, and the Commiſſioners decree accordingly, is not warrantable.

If the King grant the penalty of divers Statutes to a man, to a *Charitable Uſe*, [11] and the Commiſsioners decree accordingly, yet the Decree muſt be annulled, not altered, becauſe the Original was not warrantable.

So if an Impoſition be granted, that every one that brings ſo much Corn to the Market, ſhall pay 2 *d*. towards the repair of ſuch a Haven, though it be decreed accordingly, yet the Decree muſt be annulled, not altered, becauſe the Impoſition was not lawful.

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But if for exportation, it is good.

But if the Grant had been, that every one which ſhall tranſport ſo much Corn over Sea, ſhall pay ſo much for the repair of the Haven; a Decree made accordingly, had been good, and executable, becauſe the Grant was lawful.

Nota. Lord Chancellor may limit a longer or a ſhorter time, than is appointed by the Donor.

If the Commiſsioners decree, that the arrearages of the Profits, given to a *Charitable Uſe*, [11] ſhall be paid in two years; the Lord Chancellor may alter the Decree, in the point of time, and limit a longer or ſhorter day of payment.

A general to a particular Uſe.

If the Gift be general, for the maintenance of a School, and the Decree be made for a

Grammar-School, [39] the Lord Chancellor may alter the Decree, and appoint it for a Writing-School.

Money lent, to be paid ſooner or latter.

If the Donor give Money to be lent to poor Tradeſmen, and the Decree limits the time, how long they ſhall have it, yet the Lord Chancellor may limit a longer or ſhorter time of the Loan.

But a place certain, his Lordſhip cannot alter, as a Cauſeway.

But if the Gift be given to make a Cauſeway in a place certain, and it is decreed accordingly, the Lord Chancellor cannot alter the place; but he may change the imployment, from a Cauſeway, to make a Bridge, if his diſcretion thinks fitteſt, becauſe the paſſage was the Principal; which being obſerved, the conveniency, whether a Cauſeway or a Bridge were fitteſt, is in the Chancellors diſcretion to appoint.

Nota. Nor the kind of any thing given.

If the Donor ordain, that the relief be given in Bread, and it be decreed accordingly, the Lord Chancellor cannot alter the relief to be given in Money, for the kind ſhould be charged. So if the relief be appointed to be given at *Chriſtmas*, the decree according, cannot be altered to another Feaſt, becauſe the honor of the particular Feaſt, ſeems eſſential to the Gift. So if the Gift and Decree be, for ſuch Poor, as ſhall come and hear a Sermon at *St. Pauls*, it cannot be altered to *Weſtminſter*, for the place is material.

Nor from *Chriſtmas* to any other Feaſt.

Nor from *St. Pauls* to *Weſtminſter*.

The form of an Aſſurance, his Lordſhip may alter.

If the Decree ordain, that an aſſurance [119] ſhall be made by Feoffment, [40] the Lord Chancellor may alter the form, and limit the aſſurance [119] to be made by Fine. [29]

Nota. He may charge the Executor inſtead of the Heir. *Et è converſo*, or may divide the charge.

If the Decree charge the Heir, the Lord Chancellor may change it, and lay it upon the Executor, *Et è converſo*, for both are chargeable, if they have Aſſets; or he may divide the charge at his pleaſure.

Nota. The Churchwardens inſtead of the Overſeers of the Poor may be charged.

So if the Decree charge the Overſeers for the Poor, he may change it, and lay it upon the Churchwardens, *Et è converſo*, or may divide it between them at his pleaſure.

Nota. But a Gift general *ad pios uſus*, is not alterable.

Nor a General reduced to a Certainty.

But if a Gift be made general, *ad pios uſus*, and the Decree limit the imployment for repair of High-ways, *&c.* [p 170] this Decree is not alterable to another Uſe, [11] becauſe the Commiſsioners have lawfully firſt reduced, the generalty to a certainty.

Nota. A Charity given to the Uſe of *J. S.* ſhall nominate, is not good, but muſt be annulled.

If a Gift be made to ſuch a *Charitable Uſe*, [11] as *J. S.* ſhall nominate, though *J. S.* do nominate, and the Commiſsioners decree, yet the Decree is not alterable, but muſt be annulled.

Nota. But if to ſuch a Uſe as the Commiſſioners ſhall appoint in Certain, it is good.

But if the Gift had bin to ſuch a Charitable Uſe, [11] as the Commiſsioners upon this Statute, ſhould aſsign, and the Commiſsioners by Decree, had appointed one, in certain, this Decree were good, and not alterable by the Chancellor, becauſe they firſt reduced the Gift to a certainty.

[p 171]

Upon the Fifth Diviſion. [EXEMPTIONS]

Upon the Fifth Branch.

Provided that this Act, *&c.* ſhall not extend to any Lands, *&c.* given, *&c.* to any Colledge, Hall, or Houſe of Learnin, within the Univerſities of *Oxford* or *Cambridge*, or to the Colledges of *Weſtminſter*, *Eaton*, or *Wincheſter*, or any of them; or to any Cathedral, or Collegiate Church within this Realm. Nor to any City or Town-Corporate, nor to any Lands, *&c.* within any ſuch City or Town-Corporate, where there is a ſpecial Governor appointed to govern or direct ſuch Lands to the Uſes [11] aforeſaid. Nor to any Colledge, Hoſpital, or Free-School, which have ſpecial Viſitors or Governors, appointed by the Founders.

[164] In the above introductory paragraph for division 5 [EXEMPTIONS], the editor/writer summarises the gist of sections 2 and 3 of the 1601 statute.
The following three issues identify the three types of charitable corporation that could be exempt from the 1601 act, but the text does not deal with them as separate subjects. It discusses the factors and requirements for exemption that applied to all of them.

3 Points.

1. In what Caſes, Lands, *&c.* and Goods, *&c.* given to Colledges, Cathedral Churches, *&c.* are exempt out of this Act.
2. In what Caſes, Lands given to Towns-Corporate, or Cities, are exempt.
3. In what Caſes, Lands *&c.* given to Hoſpitals, or Free-Schools, are exempt.

Reſolve.

The Proviſo of exempting Lands, *&c.* muſt be conſtrued ſtrictly, *&c. ut in fol.* 19. [13]

Proviſo of exempting Lands, muſt be taken ſtrictly, and not by Equity.

THe Proviſo of exempting Land, muſt be conſtrued ſtrictly, and not be taken by Equity, [12] unleſs in very ſpecial caſes, becauſe the body of the Statute is a beneficial Law; and therefore,

Nota. Literally.

The Proviſo muſt be taken litterally in three Points.

1. To Corporations in *Eſſe*.

1. It ſhall extend only to Corporations in *eſſe*, at the time of making the Statute, and not to be ſtretched to ſuch as ſhall be made after.

2. Not to Lands given after the Statute.

2. It ſhall not be extended to Lands, *&c.* which are given after the making of the Statute, though the Corporation, *&c.* were in being, at the time that the Act was made.

3. Not to Goods and Chattels, given to Cities, &c.

3. It ſhall not extend to Goods and Chattels, given to Cities, *&c.* becauſe Lands only are mentioned in the Proviſo.

Yet by Equity, [12] it ſhall be extended in two caſes.

Nota. But in two Caſes it may by Equity.

1. To petty and inferior Corporations.

1. If there be inferior or petty Corporations, as Companies of Mercers, Grocers, *&c.* in a greater Corporation, as the City of *London*, it ſhall be extended, by Equity, [12] to ſuch Companies or Corporations.

2. To the whole Univerſity, though Colledges be only mentioned.

2. Though Colledges be only mentioned, yet the whole Univerſity, which is a body politick, ſhall be taken, by Equity, [12] to be within the Proviſo.

[p 172]

Three things requiſite to bring any thing within the Proviſo of this Act.

To bring a Gift within the Proviſo, three things are requiſite.

Nota. 1. That the Gift be made to a body Politique.

1. That the Gift be made to a body Politick; not to a part, or principal Member, as to the Dean and Chapter, not to the Dean alone.

2. That the imployment be to a Corporation.

2. Not only the Gift, but the Imployment alſo muſt be limited to a Corporation, yet if the Gift be to the Chief, or grand Corporation, and the imployment limited into an inferior Corporation within it, it ſhall be exempted.

3. The Corporation, &c. muſt have power to execute

3. The Corporations, Overſeers, or Governors muſt be able, and have power to execute and imploy the uſe, [11] in as ample manner, as the Commiſsioners may do;

Otherwiſe the Commiſſioners may intermeddle.

otherwiſe, if they cannot cauſe the uſe [11] to be imployed, the Commiſsioners may intermeddle, and the Proviſo ſhall not ſave them.

A Gift to a Colledge, to pay 20 *l. per Ann.* to a Parſon, for Cha. Uſes, is not within the Proviſo.

A Gift was made unto a Colledge, to pay 20 *l.* unto a Parſon, to diſtribute amongſt the poor of his Pariſh; this Uſe [11] was not within the Proviſo, becauſe the Colledge hath no power to compell the Parſon, to diſtribute the Money.

But if to a City, to be imployed by the Mayor, it is otherwiſe.

But if the Gift be to a City, to be imployed by the Mayor, it is ex-empted, becauſe he is part of the Corporation;

If to one Corporation, and the imployment to another Corporation or City, it is within the Proviſo.

ſo if the Gift be to one Corporation, as to a Colledge, and the imployment of the Uſe, [11] limited to another Corporation, as a Town or City; this is within the Proviſo, becauſe, both the property and the imployment are appointed to a Corporation, though ſeveral, and ſhall not amount to as much, as if both were one.

Nota. A Corporation for part, Commiſſioners may deal for the whole. *Majus dignum trahit ad ſe minus dignum.*

Increaſe of Relief, is exempt from the Proviſo.

If the Corporation can deal but for part, the Commiſſioners ſhall have juriſdiction for the whole, *Majus dignum trahit ad ſe minus dignum*. [165] If a Gift be made at this day to an Hoſpital, which hath a Governor appointed by the Founder, and the Gift be for increaſe of relief of the poor; this increaſe is exempted, as well as the foundation, from the juriſdiction of the Commiſsioners.

[165] Latin: A greater worth draws a lesser worth to itself.

An Hoſpital in reputation is exempt, if it have a Governor appointed, &c.

As Dean and Chapter of *Windſor*.

An Hoſpital in reputation is exempt, as well as if it were a Corporation, if it have a Governor appointed by the Founder; and therefore a Gift to the poor Knights of *Windſor*, for increaſe of their allowance, is exempt, becauſe they have the Dean and Cannons, for they are Superviſors by their Founder; and although they are provided otherwiſe to live, yet becauſe they live upon Alms, a Gift made unto them, is within the Charitable Uſes [11] of this Statute.

[p 173]

Upon the Firſt Part of the Sixth Diviſion. [PROPERTY]

The Sixth Branch.

Provided, that no perſon, who hath purchaſed, or obtained, or ſhall purchaſe or obtain, upon valuable conſideration of Money or Land, any Eſtate in, or intereſt of, in, to, or out of any Lands, Tenements, Rents, Annuities, Hereditaments, Goods, or Chattels, that have been, or ſhall be given, limited, or appointed to any of the Charitable Uſes [11] abovementioned, without Fraud or Covin, having no notice of the ſame Charitable Uſes, [11] ſhall be impeached by any Decree, or Orders of Commiſſioners, for, or concerning the ſame, his Eſtate or Intereſt.

[166] In the above introductory paragraph for division 6 [PROPERTY], the editor/writer summarises the gist of section 6 of the 1601 statute.

And upon this Proviſo, I [10] ſhall obſerve theſe Points.

Four Points.

1. What ſhall be ſaid a Purchaſe, or obtaining upon valuable conſideration of Money, or Land, of any Eſtate or Intereſt, of, in, to, or out of any Lands, &c. given to any Charitable Uſe [11] within the Proviſo of this Statute. [167]
2. What a valuable conſideration. [170]
3. What ſhall be Fraud or Covin within this Act. [172]
4. What notice ſufficient to charge a Purchaſor. [174]

Reſolve.

If the firſt Purchaſor gave a valuable conſideration, *&c. fol.* 20, 21, 22. [13]

[167] The following section within division 6 [PROPERTY] appears to deal with issue 1 in the initial table of contents and in the list of issues at the start of division 6, "***What shall be said a Purchase, or obtaining, upon valuable considerations of Money or Land, of any Estate or Interest of, into, or out of any Lands, &c. given to any Charitable Use within the Proviso of this Statute***".

Notice. The firſt Purchaſor, though upon valuable conſideration, having notice, And all in Privity of the Eſtate under him, are bound by the Commiſſioners Decree.

IF the firſt Purchaſor gave valuable conſideration, and yet hath notice of the Uſe; [11] All that claim in privity under his Eſtate and Title, whether they have notice or not, ſhall be bound by the decrees of the Commiſsioners. But,

Otherwiſe it is, if the firſt Purchaſor had no notice.

If the firſt Purchaſor for valuable conſideration, had no notice of the Uſe: [11] none of thoſe which come after him in privity of Eſtate or Bloud, ſhall be impeached by the decrees of the Commiſsioners, although they have notice of the Uſe; [11] becauſe the firſt Purchaſor, from whom they decree their Title, was exempted from their authority.

J. S. having notice, purchaſeth in the name of *B.* who hath no notice. *B.* is chargeable with the Cha. Uſe. Notice runs with the Purchaſe.

J. S. which hath notice of the *Charitable Uſe*, [11] purchaſes the Lands for valuable conſideration, in the name of *B.* who hath no notice of the Uſe; [11] yet *B.* ſhall be chargeable, becauſe in truth, *J. S.* was the Purchaſor, and he had notice, which runs with the Purchaſe.

Tenant by Courteſy is chargeable, though he have no notice.

A married Woman which hath notice of the Uſe, [11] purchaſes the Land for valuable conſideration, if the Husband be afterward Tenant, by the courteſy of theſe Lands, he ſhall be charged by Decree, though he had no notice of the Uſe, [11] becauſe he claims his Eſtate, under the Eſtate of her, which had notice, and was lyable.

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A Wife endowed, ſhall be bound by the notice of her Husband.

So if the Wife be endowed of Lands, which were given to a *Charitable Uſe*, [11] and her Husband purchaſed, having notice of the Uſe, [11] ſhe ſhall be bound by Decree, though her ſelf had no notice, for ſhe claimed her Eſtate from her Husband, who had notice, which ſhall bind her and her Eſtate, coming from him in privity, by courſe of Law.

The Lord to whom Land Eſcheats, is chargeable by the notice of the Tenant.

So if there be Lord and Tenant, and the Tenancy being given to a *Charitable Uſe*, [11] is purchaſed by one that hath notice, who dies without Heirs; the Lord to whom the Land Eſcheats, ſhall be charged with the Uſe, [11] though he had no notice of the Uſe, [11] becauſe it was chargeable in the hands of his Tenant, and he ſhall take it with all their charge. And beſides, the Lord was no purchaſor for valuable conſideration, and therefore not within the Proviſo.

Feoffee makes a Fe[off]ment of a Cha. Uſe, to one that hath notice, the Land is chargeable with the Uſe.

If the Feoffee [40] to a *Charitable Uſe*, [77] makes a Feoffment [40] to another, which hath no notice of the Uſe, [11] and for a valuable conſideration upon condition; and after the Purchaſor makes a Leaſe back again to his Feoffees, [40] for a Releaſe of the Condition: In this caſe, though the Land was diſcharged in the hands of the Purchaſor; yet the Leaſe ſhall be charged by Decree for the Uſe, [11] becauſe the Land is come again into the hands of the Feoffee; [40] which was the perſon truſted with the Uſe; [11] and therefore cannot clear the Land from the Uſe, [11] nor free himſelf from the Truſt by any Convey-

ance, [119] or means, how many ſoever they be.

A Diſſeiſor makes a Feoffment to a Cha. Uſe, and Leaſeth afterwards to the Diſſeiſee, who hath notice, this Leaſe ſhall not be impeached by Decree.

If a Diſſeiſor make a Feoffment to a *Charitable Uſe*, [77] and after makes a Leaſe to the Diſſeiſee, who hath notice of the Uſe, [11] and the conſideration is for a releaſe to the Diſſeiſor; this Leaſe ſhall not be impeached by Decree, though the Leaſee had notice of the Uſe, [11] becauſe it was the ſtrength, and cauſe of the Uſe [11] it ſelf.

A Purchaſor makes a Feoffment, with warranty, to one that hath notice, the Feoffee ſhall not recover in value.

A Purchaſor having notice of the Uſe, [11] makes a Feoffment, [40] with warranty, for valuable conſideration, to another that hath notice, the Land is evict by Decree of the Commiſsioners; the Feoffee [40] ſhall not recover in value, by reaſon of the warranty, becauſe the cauſe of Eviction is the notice of the Feoffee, [40] which is no Title paramount to the Feoffment, [40] and therefore the warranty extends not unto it.

Grantee of a Rent, purchaſes of a Tenant, who hath no notice, parcel of the Land. The reſt of the Tenants muſt pay their Rent. No extinguiſhment lies in the case.

The Grantee of a Rent to a *Charitable Uſe*, [11] purchaſes Parcel of the Lands of a Tenant, which hath no notice of the Uſe; [11] the reſidue of the Tenants ſhall be forced to pay the Rent, and no extinguiſhment in this caſe.

Two Joynt-Tenants, one hath notice, he ſhall be charged with the whole. If he dies, the Survivor with a Moity only.

If two Joynt-Tenants of Lands out of which a Rent given to a *Charitable Uſe*, [11] is iſſuing, purchaſe the Rent, and one of them hath notice of the Uſe, [11] he ſhall be charged with the whole; but if he dye, the other who had no [p 175] notice, ſurviving, ſhall be charged but for a Moity.

Rent given, be purchaſed by one that had no notice, deſcends to a Tenant that had notice. The Rent is extinguiſhed.

If a Rent given to a *Charitable Uſe*, [11] be purchaſed by one that hath no notice of the Uſe, [11] and from him it deſcends to the Tenant of the Land, which hath notice, it ſhall be extinguiſhed, notwithſtanding the notice, becauſe he comes to it by him, which had the Rent diſcharged of the Uſe. [11]

Notice of the Teſtator, ſhall bind the Executor.

A Purchaſor of a Lease having notice of the Uſe, [11] deviſeth the term to one, which hath no notice, upon condition to pay money for it, the notice of the Teſtator, ſhall bind the Executor.

An Executor aſſents to a Legacy, it is a *Devaſtavit*, and his own Goods are chargeable.

And if an Executor having notice of the Uſe, [11] aſſent to the Legacy, it is a *devaſtavit*, [168] and he ſhall be charged with his own Goods, becauſe he might have pleaded the Gift to the Uſe [11] in the Spiritual Court, if he had been ſued for the Legacy, and if the Judges had not allowed the allegation, he might have ſued a Prohibition.

[168] *devastavit*: Latin, literally "he has wasted" (an estate); but used in law as a noun for misconduct by an executor. "The wasting of the property of a deceased by his executor or administrator, by misapplying the assets. It renders him personally liable to creditors and legatees having claims against the estate by proceedings to make him responsible."—*Oxford Companion to Law* (1980).

Upon conſideration of Money, thoſe only ſhall be charged, that had notice. If the Conſideration be mixt, as Marriage, and Money, the Law is otherwiſe. For then all ſhall be charged by the notice of one.

A. Purchaſes Land given to an Uſe [11] to himſelf for years, the Remainder [81] to *B*. for life, the Remainder [81] to *C*. in Fee, and *A*. pays the Money, which was the Conſideration; thoſe only which have notice ſhall be charged, becauſe the conſideration being Money, it is valuable for every ſale; but if the conſideration had been mixt, as Marriage and Money; it were otherwiſe, for all ſhall be charged, by the notice of one.

A Man and a Woman being an Infant, having notice inter-marry and purchaſe, &c. they are both chargeable with the Uſe.

If a Man and a Woman being an Infant, having notice of the Uſe, [11] purchaſe the Land before Marriage, with the Money of the Wife, to them and the Heirs of the Husband, for a Joynture [84] for the Wife; in this caſe they ſhall both be charged, by reaſon of their notice.

Infancy will not give her priviledge, becauſe a Purchaſor and this Joynture ſhall barr her of her Dower.

And the Infancy of the Woman ſhall not give her any priviledge, becauſe ſhe is a Purchaſor, which is her own Act; And it ſeems this Joynture [84] ſhall barr her of her Dower, [84] though it be evicted by Decree, becauſe the cauſe of the eviction was her own notice.

The Wife ſhall be bound by the notice of her Husband. After Eviction, ſhe ſhall be endowed of the reſt of her Husbands Eſtate.

But if the Husband purchaſed Land, having notice of the Uſe, [11] and then, after Marriage, made Joynture [84] to his Wife; in this caſe the Wife ſhall be bound, by the notice of her Husband; yet if the Joynture [84] be evicted by Decree of the Commiſsioners, the Woman ſhall be endowed of the reſt of her Husbands Land;

For this is Equity within 27 *H*. 8. A former Statute may be conſtrued in Equity by a latter.

for this is an eviction within the Equity [12] of the Statute, 27 *H*. 8. *Cap*. 10. [169] of Joyntures; [84] for a former Statute may be conſtrued in Equity [12] by a latter.

[169] The *Statute of Uses* of 1535, 27 H 8 c 10, in which s 4 barred the dower of any widow benefiting from a jointure.

A Man having notice, marries a Woman purchaſe, that had no notice. His notice ſhall not charge him, for he was no party truſted.

A Man having notice of the Uſe, [11] marries a Woman which had purchaſed the Land, having no notice of the Uſe; [11] ſhe dies, and he is Tenant by the Courtesie: his notice ſhall not charge him, becauſe he comes by courſe of Law to an Eſtate, which was diſcharged; and he was no party truſted.

[p 176]

Two Joynt-Purchaſors of Land, one of them hath notice, if he ſurvive the whole ſhall be charged; if the other out-live him that had notice, yet he ſhall be charged for a Moity, becauſe he is in by ſurvivorſhip, and the Uſe [11] was paramount the Joynture.

Two Joynt-Tenants, one an Alien, and dies, and an Office is found. The King ſhall have a Moiety, becauſe his Title is Paramont.

As if two Joynt-Tenants be, whereof one is an Alien, and he dies, and then an Office is found, the King ſhall have a Moity, becauſe the other was in by Survivorſhip, and the Kings Title was Paramount.

Iſſue of the Tenant in Tail, with remanders over, ſhall be charged by the notice of the Tenant in Tail, becauſe he is remitted to the Eſtate Tail, which was char-ged with the uſe.

Tenant in Tail, Purchaſor, having notice, Enfeoffs [40] a Stranger, having no notice of the Uſe; [11] the Feoffee [40] infeoffs [40] the Iſſue of Tenant in Tail, who alſo hath no notice; the Tenant in Tail dies, now the Iſſue ſhall be charged, becauſe he is remitted to the Eſtate Tail, which was charged with the Uſe. [11]

[170] The following section within division 6 [PROPERTY] appears to deal with issue 2 in the initial table of contents and in the list of issues at the start of division 6, "***What*** [*is*] ***a valuable consideration*** [*for a property purchase by or from a charity*]".

[p 177]

Upon the Second Part of the Sixth Diviſion.

Valuable Conſideration.

Valuable conſideration of Land or Money.

He [110] made ſeven Concluſions.

Mixt Conſiderations, No valuable Conſideration within the Proviſo of this Statute.

1. A mixt Conſideration, though it were good upon other Conveyances, [119] yet it is no valuable Conſideration within the intent of this Proviſo. As if the Purchaſe be in conſideration of Money, and a Marriage, or Money and natural Affection; becauſe there ſhall be intended, that there is Fraud in Affection, and the mixture of Money, is added but for a colour.

If a valuable Conſideration mixt with another that is not ſo, the mixture ſhall not hurt the former. *Utile per inutile non vitiatur.*

2. If a valuable Conſideration be coupled with another, that is invaluable, and void. (As if it be for Money, and in conſideration of antient Amity, or ſuch like) becauſe the whole Conſideration, reſts upon Money, which is valuable and good, the mixture of the other ſhall not marr the former. *Utile per inutile non vitiatur*. [171]

[171] Latin: The useful is not ruined by the useless.

A Purchaſe undervalued.

3. The Money or Land are not regarded,

If Purchaſe Money be paid, and preſently repaid,

if either the Purchaſe be undervalued more than halfe the very worth of the thing, as if 20 *l*. be paid for that which was worth 30 *l*. or

or promiſe taken for repayment.

if there be Fraud in the payment, as if the Money were paid, and preſently repaid, or Promiſe and Truſt given of repayment, (for ſuch things are averrable) or

If the ſale be to Servant, Couſen, Brother; all theſe are Frauds within this Act.

if the Fraud be apparent, as if the ſale be to a Servant, a Couſin, or a Brother, it is Fraud by common Intendment of Truſt and Confidence in ſuch perſons.

By Conſideration of money, are intended all things; as a Releaſe of a Debt, of Arrearages of Rent, Value of a Wards Marriage, Release of a Co-venant broken, of a debt due by an Infant; Plate of known weight, are within the meaning of conſideration for Money.

4. By the name of Money, are intended all ſuch things as are of the nature; as a releaſe of a Debt, or of Arrearages of Rent, or of the value of a Wards Marriage; but not of Money due, as Marriage-Money, becauſe Marriage it ſelf is no valuable conſideration for doubt of Fraud in Affection. But a Releaſe of a Covenant when it is broken, or of a Debt, which an Infant owes for his Dyet, are conſiderations within the intent of the word Money. So is Plate, of a known Weight;

But Marriage-Money, Jewels, and things of pleaſure are not.

But neither Jewels, nor matters of Pleaſure (though Money be paid for them) are within the meaning of conſideration for Money.

Land extends to all things, that depends upon Land, as Rents, Leaſes, Extents, Wardſhip, Titles of Entry for Condition broken, Forfeitures, Commons, *&c*, forfeitures of Marriage.

5. *Land*. This word extends itſelf to all things that have their dependencies upon Land, as Rents, Leaſes, Extents, Wardſhip, Titles of Entry for Condition broken, orfeitures, *&c*. Commons, *&c*. forfeiture of Marriage, *&c*.

But extinguiſhments of poſsibilities are not.

But extinguiſhment of poſſibilities, are not within this Proviſo.

If the Purchaſe be for 110 *l*. which 10 *l*. is for Uſe, [11] the conſideration is for Money and Uſury, [44] and ſo mixt, that the Uſury [44] ſhall make all void.

If the Conſideration be for Money and Uſury mixt, the Uſury makes all void.

[p 178]

Commiſſioners may examine into the truth of a conſideration expreſſed, and add to them; or falſify them, though the party be Eſtopped by his Deed.

6. What conſideration ſoever be expreſſed in the Conveyance, [119] yet the Commiſsioners may examine the truth of the matter, and add other unto them, or falſify them notwithſtanding the party be eſtopped by his Deed to ſhew the contrary, that is there contained.

If the Conſideration be exemptory, and not performed, it is out of this Proviſo, and Commiſſioners may decree againſt a Purchaſor.

7. If the conſideration be Executory, and not performed, it is not within the meaning of this Proviſo; and the Commiſsioners before the performance, may make a Decree againſt the Purchaſor.

But if part be executed, and part executory, as a fine [29] and Rent, or a ſum in groſs, whereof is paid, and a day given for the reſidue, in theſe caſes the Commiſsioners are concluded, and cannot Decree.

But if part be executed, and part executory, or a ſum in groſs, &c. in part paid, the Commiſſioners are concluded, and cannot decree.

A Rack-Rent is no valuable conſideration, but a Fine for a Leaſe is.

If the Feoffee to an Uſe [78] make a Leaſe for an improved Rent to one that hath no notice of the Uſe, [11] the rack Rent [140] is no valuable conſideration, to make him a Purchaſor within meaning of the Proviſo, but a Fine [29] for the Leaſe is a valuable conſideration.

A Feoffment to pay Debts, is no valuable conſideration within the Proviſo of this Act.

A Feoffment [40] to pay the debts of the Feof-for, [40] with the Profits, is no valuable conſideration within this Proviſo.

[172] The following section within division 6 [PROPERTY] appears to deal with issue 3 in the initial table of contents and in the list of issues at the start of division 6, "***What shall be Fraud or Covin within this Act***".

[p 179]

Upon the Third Part of the Sixth Division.

Without fraud or covin.

Private agreement, that the Uſe ſhall not be imployed according to the Donors Gift, is fraud.

IF Land be given upon condition to maintain a *Cha. Uſe*, [11] and the Feoffee, [40] and the Heir of the Feoffor [40] agree, that the Uſe [11] ſhall not be imployed, and that the Heir ſhall enter for Condition broken, and then make an abſolute Feoffment [40] again to him, this agreement is Fraud within this Statute.

A Feoffment made by the diſcontinuance, to the end, the Heir may be remitted, to deſtroy the Cha. Uſe, is fraud.

A Feoffment [40] made unto the Heir in Tail, by the diſcontinuance to a *Cha. Uſe*, [11] to the intent the Heir may be remitted to deſtroy the Uſe, [11] it is Fraud.

A Feoffment made with power of Revocation, by one that hath notice, and after releaſeth the power, is fraud.

A makes a Feoffment [40] to *C.* of Lands chargeable with an Uſe, [11] whereof *C.* hath notice, and this made with a power of Revocation. *C.* makes an exchange with *B.* who hath no notice of the Conſideration; and after *A.* releaſes the power of Revocation, this is a Fraud, becauſe it would overthrow the Uſe. [11]

A Joynture made of Lands given to a Cha. Uſe, upon condition to releaſe a former Joynture, it is chargeable with the Charity, if the latter be accepted: but it is no fraud within this Act.

The Husband makes a Joynture to his Wife before Marriage, and after makes her another Joynture of Lands given to an Uſe; [11] upon condition, that ſhe ſhall refuſe the former; if ſhe takes the latter, ſhe ſhall be chargeable, but this is no Fraud, but ſhe is bound by her own acceptance.

Lands given to a Son chargeable with a Cha. Uſe, of which the Son hath no notice, inſtead of Lands, of which the Son was before ſeized, is fraud in the Father.

The Father, in conſideration of natural affection, Enfeoff [40] his Son of certain Lands, and after, upon condition, that the Son ſhall Re-enfeoff [40] him of that former Land, he gives him other Land which is chargeable with an Uſe, [11] whereof the Son hath no notice; this is Fraud, becauſe the Father had notice; for at the Common Law, where the Father which held by Knights ſervice Infeoff'd [40] his Heir within age, it was Fraud apparent.

Rent given to deceive a Purchaſor, which was given to a Cha. Uſe, is decreeable, for, Rent is no good conſideration.

If a Rent that was granted to deceive a Purchaſor, be granted to another for Land, which was given to an Uſe, [11] though he had no notice of the Uſe, [11] yet the Land is decreeable, becauſe ſuch a Rent was no good conſideration.

If Land, &c. be exchanged with an Accomptant to the King, and no notice, and the Land be ſold, Commiſſioners may decree the whole Land, for the gaining to the King was fraud. The King hath not the Land, but a power to ſell it, by 13 *Eliz. cap.* 4.

If the Feoffee to an Uſe, [78] exchange that Land with an Accomptant of the Kings, [76] who hath no notice of the Uſe, [11] and both the parcels are ſold to ſatisfy the Kings debt; the Commiſsioners may decree for the Land given to the Uſe, [11] becauſe there was Fraud in the Feoffee, [40] to gain it to an Accomptant of the King, [76] and the Land never came to the King, for the King hath not the Land, but only a power to ſell the Land given by the Statute 13 *Eliz cap.* 4. [173]

[173] *An Acte to make the Landes Tenementes Goodes and Cattalles of Tellers Receavers, &c. lyable to the payment of their Debtes*, 1571; eventually repealed in 1924.

[p 180]

Leſſee to a Cha. Uſe, makes a Feoffment to one that hath no notice. Leſſor having notice, enters, the Leaſe is decreeable for the apparent Fraud.

Leſſee to a *Charitable Uſe*, [11] makes a Feoffment [40] for conſideration, to one that hath no notice; the Leſſor, or he in the Reverſion, [81] having notice, enters for a forfeiture, the Leaſe is Decreeable for the Fraud apparent.

Goods ſold in a Market, and bought again by the ſeller, is Fraud, if he had notice of the Uſe.

Goods given to a *Charitable Uſe*, [11] are ſold in a Market, if the party buy them again, they are decreeable; ſo is he chargeable that bought them, if he had notice of the Uſe. [11]

Goods given to a Cha. Uſe paſs by a general Deed of Gift, is fraud.

One that hath Goods given to a *Cha. Uſe*, [11] makes a general Deed of Gift of all his Goods, they ſhall paſs with the other, by the general words, and yet they that were given to the Uſe, [11] are decreeable for the Fraud implied in the generalty.

Goods &c. given to ſave another harmleſs, at undervalue, is fraud without notice of the Cha. Uſe.

Goods given to an Uſe, [11] are given to another to ſave him harmleſs of a Debt, undervalue, he ſhall be charged for the overplus, without notice.

A ſale under the moiety of the value, is fraud. But being ſold over to another, upon good conſideration, the Fraud is purged.

A Sale under the moity of the value, is fraudulent and decreeable.

But if one purchaſe Lands or Goods, under halfe the value, and ſell them over to another, upon good conſideration, *bona fide*, the Fraud is purged.

A Gift to maintain one for his life, the reſidue of the profits to a Cha. Uſe, is fraud *ab initio*. The Conſideration is Executory.

The Feoffee or Donee to an Uſe, [78] makes a Gift to one that hath no notice, to find, and maintain him during his life, and the reſidue of the Profits, to be given in *Pios Uſus* this is a Fraud for all, becauſe the conſideration is Executory.

[174] The following section within division 6 [PROPERTY] appears to deal with issue 4 in the initial table of contents and in the list of issues at the start of division 6, "***What notice sufficient to charge a Purchasor***".

Upon the Fourth Part of the Sixth Diviſion.

Notice.

CConcerning notice of the Uſe, [11] which ſhould make a man chargeable, notwithſtanding any valuable conſideration, he [110] conſidered three circumſtances.

The perſon that muſt have notice.

1. The person to whom notice must be given.
2. The manner how it may be given.
3. The time when it ought to be given.

Notice is traverſable

Notice is a thing traverſable, and to be collected by circumſtances.

1. The Purchaſor is the perſon muſt have notice. A Purchaſor is he that pays the Money.

1. The Perſon who muſt have the notice, is the Purchaſor,

and the Purchaſor is he which pays the Money.

Notice to a Leſſee in Remainder over, &c. is ſufficient.

If an Eſtate be made to one for years, remainder [81] for Life, the remainder [81] in Fee to others, if the Leſſee pay the Money, his notice is ſufficient.

So if Father or Son have notice, and the Father pays the Money; if the Son be named a Purchaſor.

So if the Father or the Son have notice, where the Father pays the Money, it is ſufficient, where the Son is named the Purchaſor.

If Guardian of an Infant. Committee of an Ideot. Husband for the Wives Eſtate. To the Factor of a Purchaſor.

If the Guardian or Infant have notice, where the Infant is purchaſor, it is ſufficient. To the Committee of an [p 181] Ideot, for his Purchaſe, to the Husband, for the Eſtate of his Wife, to a Mans Factor, whom he puts in Truſt to purchaſe for him.

To a Dean, Mayor, &c. for the Body Politique, are all good notice.

To a Dean, Mayor, or other Head of a Body Politique, for their Purchaſe. For the head, as it hath the tongue to ſpeak, ſo hath it the ears to hear, for the reſt of the Body, and therefore notice to the head, is ſufficient for the reſt of the body Politique.

2. To the manner of Notice. Any general information is ſufficient as Church-land, Highway-land, Hoſpital-land, &c.

2. The manner. Any general Information is ſufficient, as ſometimes the general name of the Land gives a competent notice: as if it be called the Church-Land, or the High-way-Land, or Hoſpital-Land, *&c*. the notice of ſuch a name gives an intimation of an Uſe. [11]

An Attorney that makes Livery and Seiſin, hath thereby ſufficient notice.

An Attorney which makes Livery and Seiſin upon a Feoffment, to a *Charitable Uſe*, [77] hath ſufficient notice of the Uſe; [11]

So have witneſſes which hear the Deed read, or the Effect declar-ed.

ſo have the Witneſſes which hear the Deed read or a Will read, or the effect thereof declared.

A Scrivener which writes the Will for a Cha. Uſe, is thereby excluded from being a Purchaſor.

A Scrivener which writes the Will of a Man that deviſes Land thereby, to repair Highways, though the Deviſor afterwards change the imployment to repair Churches, yet the Scrivener hath ſufficient notice of the *Cha. Uſe*, [11] to exclude him from being a Purchaſor within the Proviſo.

By ſurrender of a Coppyholder, all other Tenants and Suitors, have ſufficient notice.

If a Coppyholder ſurrender to another, to a *Charitable Uſe*, [11] and this be preſented, all the Tenants and Suitors of the Mannor, have thereby ſufficient notice, whether they were preſent or abſent from the Court; for every one is bound to be preſent by himſelfe or his Eſſoignor, who is his Attorney, and therefore at his peril, muſt take notice of all things done in that Court.

Notice of the imployment, is a good notice.

The notice of the imployment, is a ſufficient notice of the Gift,

Churchwardens and Overſeers of the Poor, and all preſent at their Accompts, have notice enough.

and therefore both the Church-wardens and Overſeers for the Poor, and ſuch as are preſent at their Accounts, have notice ſufficient of the Gift and Uſe. [11]

Notice in the Church.

Notice given generally in the Church is ſufficient for all the Pariſhioners, whether preſent or abſent, at the time it was given; for every one ought to be there preſent, or to enquire and know what was done there.

In a Leet.

Notice in a Leet is ſufficient for all that owe ſuit to the Court; but neither Infants, Women, Clergymen, or perſons above 60 years old, are bound by ſuch notice.

Coppy of a Will under the Ordinaries Seal.

The Copy of a Will read or declared, under the Seal of the Ordinary, is notice ſufficient, but not a Paper Copy.

A Client being told by his Counſel, of the Cha. Uſe, binds the Client, not the Counſel.

If a Client bring a Writing to a Counſellor, and the Counſellor tell him the Land is given to a *Charitable Uſe*, [11] this notice ſhall bind the Client, but not the Counſellor.

[p 182]

The Reading of an Inquiſition, or a Depoſition, are all good notice.

The reading of an Inquiſition, or a Depoſition, taken concerning the Uſe, [11] binds thoſe which hear it.

The time of Notice, muſt be before the Purchaſe.

3. The time of the notice muſt be before the Purchaſe.

If a Leaſe be made for years, upon condition to have the Land in Fee, and this was Land given to a *Cha. Uſe*, [11] and then before the performance of the Condition the Leſſee hath notice of the Uſe; [11] if after he perform the Condition, the term now ſhall be chargeable; but if he perform not the condition, he ſhall hold his term without impeachment of the Commiſsioners Decree, becauſe it was a purchaſe before notice.

Notice before Livery and Seiſin.

Notice before Livery, and Seiſin upon a Feoffment. [40]

Before Attornment upon a Grant.

Before Atturnment [88] upon a Grant of a Rent or a Reverſion, [81] is time enough to bind the Feoffee, [40] and the Grantee.

To the Obligor, before payment of his Money

So is notice to the Obligor before payment of his Money,

If the Bond was not taken for the payment of a reſidue of the ſum, whereof part was paid in hand for the purchaſe.

Before a Deed delivered, are time enough.

So is it, if it be before a Deed be delivered, though it were ſealed firſt.

Notice before Enrollment of a Deed, doth not bind. The bargain was good before. Inrollment is only a ceremony.

If Land be bargained, and ſold by Deed, and the party that bought it, have notice before the Inrollment of the Deed, yet he is not bound by that notice, for the bargain was perfect before, and the inrollment is but a ceremony, added by a Statute.

Notice to the right Heir of *J. S.* is not good for the incertainty.

If a Remainder [81] of Land given be limited to the right Heir of *J. S.* or to his eldeſt Son, which he ſhall have at the time of his death; notice cannot be given to any man during the life of *J. S.* for the incertainty, what perſon ſhall be his right Heir, or his eldeſt Son, at the time of his death.

[p 183]

Upon the Firſt Part of the Seventh Diviſion. [FRAUDS]

[174] Although the above heading of this seventh division refers to its "First Part", no later part headings are shown in Duke's print.

Upon the 7 Branch.

The Commiſſioners, or any four, or more of them, ſhall and may make Decrees and Orders, for recompence to be made by any perſon or perſons, who being put in truſt, or having notice of the Charitable Uſe, [11] that hath or ſhall break the ſame Truſt, or Defraud the ſame Uſes [11] by any Conveyance, [119] Gift, Grant, Leaſe, Demiſe, Releaſe or Converſion whatſoever; and againſt the Heirs, Executors, and Adminiſtrators of him, them, or any of them, having Aſſetts in Law or Equity, [91] ſo far as the ſame Aſſetts will extend.

[175] In the above introductory paragraph for division 7 [FRAUDS], the editor/writer summarises the gist of section 7 of the 1601 statute.

And hereupon I [10] will obſerve;

Three Points.

1. What ſhall be a breaking of Truſt, or defrauding of Charity within this Act. [176]
2. What Heir, Executor, or Adminiſtrator ſhall be chargeable with recompence, or defrauding of Uſes [11] by his Anceſtors, Teſtators, or Inteſtate. [177]
3. What ſhall be Aſſetts in Law or Equity, [91] to make recompence according to this Act, [178] *ut in fol.* 9, 6, *fol.* 23, 24, 25, 26. [13]

Reſolve, *fol.* 9. & *fol.* 23, 24, 25, 26.

If Fees in Truſt to a Charitable Uſe, [11] *&c. fol.* 6. *b.* to theſe words, *What an Inquiſition*, and then begin at *fol.* with theſe words, *fol.* 24. *b. If a Man marry a Woman*; *&c.* and ſo as in *fol.* 25. 26. to the end. [13]

What a breach of Truſt, and fraud within this Act.

[176] The following section within division 7 [FRAUDS] appears to deal with issue 1, "***What shall be said a breaking of trust or defrauding of charitable uses within this Act***."

If a Husband releaſe a Bond, given to a Wife for a Cha. Uſe, it is a breach of Truſt.

IF a Man marry a Woman, to whom a Bond was made for a *Charitable Uſe*, [11] and the Husband releaſes the Bond, though he had no notice of the Uſe, [11] yet this is a breach of Truſt, and he ſhall render in recompence, becauſe the notice of the Wife ſhall bind him.

But if it were given after Coverture, and he wave the Bond, it is otherwiſe.

But if an Obligation be made to a Woman, after coverture for a *Charitable Uſe*, [11] and the Husband wave the Bond, he ſhall not make recompence, though he had notice of the Uſe. [11]

Lands are deviſed for Life, the Remainder [81] in Fee to a *Charitable Uſe*. [11] If he in the Remainder [81] have notice, and wave the Remainder, [81] this is a defrauding of the Uſe, [11] (otherwiſe without notice.)

Remainder in Fee hath notice, and waves the remainder, this is a fraud, otherwiſe it is without notice.

A Leaſe for Life is made, and the Remainder [81] is limited to the right Heirs of *J. S.* for a *Cha. Uſe*: [11] If Tenant for Life have notice of the Uſe, [11] in remainder, [81] and make a Feoffment, [40] this is a defrauding of the Uſe, [11] becauſe the Uſe [11] cannot conſiſt without the Remainder, [81] whereunto it was annexed, and which was deſtroyed by the Feoffment; [40] and therefore he ſhall render recompence.

A Uſe in remainder cannot conſiſt, in that the remainder, to which it was annexed.

[p 184]

But if Tenant in Tail (the Remainder [81] over being limited for a *Cha. Uſe*) [11] ſuffer a common Recovery, this is no ſuch defrauding of the Uſe, [11] though he had notice of the Uſe, [11] as that he ſhall make any recompence, becauſe his Eſtate hath that priviledge annexed by Law, that he may cut off the Remainder [81] lawfully.

If Tenant in Tail ſuffer a common Recovery, this is no defrauding of the Uſe.

[177] The following section within division 7 [FRAUDS] appears to deal with issue 2, "***What heir, executor or administrator shall be chargeable with recompence for breach of trust or defrauding of uses, by his ancestors, testators, or intestate***."

The Mortgagee deviſes, that if the Money be paid, it ſhall be imployed to a *Cha. Uſe*; [11] and if the Money be not paid at the day, then the Land ſhall be given to a *Cha. Uſe*, [11] the Heir of the Mortgagee enfeoffs [40] the Mortgage before the day of payment; if the Mortgager had notice of the Uſe, [11] he ſhall be charged for the Money, but if he had no notice, then the Heir of the Mortgagee ſhall be charged with recompence for the Land, for he brake the Truſt.

Mortgagee having notice, is chargeable with the Uſe, if notice; otherwiſe, the Heir of the Mortgagee.

The termer to an Uſe, [11] deviſes it to an Eſtranger, which hath no notice; upon condition, to pay 20 *l. per ann.* the Executors which have notice of the Uſe [11] receive the 20 *l.*, and ſo aſſent to the Legacy, they ſhall be charged for recompence of the Goods of the Teſtator, if they have Aſſetts, if not, of their own Goods, for they did finiſh the Fra[u]d, which was commenced by their Teſtator;

Executors aſſent to a Legacy, are chargeable out of the Teſtators Eſtate, if Aſſets, if not, out of their own, for recompenſe.

but if the Deviſee had notice, there ſhall be no recompence for the leaſe, becauſe, in that

But if the Deviſee had notice, it is otherwiſe.

caſe, the Leaſe it ſelf is to be decreed for the Uſe. [11]

Diſſeiſee Enters, and Enfeoffs the Grantee of the Rent. The Uſe is deſtroyed without recompence.

If a Diſſeiſor grant a Rent to a *Cha. Uſe*, [11] and the Diſſeiſee enters and Enfeoffs [40] the Grantee of the Rent, the Uſe [11] is deſtroyed; but without recompence, becauſe no fraud.

If a Reversioner releaſe to a Feiffee, the Feoffee ſhall render in recompence.

But if Tenant, for life, grant a Rent-charge to an Uſe, [11] and after enfeoff [40] the Grantee, and then he, in the Reverſion, [81] releaſe to the Feoffee, [40] the Feoffee [40] ſhall render in recompence, becauſe the Feoffment [40] was fraudulent, and was not lawfully defeated.

Notice ſhall deſcend and bind the Heir.

A notice ſhall deſcend, and bind the Heir to recompence.

The Father holds Land to an Uſe, [11] and dies, the Heir, having no notice, ſells the Land to another, which likewiſe hath no notice of the Uſe: [11]

Becauſe his Father had notice.

yet the Heir ſhall render in recompence, becauſe his Father had notice of the Uſe; [11]

So an Executor by notice to the Teſtator.

ſo ſhall the Executors, for the notice of their Teſtator, be anſwerable in recompence, if they have Aſſetts.

A Teſtator hath Goods to a Cha. Uſe, gives them by Will to a Feme-Covert, or converts them to his own uſe; the Wife only ſhall be charged, unleſs the Executors had notice; it is then, in the Commiſſioners election to charge either.

A Teſtator having Goods to a *Charitable Uſe*, [11] makes a Feme-Covert, his Executrix; her Husband, having no notice of the Uſe, [11] gives them by his Will, or otherwiſe converts them, to his own uſe, [11] the Wife only ſhall be charged, and not the Executors of the Husband, unleſs they have notice of the Uſe; [11] and then it is in the Election of the Commiſsioners, to charge either the Woman, or the Executors of her Husband.

[*recte* **p 185**]

[p 183]

Treſpaſſer is chargeable with recompence for his wrong.

If a man wrongfully, by Treſpaſs, take Goods which were given to a *Charitable Uſe*, [11] and ſell them in a Market, the Treſpaſſor ſhall be charged with recompence for his wrong;

But if recovery be made before recompence, upon an action, the Recoverer is chargeable.

but if the party, out of whoſe poſſeſsion they were taken, recover in an Action of Treſpaſs, againſt the Treſpaſſor, before recompence made, he is not to be charged with recompence, but the party which recovered, muſt be charged; yet if the Treſpaſſor be charged, the Commiſsioners by their Decree may diſcharge them againſt the Proprietory, and he may plead the Decree in Barr.

Goods imployed to the benefit of an Infant, by an Adminiſtrator, the Infant is to allow. But if the Adminiſtrators commit waſt, it is otherwiſe. The like Law of a Guardian in Soccage.

An Adminiſtrator *durante minori ætate*, without notice of the Uſe, [11] imploys the Goods to the benefit of the Infant: the Goods of the Infant ſhall make recompence: but if the Adminiſtrator waſte the Goods, he ſhall be charged with recompence of his own Goods; like Law of a Guardian in Soccage. or,

The King remits an Ideot, the Comittee not chargeable.

If a Rent for a *Charitable Uſe* [11] be iſſuing out of the Lands of an Ideot, and the King remits him over, the Committee ſhall not be charged, though he have notice of the Uſe, [11] until it be allowed, upon ſuit by Petition, or by Bill of Complaint, becauſe he comes under the Title of the King, who hath the cuſtody of an Ideot to his own Uſe. [11]

But for a Rent out of the Lands of an Ideot [*sic*, read *lunatic*], it is otherwiſe.

But if ſuch a Rent be iſſuing out of the Lands of a Lunatique, the Committees ſhall be charged with the Rent, without any Suit for allowance, becauſe they have the cuſtody of the Lunatick, for the benefit of the Lunatick, and the King is not entituled to the Profits, but to the diſpoſing of the Cuſtody.

Purchaſor in another mans name, ſells over, &c. he whoſe name was uſed, ſhall make recompence.

A man having notice of the Uſe, [11] purchaſes the Land in another mans name, which hath no notice, and he, in whoſe name the purchaſe was made, ſells it to another, which hath no notice, he, whoſe name was uſed, is a party truſted; and ſhall make recompence.

An Accomptant purchaſeth in anothers name, &c. the Accomptant is chargeable. But if Bargainee of the King had notice, it is otherwiſe.

An Accomptant to the King [76] having notice of the Uſe, [11] purchaſes in anothers name, who hath no notice of the Uſe; [11] the King ſells the Land to one which hath no notice, the Accomptant [76] ſhall be charged in this caſe; but if the Bargainee of the King had notice, he ſhould be charged.

A Bankrupts Lands, &c. are ſold to a Creditor that hath not notice; The Bankrupt muſt be charged. If the Bankrupt dye without Heir, the Commiſſioners may charge the Land with the Uſe.

A Bankrupt hath Lands given to an Uſe, [11] the Commiſsioners ſell it to a Creditor that hath no notice of the Uſe; [11] in this caſe the Bankrupt muſt be charged, and though the Commiſsioners have notice of the Uſe, [11] and ſell it; yet they ſhall never be charged; becauſe they do but execute an authority; but if the Bankrupt dye without Heir, ſo that there remains no colour of recompence to be made by him, then the Commiſsioners upon this [p 184] Statute, may charge the Land with the Uſe, [11] in the hands of the Creditors; *&c.* for a *Charitable Uſe* [11] ſhall not be barred without actual recompence, or a party which ſhould render, if he were able.

[*recte* **p 186**]

A Cha. Uſe is not to be barred, without actual recompence,

The firſt Purchaſor, and not he whoſe name is uſed, ſhall be charged with recompence in this caſe.

One which hath notice of an Uſe, [11] purchaſeth the Land in the name of another that hath no notice, and after the Purchaſor requeſts him, whoſe name he uſed, to make a Feoffment [40] to another, for good conſideration, the party having no notice of the Uſe; [11] in this Caſe the firſt Purchaſor, and not he whoſe name was uſed, ſhall be charged with recompence.

The Daughter without notice ſhall be charged with ſo much as the Land was worth, at the time of the Purchaſe, with notice, ſhe is chargeable with the whole recompence.

The Father being Feoffee to an Uſe, [78] Mortgages the Land to one which hath no notice, and dyes, having iſſue only one Daughter, and leaves his Wife with Child; the Daughter redeems the Land by payment of the Money, then a Son is born, then the Daughter having no notice of the Uſe, [11] ſells the Land to one which hath no notice, the Daughter without notice, ſhall be charged with ſo much as the Land was worth, more than ſhe paid for it; and if ſhe had notice, ſhe ſhall be charged for the whole recompence, though ſhe is not Heir to her Father.

Daughter ſhall make recompence out of her own Land.

A Man having knowledge of the Uſe [11] purchaſes the Land to his Wife, the remainder [81] to his own right Heirs, and dies, having iſſue only a Daughter; and ſhe, after the death of his wife, having no notice of the Uſe, [11] ſells the Land to another, which hath no notice of it; the Daughter ſhall make recompence for the Land, of her own Land, becauſe ſhe is no purchaſor within this Statute, but comes in privity of the notice, as Heir to her Father.

Feoffee releaſes to the Heir of the Diſſeiſor, the Heir ſhall not be charged with recompence, but the Feoffee.

The Feoffee to an Uſe [78] is diſſeiſed, the Diſſeiſor dies ſeized, and then the Feoffee, [40] in conſideration of Money, releaſes to the Heir of the Diſſeiſor, who had no notice of the Uſe, [11] the Heir ſhall not be charged, but the Feoffee [40] brake the Truſt, and he muſt make the recompence.

Anceſtor collateral releaſeth with Warranty, his Executors are chargeable; unleſs he leave Aſſetts, then the Heir. If Aſſetts be Burrow-Engliſh, then the Land, and the Executors of him that releaſed, are chargeable.

Tenant for life, the remainder [81] to *A*. in Fee, being charged with an Uſe, [11] the Tenant for life makes a Feoffment [40] for valuable conſideration: an Anceſtor collateral to *A*. releaſes, with warranty; and dies, although the Anceſtor had no notice, nor was put in Truſt with the Land; yet, for the Fraud, his Executors are chargeable; but if he leave Aſſetts, the Heir ſhall be charged, if not, then his Executors are to be charged; And if the Aſſetts deſcend to Burrow-Engliſh, then that Land, and the Executors of him that releaſed, ſhall be charged.

Executors ſell Land to the Teſtators Heir.

A Purchaſor having notice of the Uſe, [11] deviſes, that his Executors ſhall ſell the Land;
the Executors having no notice of the Uſe, [11] ſell theLand to the Heir of the [p 185] Teſtator, who likewiſe is ignorant of the Uſe, [11] the Executors ſhall be charged for recompence *de bonis Teſtatoris*, and the Heir for the Land, becauſe the Notice deſcended.

[*recte* **p 187**] The Executors, *de bonis Teſtatoris*, the Heir is chargeable for the Land.

All co-parceners at Common-Law, Heirs by cuſtom of Gavel-kind, Heirs in Burrow-Engliſh, are bound to make recompen-ce with Lands deſcended. Heirs in Truſt are not.

All Co-parteners, at the Common Law, and Heirs by Cuſtom of Gavel-kind, and the Heir in Burrow-Engliſh, ſhall be bound as Heirs, to make recompence with their Land, deſcended to that kind. But the Heir in Tail, is not to make recompence with ſuch Land deſcended, becauſe it is not Aſſetts; for he hath it *per formam doni*, as much as by deſcent, and yet,

Heir in Tail of him that leaves Land to deſcend, that was gained by fraudulent purchaſe, is chargeable with recompence.

If the Feoffee to an Uſe [78] ſell that Land, and after purchaſeth other Land in Tail, which deſcends to his iſſue; the Heir in Tail, in this caſe, ſhall be bound to make recompence with that Land intailed, becauſe it ſhall be intended that his Father purchaſed that Land, with the money which he had for his fraudulent ſale of the other Land in Uſe. [11]

[178] The following section within division 7 [FRAUDS] appears to deal with issue 3, "***What shall be Assets in law or equity to make recompence according to this Act***."

Money in the hands of an Heir, whoſe Anceſtor was a defrauder.

A defrauder of an Uſe [11] purchaſes Land in another mans name, and dies; his Heir procures him, in whoſe name it was purchaſed, to ſell the Land to another, and the Heir receives the Money; this money in the hands of the Heir, ſhall be Aſſetts in Equity, [91] to make recompence for his Fathers fraud.

Aſſetts in Equity.

So the Heir of him which puts another in Truſt, his Lands are Aſſetts in Equity.

So if the party, whoſe name was uſed, infeoffe [40] the Heir of him which put him in Truſt; that Land ſhall be Aſſets in Equity, [91] becauſe he comes in upon a Truſt deſcended.

The Lands of an Heir, in as a ſpecial Occupant.

Land is given to a Man, and his Heirs, for the life of *J. S.* though the Heir in this Caſe, be in, as a ſpecial Occupant, yet this Land ſhall be Aſſetts to make recompence, as Heir to a defrauder of an Uſe. [11]

Aſſetts in Equity. A power of Revocation.

A defrauder ſells a Term with a power of Revocation, this power of Revocation in the Executors, is Aſſetts in Equity [91] to make recompence; becauſe they may ſell without Revocation, and then the Money will be Aſſetts.

Aſſetts in Equity. A Coppyhold deſcended, and an Eſtate by Eſtoppel.

A Copyhold deſcended, is Aſſets, in Equity, [91] ſo is an Eſtate by Eſtoppel.

Forfeiture of a Term, makes the Term Aſſetts.

If an Executor take money to forfeit a Term, the Term ſhall be Aſſetts. So if the Heir aſſent to a forfeiture of Land deſcended, the Land ſhall be Aſſetts, for which the Heir muſt yield recompence; the remainder [81] to the right Heirs of *J. S.* (if *J. S.* was a defrauder of an Uſe [11]) is Aſſetts to make recompence.

Remainder of *J. S.* a Frauder, is Aſſetts.

Equity.

Where Executors or Adminiſtrators may be charged with recompence, after Adminiſtration committed; in ſuch Caſes before Adminiſtration committed, the Ordinary, by Equity, [91] may be charged by Equity [12] upon this Statute.

The Ordinary may be charged.

[*recte* **p 188**]

[p 186]

Aſſetts in Equity muſt ſatisfy Charitable Uſes firſt. Equity of this Statute above the Equity of Chancery.

Aſſetts in Equity [91] muſt ſatisfy Charitable Uſes, [11] before Debts or Legacies; becauſe Aſſetts in Equity [91] are diſpoſable, by this Statute, which ordains them to make recompence, and the Equity [12] of the Statute, is above the Equity [91] of the Chancery.

Aſſetts in Law, muſt ſatisfy debts, *&c.* firſt.

But Aſſetts in Law, muſt ſatisfy Debts, before Charity; becauſe the Common-Law muſt order their diſpoſition.

Charity before Legacies.

Yet Charity muſt be preferred before Legacies, in diſpoſition of Aſſetts in Law.