

[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 Chan-
cery, by Information, in the name of the
King's Attorney-General, for Relief on di-
vers Cafes, wherein the Aid of this Statute
is not required.

Necessary for all Bishops, Cathedrals,
Colledges, and all Parishs 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

printed 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.

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

[4] *Sic.* Should read 5 *Jacobi*, not 4. 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 I’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, no contemporary record shows it.

[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 Law French reading in English is unclear. His audience consisted of other lawyers and students who would already have known Law French and had no need for a translation. There would have been more interest in the legal argumentation of his reading than in a summary 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 [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

S^r FRANCIS MOORE, Kt.
SERJEANT at LAW.

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

[TABLE OF
CONTENTS]

The Heads and Contents of the several Divisions.

Division 1. [CHARITABLE USES]

1. **W**hat shall be said to be a *Charitable Use* within the intent and meaning of this Statute. [14]
2. What shall be said to be a Gift, Limitation, Appointment, or Assignment of such a Charitable Use. [75]
3. 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. [95]

Division 2. [COMMISSIONS]

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

Division 3. [INQUISITIONS]

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

Division 4. [DECREES]

1. What Decree, Order, and Judgment good, and warranted by this Statute. [8]

[8] The wording of issue 1 of division 4 here in the initial table of contents omits part of the same issue 1 shown further on in the list of issues at the start of division 4 itself. 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] Another mistake of omission occurs at this point. There is a different issue 2 shown in the list of issues at the start of division 4 itself: "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 here are therefore numbered 3, 4 and 5 there.

2. How such a Decree, &c. may be executed. [159]

3. What Decree, &c. may be undone, or altered by the Lord Chancellor, and upon complaint, &c. [160]

[p 130]

4. What adnullation, alteration, &c. of such Decrees by the Lord Chancellor, shall be good and firme within this Statute. [163]

Division 5. [EXEMPTIONS]

1. In what Cases, Lands, &c. and Goods, &c. given to Colledges, &c. or Cathedral Churches, &c. are exempt out of this Act. [164]
2. In what Cases, Lands, &c. given to Cities or Towns Corporate are exempted. [164]
3. In what Cases, Lands, &c. given to Hospitals, or Free-Schools are exempted. [164]

Division 6. [PROPERTY]

1. 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. [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 Purchaser. [174]

Division 7. [FRAUDS]

1. What shall be said a breaking of Trust, or defrauding of Charitable Uses, within this Act. [176]
2. What Heir, Executor or Administrator shall be chargeable with recompence for breach of Trust, or defrauding of Uses, by his Ancestors, Testators, or Intestat. [177]
3. What shall be Asssets in Law or Equity, to make recompence according to this Act. [178]

[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 today's sense, that is, 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 that is 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? No, there can't be any charitable use deduced from the "equity" of the statute—but yes, there can be, "by Equity taken upon the Letter" of the statute?]

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. This is quite the opposite of Moore's position taken here. Albeit his red line was unclear, he was clearly groping for some degree of strict literal interpretation of the statute, not the intentional or purposive interpretation based on the "equity of the statute". [12]]

[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 Churchyardes", UK 5 & 6 Ed c 4 (1551); repealed in 1963.

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

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

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, left the Gifts intended to be employed, 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 does not mean that religion is, or was in his time, excluded from charity. 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 all charity in general. There were other charities that were outside the examples listed in the 1601 act:

—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. 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, cited several cases that either accepted religious purposes as charitable or (the same thing in reverse) rejected some as superstitious [22] or contrary to the statute of chantries. [23] See: Duke (1676) pp 69 (case 7), 71-72 (case 10), 80 (case 26), 82 (cases 35, 36), 105-113. If these cases were decided by the lord chancellor under his general chancery jurisdiction, not under the 1601 act, 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. The 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 Kings 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 simply 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 a line of cases in modern times beginning with *Re Glyn's Will Trusts, Public Trustee v AG*, [1950] WN 373, 66 (pt. 2) TLR 510, [1950] 2 All ER 1150n, Chancery Division. There, 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].

Bastard.

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

To find Bows and Arrows for 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 Landreys 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 concur 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 Pitts v. James* (Hob. 121)." [28]

[27] The regnal year "30 Jac." is impossible because James I 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^o 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 Pitts versus Richard James & al* (Trinity term 12 Jac. [=1614], Rot. 2187), Hobart 121 (published 1641), 80 ER 271. This is the case report cited by Tyssen.

- *Pitts versus James* (Michaelmas term 12 Jacobi [=1614], rotulo 2155), 1 Brownl & Golde 178 (published 1651), 123 ER 740.

- *Le Case de Donnington Hospital* (Hillary term 20 Jacobi [=1623]), Benloe 117 (apparently published 1661), 73 ER 982.

- *Pitts vers James* (Michaelmas term 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, he was renowned for his law reports. These were published posthumously, and were not part of his reading on the 1601 charitable uses statute.

- *Pitts versus James* (Michaelmas xiv Jacobi [=1616]), 1 Rolle 416 (published 1675), 81 ER 576.

These case reports are mostly in Law French. To be further researched. *The History of Donnington Hospital* by Cecilia Millson (1985) is a useful backgrounder but not very informative about this case.

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 law books published many years after he died in 1621. So this paragraph on "*Simon Peter's* case" seems to have been added by someone else.

A Fine [29] was Levied [30] by a Recufant [31] to another in Queen Elizabeths time, and this was in Truft, That the Profits might be employed upon an Hospital of Religious, which should be renewed, when the times would ferve; and in the mean time, the Profits to be employed to the relief of poor people, by the difcretion of the Conufee [29] and his Heirs, according to the intent of the Conufor. [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 Employment 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] This case is otherwise unreported. In Jones (1969) p 14 n 6, a citation is given of "*Lady Egerton's case* (1606), Moo. K.B. 551" [72 ER 752]. But this appears to be erroneous. It turns out to be a 1586, not 1606, case about Sir Thomas Egerton, the Queen's solicitor from 1581 to 1592, not Lady Egerton; nor does it touch on charity, religion or recusants. The following article from the website *A Who's Who of Tudor Women*, compiled by Kathy Lynn Emerson, <http://www.kateemerson-historicals.com/TudorWomenG.htm>, may refer to the Lady Egerton in question. She was the stepmother of Sir Thomas Egerton. She died seven years before 1606, the year that Jones cites.

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." [(1598, 1602), 4 Co Rep 96 a, 104 b, 76 ER 1079, 1091; also reported and translated by Sir John Baker for the Selden Society vol 141 for 2024, *Reports from the Notebooks of Edward Coke*, vol VI pp 1354-1356, *sub nom Adams d Snelling v Lambert*, and pp 1357-1375, *sub nom Adams v Lambert*. 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*, the gift did not fail, it was still charitable in principle but had been misdirected to a superstitious [22] use, so it was referred to the Crown for the property to be redirected rightly.]

(*Soldiers*) Under this word are contained every one, whether voluntary or Preft, 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.

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

(*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 employed 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.

(*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 relievable: 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.

Soldiers sick, or maimed.

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 Recufant [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 Recufant, [31] and his [p 135] intent by the words might appear to be, that the mis-employment 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 Employment 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 Ufury, [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 more or less allowed in 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) 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 more likely failed to deal with it) 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 public 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 employed to find Lights to guide ships into the Haven, is a Charitable Use [11] within these words. An Imposition granted upon Commodities Imported or Transported, to be employed 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 would normally be covered under private law, as in this case. Therefore, he argued, 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, not riverbanks. So it would seem he did not consider repair of riverbanks to be charitable.

[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 indentment they are able to get their living, which is the age of 21 years.

Orphans.
Bastards.

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 until 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.] 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 virtue of the Act of Parliament, made 39 Eliz. [49]

Houses of Correction.

[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 punishment 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 to 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 Wedding 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
- others 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 relevance 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. Some 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.

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 Ufury, [44] all Ufury [44] being unlawful.

Ufury.

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

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

Prisoners or Captives.

[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 by providing necessities to them and their families while in prison, or 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 acts of 1670 (22 & 23 Ch 2 c 20 s 9-11), 1728 (2 G 2 c 22 s 7) and 1758 (32 G 2 c 28 s 9, 10; 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 the English royal courts, 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 daring to question, disregard or diminish 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 is offered as 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 it normally meant a school for priests, typically Roman Catholic. How could a building, or an institution of students and teachers, or an artificial person such as a school corporation, be "committed" (to prison)? 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 regarded not so much as criminals but as 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 131n: "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 villen, 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 17b] Hostility, and can be no Peace; for as the Apostle saith, 2 Cor. 6. 15.

Quæ autem conventio Christi ad Belial, aut quæ pars fidelium infidelium, 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*. **T**urks 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.

[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.

[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 privileges, cannot be granted to a Charitable Use. [11]

[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.

Ability of the Donor.

Capacity of the Donee.

The Instrument.

The thing given.

Persons disabled to be Donors. Infants, Married Women, Ideots, Madmen, Lunatics, Accountants to the King, Bankrupts.

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

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, Lunatics, Accountants to the King, [76] Bankrupts, &c.

[76] "account", "accountant"—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 Woman-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 only 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.

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

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

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.

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]

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

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.

But if the Father had been a Feoffee, [40] upon condition, that he or his Heirs should give the Land to a Charitable 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.

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; inasmuch as it was given to a Charitable Use. [11]

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

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

May be Donees, Feoffees, &c.

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

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

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

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

Shall bind the Son

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

Banisters Cafe 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 Ecclesiastical 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 Ufe*, [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 deace, it shall be revived in his heir.

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

A Gift to a Married Woman, void, if her Husband disagree. Devise by Will, granted by Deed, compellable to perform the Cha. Ufe.

If Lands or Goods be devised to one by Will, or a Remainder [81] limited to one by Deed, to perform a *Charitable Ufe*. [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 Ufe. [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. Ufe 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 Cafe, 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 Ufe*, [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 *Charitable Ufe*, [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 Aff. 26. [83]

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

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

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

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

But it may be charged upon a Joynture,

[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, [169] 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, [169] 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.

And wherefover a Condition is limitable, there a *Charitable Ufe* [11] is appointable.

[Where]soever a condition is limitable, there a Cha. Ufe is appointable. [88]

Gift in Tail, by
render by Fine,
upon a Gift, *caufa*
Matrimonii
prælocuti, Re-
lease of right of
action, Entry, &c.
or any thing valu-
able.

Upon bargain and
sale: it may be
averred
Upon a Feoff-
ment without
Liver.

Upon a Rever-
sion without At-
tornment.
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 1706 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)

Wherefoever a
condition is limit-
able, there a Cha.
Ufe is appointa-
ble.

Copyholder fur-
renders to the ufe
of a Grammar-
School
The Lord is com-
pellable to admit
the Tenant.

If Surrender had
been to a Corpo-
ration, the Law is
otherwise.

It may be limited upon a Gift in Tail, by a
Render by Fine, [29] upon a Gift, *Caufa Ma-*
tramonii 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 a bargain and sale of Land, it may be
averred, that it was to a Charitable Ufe [11]

upon a Feoffment [40], without Livery,

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

Upon a Bargain and Sale, without Inroll-
ment.

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

If a Copyholder surrenders to another, to
the ufe [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; infomuch, as he hath but one Tenant,
after whose death, his Fine is due, as it was
before, and the ufe [11] of the Land is only in
the Corporation. *Ranshaw & Robottom's*
Case at *St. Albans*, Dower [84] in the *Chan-*
cery, 43 *Eliz.* [89]

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 Ufe, [11] because the Lord is
delayed of his Harriot.

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

Copyholder fur-
renders to the ufe
of his Will.
Deviseeth Land to
be fold for a Cha.
Ufe.

A Copyholder surrenders to the ufe [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 employed to a *Charita-*

ble Ufe. [11] The Copyholder dyeth, his Heir
is admitted, the Parson, &c. sell the Copy-
hold to *J. S.* the Heir was compelled to sur-
render to *J. S.* *T. H. Guiddys* Case decreed,
4 *Jac.* in the *Chancery*. [90]

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

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 ap-
pointed to a stranger, by the Common Law.

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

If a man make a Feoffment, [40] with a
power of Revocation, and afterwards he sells
the Land to a *Charitable Ufe*, [11] the Ufe [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 Ufe*, [11] though the remain-
der [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 Ufe. [11]

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 Leg-
acy 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 was developed by the chancery court to make the ordinary law
"fairer" or more just.

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

The Heir com-
pelled to surren-
der accordingly.

A Lease rendring
Rent to a com-
mon Midwife, for
poor Women,
good,

Two Joynt Ten-
ants one releases
to a Cha. Ufe, the
Ufe is well limit-
ed.

But a Grant from
one to his fellow
is void.

Land sold to a
Cha. Ufe, after a
Feoffment, with
power of Revoca-
tion, the ufe is
well raised.

Residue of a term
charged with a
Charitable Ufe.

Three Parishes.
Money given to
be Lett out by the
Churchwardens
at Interest. Re-
lievable in *Chan-*
cery, but not by
this Statute.

[p 141]

Interest of Money
given to a Cha.
Ufe, not Charity,
because ground-
ed upon Usury,
which in itself 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 Affjets of the firft Teftator, it is good, as to the Affjets.

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 Affjets 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 Burgeses, in whose Precincts the Hospital was, to the use of the poor 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 Burgeses were Governors, and Supervisors of the Hospital, the Land upon Equity, [12] decreed to the Mayor and Burgeses, 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 & Burgeses de Reading contra Lane* (43 Eliz. [=1600-1]), Tothill 94 (published 1649), 21 ER 115:

Major & Burgenfis 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 Mayor and Burgeses for the maintenance of the said Hospital.

- *Major and Burgeses 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 6s. 8d., 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*

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]

A Charity may be averred, where it passeth without Deed.

Where they pass by Deed, *à contra*.

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 Averment be taken by paroll of a *Charitable Use*, [11] which is agreeable to the Use [11] expressed.

A Charity cannot be averred against a Fine, Surrender, Grant, and Render. If the use pass by another Deed, & upon Confidence, &c. an averment 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 averred.

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 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.

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]

[p 142]

[95] The following section within division I [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.*"

5 things not chargeable with a Cha. Use.

1. Things of no profit.
2. Things incident to others, and unseparable.
3. Possibilities.
4. Conditions.

5. Copyholds, if prejudicial to the Lord.

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

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

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

First, things that yield no profit.

2. Things that are incident to others and unseparable;

3. Possibilities of Interest;

4. Conditions;

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

An Advowson in grofs, 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]

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.

A common Appendant, an Annuity *pro confilio 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."

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 grofs may be released to a *Charitable Use*, [11] but it cannot be granted.

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; 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 descent.

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

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 employed to a *Charitable Use*. [11] This Use [11] is well limited, upon such a possibility &c.

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

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

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.

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.

[p 143]

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

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 employed 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 afore said 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 the Commissioners, and seal the Commission himself, notwithstanding the words of the Statute; that the Lord Chancellor, &c. shall award commissions, &c.

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

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.

Commissions in the vacancy of a Chancellor, cannot.

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

A Commission under the Privy Seal, gives no authority.

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.

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

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]

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

[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]

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 employment be appointed in some place, out of the *Dutchy*; or if the Lands lye without, and the employment 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.

Goods within the County *Palatine*, and to be employed 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.

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.

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

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.

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.

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

A Bishop Suffragan not within this Act.

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

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

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 criminal, 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.

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

And so the Commission good, though the Bishop be omitted.
An Alien [may].

Persons of good and sound behaviour. An Alien of amity may be a Commissioner; so may a person that is Fined, [f] or Ryots; or petty-misdemeanors;

A person Fined for Ryots, &c. may.
But a Juror Fined for Acquitting a Felon against Evidence,

but one that was fined, for acquitting a Felon against the Evidence given, when he was a Juror, may not be a Commissioner;

[n] or one that was Fined for Fraud, or Couzenage, [107] or a Barritor, [108]

and all persons convict, cannot be of the Commission.

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

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

or one Fined for Fraud and Couzenage, nor a Barritor nor any person convict, may not be of the Commission.

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.

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

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.

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.

[p 146]

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 Diocese, exempt from the Jurisdiction of that Bishop.

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

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

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

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 than four cannot execute a Commission.

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

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, jointly of the Gifts, and Abuses, not of either of them alone.

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

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 interested 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 Revival, 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 Symony, [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 attaind and pardoned, is disabled.

So may a man that is indicted of a Crime; but if after the Commission awarded, he be attaind, 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 Commissioner, 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.

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.

If to a Company, no Member thereof, may 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]

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

[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 be executed by five, and four of the Commissioners be without exception, it is well executed, though the fifth were a party interested, &c.

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

[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 ought to be awarded without a precedent negligence, or misemployment supposed.

No Commission to issue, without a supposed negligence precedent.

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.*

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

[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 interested 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 interested, 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.

Four points.

- I [10] shall offer to your consideration,
1. What shall be a sufficient Inquisition. [116]
 2. Who a party interested, that ought to be called to be present at the Inquiry. [120]
 3. Who a party interested 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.
Land in several Counties, may be inquired in its proper County.

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

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 virtue of that Commission, because Land is a thing local, and tied 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 virtue 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 issue.

If the Land given to a *Charitable Use*, [11] lie in one County, and the employment 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 Expedient to have it awarded in both Counties.

Land given in one County, & employment 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 employment is limited.

If Goods be given, Commission where the Employment 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 a "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 Ufe 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 Ufe [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 Ufe 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 Scholars. One Ufe 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 Ufe.

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. Covyn with an Heir.

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 Ufe*. [11]

[p 150]

Lands are devised to one for a *Charitable Ufe*, [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 Conuſee in a Fine.

Tenant in Tail grants a Rent to a *Charitable Ufe*, [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 seized, 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 Ufe*, [11] the Heir refuseth the Legacy, and, by colluſion with the Mortga-

gee, suffers the day to pass, and then redeems the land; this is a fraud inquirable.

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

The Father gives Land to his younger Son, upon condition to perform a *Charitable Ufe*; [11] the Father dies, the elder Son dies, yet the younger Son shall be bound to perform the Ufe, [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 Ufe. [11]

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

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

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.

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.*"

The Commissioners cannot proceed without summoning the parties interested 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.

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

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

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

Twelve, a good Jury.

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

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

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

Leſſee of a Re-
mainder, 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 Soc-
cage, and his
Guardian.

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

Non compos.

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.

His Heir relieva-
ble upon Petition.

Like Law of an
Ideot.

Two Joynt-Ten-
ants.

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.

One ſummoned,
binds a Moyety.

An Occupant,

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.

But not the
Reverſion.

Tenant by Eſtop-
pel, 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 af-
ter.

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]

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.

Grantee of a
Reverſion before
Attornment, &c.

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

Summons binds
him, that is abſent
from the Inquiry.

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.

Executor and
Legatory.

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

Obligor and Obli-
gee.

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

Ordinary of one
inteſtate, having
Goods to a Chari-
table Uſe.

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

A married Wom-
an.

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

He that hath the
nomination of an
Almsman.

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

Perſons receiving
Alms, if the Char-
ity be miſimply-
ed.

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.

Every wrongful
poſſeſſor.
Notice what

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.

Notice to be giv-
en, and left, as
Subpœnas in
Chancery, and
may be ſerved
any where.

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

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

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

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

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

Why parties interested are to be summoned. To give in Evidence.

To take his challenge to the Jurors.

A party not summonable, may have his challenge.

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

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

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

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 setting, and give him notice thereof, this is a sufficient calling.

It is good discretion in the Commissioners before they proceed to make Inquiry, 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]

A party interested, not being summoned, was present at an Inquiry, 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 interested, 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.

The party interested 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 remotely interested, may challenge a Juror, though he be not summonable.

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

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

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 faith, 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.*"

Criminosity is a principal Challenge.

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

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.

If an Alien challenge the Jury, *propter medietatem lingue*, [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 restrained to Inquests, taken to try issues, between party and party, and not to Inquiries 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;
- then, a statute passed the next year (1354), 28 Edw 3 c 13, confirming and amending the Ordinance; and
- third, 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 medietate lingue*—"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.

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.

Criminuous things a principal challenge.

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

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

That he was sworn upon a former Jury.

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.

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 interested, shall bind both.

Two Joynt-Tenants, parties interested, 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 interested, summoned to be of the Jury, is no good Summons.

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

[p 154]

**Upon the Firft Part of the Fourth
Division. [DECREES]**

And after Hearing, and Examination, it fhall and may be lawful for the Commiffioners, or any four or more of them, to fet down fuch Orders, Judgements, and Decrees, as that the Lands, Tenements, Rents, &c. given to *Charitable Ufes*, [11] may be duly and faithfully employed, to, and for the Ufe, [11] for which they were given, and not being repugnant, or contrary to the Orders, Statutes, or Decrees, or founders, which Decrees fhall ftand firm and good, and be executed accordingly, until the fame fhall 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.

Five points.

And herein are observable, five Points,

1. What Commiffioners may make a Decree, [132] and what Decree, Order, and Judgment, fhall be faid 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 fhall be faid to be made, according to the intent of the Donor, [134] and what perfons fhall be bound by fuch a Decree. [149]

3. How fuch 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 fuch Decrees by the Lord Chancellor, fhall be good and firm within this Statute. [163]

Refolve.

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

What Commiffioners may make a Decree.

UPon this fourth Point, are confidered.
1. What Commiffioners may make a Decree according to their Commiffion, [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 perfons are bound by Decree.

[129] This considerations 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 . . .**"

Thofe Commiffioners that made the Inquiry, may make the Decree, and none other, becaufe the words of the Statute are in the Copulative (fhall make inquiry, and upon fuch inquiry) and herein he [110] compared this Case to a Bailment of a Prifoner; for if two Juftices, upon [p 155] examination, commit a perfon fufpected to prifon;

None but fuch Commiffioners as were upon the Inquiry, may make the Decree.

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

If two Juftices commit one fufpected, & other two bail him, it is finable.

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

The like Law in Commiffioners, not prefent at the Inquiry.

[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.**"

A Bifhop is named with other four Commiffioners, the other four inquire, and at the making of the Decree, one of thofe four is abfent, but the Bifhop is prefent, and joyns, yet this Decree is void, becaufe the Bifhop was not at the inquiry.

If a Bifhop intermeddle in a Decree not being prefent at the Inquiry, it is void.

Four of eight
Commissioners
may Inquire and
Decree.

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

If four of six are
without Excep-
tion, and make a
Decree, it is good.
If one of four be
present at part of
the Evidence, and
go out and come
in again, at the
giving of the Ver-
dict, no Decree
can be made.

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

If a Decree be re-
turned by three,
in the name of
four, it is void.
Averment ag-
ainst such a Re-
turn, 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 consid-
ered in the 2 Point.

1. That Commis-
sioners, Decrees,
and Orders, tend
to the employ-
ment of the things
given
2. That the im-
ployment be due.
3. That the im-
ployment vary
not from the Use.

Five things they
may do.

1. They may est-
ablish the prop-
erty of a thing
given to the Donee,
or transfer it.

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.

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

If four Commissioners be present at part of the Evidence, and one 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 three only hear the Evidence, and make a Decree, and return it in the names of four, the Decree is void, and an averment may be taken against such a Return.

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

1. That it tend and conduce to the employ-
ment of the things given.

2. That the employment be faithful and due.
3. That the employment vary not from the use [11] and intent, for which the thing was given.

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

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.

[p 156]

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

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

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

5. They may impose penalties for mis-
employments.

Commissioners, by their Decrees,

cannot confirm Leases nor release Debts,
nor Stocks of Money,

nor erect Corporations,

nor remit Arrearages,

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

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

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

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

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 employment, until the third year of King Edw. 6. [137] And therefore in the Queens time, one Payne purchased the Land as a concealment. After a Commission, being awarded upon this Statute, the Commissioners enquired and found the Gift, and thereupon agreed the property, to another from Payne;

2. They may af-
firm the thing
given in substan-
ce, circumstan-
ces, and decencies.
3. Ordain Con-
veyances.

4. Add Decen-
cies.

5. Impose penal-
ties.

But

cannot confirm
Leases, nor re-
lease Debts,
nor erect Corpo-
rations,
nor remit Arrears

nor Lease at an
undervalue, ei-
ther of Fine or
Rent;

nor Lease to their
friends,

nor ordain their
own servants to
be poor, if able to
maintain them-
selves.

They may ap-
point Collectors
to gather Rent, to
allow them wag-
es.

Appoint a Scriv-
ener to draw their
Funds, and allow
them Fees.

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

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

Chancellors decree to the first Use, good,

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

Adjudged *Pafch*. 3 *Jac*.

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,

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

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]

and so was the opinion of the Justices in the *Kings Bench*, Term *Pafchæ* 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, Sir Christopher Hatton was Lord Chancellor from 29 April 1587 to 22 November 1591, which seems inconsistent with both Moore's stated year 1605 and the 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 [of the original Law French manuscript of Moore's reading, apparently]. Cf. F. H. Newark, 'Public Benefit and Religious Trusts', *Law Quarterly Review*, lxii (1946), 234, 234-5."

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

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

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]

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 concur 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 Northleeche, 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. 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 employed upon the School in being.

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

3. If they decree the Land to the Heir, which hath entred, or might enter, by virtue 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,

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. 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 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 employed.

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 concurs with the intent of the Founder, to have one of sufficiency.

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

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.

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

The Decree good.

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

4. Commissioners may increase a Gift.

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

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

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

The authority of nomination, cannot Escheat to the Lord.

after, in the Reign of King H. 7. his Heir dyed without Heir; 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 Employment of the Profits to perſons of one Sex, Quality, Nation, Trade, or Profeſſion, the [p 158] Commiſſioners cannot decree the employment 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 employment 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 interleaving one) decree the employment 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 Commiſſioners, and Fees allowed them.

If the Uſe [11] be limited for relief of many Soldiers, they may by Decree, add a Chyrurgion, 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.

Sir Francis Moore did not cover the fifteenth in this summary of his reading. He mentioned the fifteenth in the above paragraph for a different purpose: All he said was that the charitable use commissioners' power did not include converting a charity to help the poor pay fifteenths to a different charitable purpose, relief of “bastards” (fatherless children, a Poor Law responsibility of the parish).

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.

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

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

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

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;

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

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.

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

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.

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

The Commiſſioners may decree, That a Houſe of Correction [48] [49] ſhall be erected by Deed inrolled, allowing 20 l. per ann.

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

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, mesonduie or house of correction.

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

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

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.

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

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

Marriage, no valuable consideration within this Act.

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

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

[145] Latin, in actual existence.

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 employed to the *Charitable Use*, [11] during the time of the former Lease.

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.

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.

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

Unto a general limitation of the Giver, the Commiſſioners, by their Decrees, may add particular limitations, as if the Donor limit the employment 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.

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.

They may apportion a sum, given in groſs.

So if a Gift be made to redeem Captives, they may decree that no part shall be employed 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]

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 likelihood, that the Bridge without employment 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 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.

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

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 misgovernment, although the time that it should commence, be not then come; for an endeavour to defraud, is a misgovernment, 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]

Commiſſioners may transfer a Term, in case of Fraud.

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

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]

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

[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.

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

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

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 summoned and at the Inquiry. But only such as the Donor, by his own Act, hath bound.

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

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

But he takes another wife, and has issue, and this issue enters, he shall be bound till the first issue recovers.

☞

Lord by Escheat is bound.

If Lessor enters for a forfeiture, he is bound to the Charitable Use.

Nota. Charitable Use not to be bound by Escheat.

☞

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.

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 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,

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 recovers.

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

If a man disfeise the Feoffee to a *Charitable Use*, [77] and purchase a collateral Warranty, which descends upon the [p 161] Feoffee, [40] yet the Disfeisor 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.

[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 Disfeisor 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.

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]

[151] The "Limitation 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 the reference must obviously have been added by another hand.

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 decreable.

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]

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

Nota. An Heir of a Disfeisor, in by descent, is bound to a Char. Use. No laches destroy a Char. Use. A Conveyance upon good consideration, without fraud, may.

Nota. Statute of Limitations doth not extend to this.

Nota. A Recovery destroys the Remainder, whereupon a Char. Use dependeth.

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

Nota. Statute of Bankrupts subject to this.

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

Nota. Commis-
sion of Sewers, is
prefer'd before
this Statute.

But both may De-
cree in repair of
Seabanks.

Nota. Lands ex-
tended upon a
Statute, subject to
this, notwith-
standing an Ex-
tent.

An Occupant is
bound by this
Statute.

Nota. The King
bound by this
Statute.

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

Nota. Lord by Ef-
cheats, bound for
the Tenancy, not
for his services.

Nota. Copyhold
cannot be trans-
ferred by Com-
missioners. But to
admittance of a
Tenant, the Lord
is bound.

Nota. Bargainee
by Feoffment,
with power of
Revocation, is
not bound,
though he had
notice.
The bargain
amounts to a Rev-
ocation.

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

The Feoffee to a Use, [78] acknowledges a Statute, and the Statute is extended to these Lands, and other; the Commisssioners 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 shall be bound by the Decree of the Commisssioners.

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 Commisssioners, because the Use [11] was limited before the Titles of the King.

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]

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.

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.

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.

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]

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 Commisssioners may decree the payment of the Money, and it shall bind the party to pay the principal, but not the forfeiture.

A man devises that his Executors shall sell his Land, and that the Money which shall be received, shall be employed to a *Charitable Use*; [11] if the Executors refuse to sell it, the Commisssioners, 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;

and it seems in that case, if the Commisssioners 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]

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,

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. *Elizabeth*, [154] before the Statute of *Caritable Uses*,

and this Decree was made upon ordinary and judicial Equity [91] in the *Chancery*; and therefore it seems the Commisssioners 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.

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

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

As to the Principal.

Nota.

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

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

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

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

Upon ordinary judicial proceedings in *Chancery*.

[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-feeck.

Sir *Tho. Bromley* [155] decreed, and compelled the Ter-Tenant, to give Seisin of a Rent-feeck, 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. *Mallory's 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.

[157] *Mallory's Case* (1601), 5 Co Rep 111b, 77 ER 228; also reported and translated by Sir John Baker for the Selden Society vol 141 for 2024, *Reports from the Notebooks of Edward Coke*, vol VI pp 1299-1302, *sub nom Mallory v Payne*.

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

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

Nota. If three Commissioners only make a Decree.

Upon the Fourth Point.

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.

But if a Decree be made without calling the parties, or if the party be denied 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.

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.

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

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.

[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]

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.

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

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

Entry by a Reversioner upon a Lease decreed void, is good without Writ. A Release decreed void, not pleadable in Barr. Tenant may retain his Rent.

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

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. 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.

Voluntary delivery of Evidence decreed, is good without Writ. 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 Chancel-
lor.

What to be
awarded.

What to be certi-
fied.

What manner of
execution well
made and certi-
fied.

Nota. If one of
four be disabled;
If of any thing out
of their Commis-
sion. Or against the Com-
mon Law, or Or-
dinances of the
Church Repug-
nant to the Do-
nors intent, are
good causes to
stay execution.

Record of a Cer-
tificate, may be
averr'd by word
of mouth, and
stay execution.
But such as are
not upon Record,
must be in Writ-
ing.
Stay of Execution
cannot be, but
upon proofs of
Allegations first
made.

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

If a Commis[sion-
er disabled, make
a Decree, though
desired; The Lord
Chancellor ought
not to execute the
Decree.

Concerning the awarding, or staying Exe-
cution by the Lord Chancellor, touching De-
crees made by the Commissioners, he [110]
considered three Points, upon two Branches
of the Statute:

1. What Decree shall be said to be so made,
that the Lord Chancellor ought to award,
or stay execution thereupon.
2. What Decree shall be said to be so certi-
fied, as the Lord Chancellor ought thereup-
on to stay, or award execution.
3. What manner of Execution the Lord
Chancellor may award, for execution of
their Decrees, well made and certified.

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 Chan-
cellor, because it appears, that the Decree
was not well made, the Chancellor ought to
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 Re-
cord, must be [p 165] suggested and shewed in
Writing.

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 alle-
gations.

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 cer-
emony.

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

If one that was a Recufant [31] at the time
of the Commission awarded, and after con-
forms 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 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 after the Decree made, and before Cer-
tificate, all the [C]ommissioners dye but
three, those three cannot certify, if they do,
the Decree is not executable.

If the Certificate be not made within the
time limited by the Commission, yet if vol-
untarily, or upon *Certiorari*, the Commis-
sioners certify afterwards, the Decree is
good, and ought to be executed; because the
not certifying was but a contempt, and fina-
ble, and the time of certifying is but a cir-
cumstance, added to the Certificate, and no
Condition limited by the Statute, to make the
Decree void.

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.

It is of necessity requisite, that both the
Decree and Certificate be made, and certi-
fied under the Hands and Seals of the Com-
missioners, for their Seals are essential to
their Decrees and Certificates.

Every Certificate must be made in a several
Parchment, under the Seals of four Commis-
sioners, 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.

If a Recufant
Commis[sioner
conforms after,
Certify, yet the
Decree is not to
be executed.

If a Commis[sion-
er certify, and dye
before it be
brought into
Court, the Decree
ought to be exe-
cuted.

If all but three dye
after a Decree,
and before Certif-
icate, yet the De-
cree is not execut-
able, for three
cannot certify.

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

If all the Com-
mis[sioners dye,
and a *Certiorari*
be directed, the
Executor of the
Jurvivor, returns
the Certificate,
and good, and the
Decree ought to
be executed.
Seals are Essen-
tial to a Decree,
and to a Certifi-
cate.

Certificates must
be made in sever-
al, by four Com-
mis[sioners, and
not indorsed up-
the back of the
Commis[sion.
Commis[sioners
may make a re-
turn, and keep the
Commis[sion
itself.

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 usual course is to award a Writ of Execution upon the Statute, and, upon that, Attachment and Imprisonment. 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 a *Fieri facias*.

These three manners are 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.

Nota. Bankrupts Lands given to a Cha. Use, sold to one that had no notice, may be decreed to that Use.

Nota. Money in a Bankrupts hands to that use, shall be liable as a Creditor, and be share'd accordingly.

Concerning the Third Point.

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]

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;

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 Chancellor 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.

Decrees upon this Statute, shall make those Lands and Goods only liable 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.

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]

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.

If a Recufant, [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 Revenue of the Crown, but for a punishment of the Offender.

If an Accomptant [76] 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; 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.

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;

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.

A Decree made against the Ancestors, or the Testator, shall not be executed against the Heir, or Executor, with a *Scire facias*, first awarded.

[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.

There is given to the Lord Chancellor, a Directory declaratory, and additional and compulsory power by this Statute, which he may exercise, upon complaint by a party grieved, that the Commissioners have not pursued their authority.

Nota. If a Recufant Convict, give a Cha. Use, and after the offence committed, it binds the King, as to the Cha. Use.

Nota. If an Accomptant give Lands, and he found in arrear, the Decree, shall bind the King.

A Cha. Use must give place to the Treasure of the Crown.

The Goods of the Husband shall be bound for a Cha. Use given to the wife before Coverture.

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.

If the Decree be made only upon contempt for not payment, the Lands are excused.

A *Scire facias* must be first awarded, before any Decree can be executed against an Ancestor, or a Testator.

What compulsory power is in the Lord Chancellor.

Who may justly complain.
Whofoever hath *bonum omiffum*, or *malorum Commiffum* by the Decree.

Every one intereffed in property, to his own Ufe.

Any one that hath prejudice by the Decree in Law or Equity.

A party grieved is, whofoever hath *bonum omiffum*, or *malorum commiffum* [161] by the Decree.

[161] Latin usages meaning whoever has had to "forgo something good" or "incur harms" under the decree.

Whofoever is intereffed, and hath a property and ownership of Goods and Lands to his own ufe, [11]

whofoever 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.

If a stock be given to poor Tradesmen in general, be decreed only to Clothiers, all other Tradesmen are *partes gravatæ*.

A Cha. Ufe charged upon a Dower, the Wife, poft mortem, is *pars gravata*.

Nota. So of Land descended to a Daughter, and a Son born after, the Son is *pars gravata*.

Nota. The Leffor of a termor upon condition, &c. is not *pars gravata*.

Nota. Title paramount this Decree, is *gravata persona*.

Feoffee, or Assignee, after Inquisition, is not. Every Creditor after a Decree against a Bankrupt, at the time for Goods, is *pars gravata*.

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 Ufe [11] to any other purpose.

If a Stock be given to be lent out to poor Tradesmen 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]

[p 168]

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.

So if a Decree be made against a Daughter for Land descended, the Son that is born after, is a party grieved.

If a Termor upon a Condition, that he shall not alien, without the consent of his Leffor, devise that his Executors shall sell it for a *Charitable Ufe*, [11] the Commissioners decree, that the Executors shall sell it, the Leasor is not *pars gravata*. [162]

Every one which hath a Title, paramount the Decree, is a party grieved:

but the Feoffee [40] or Assignee, after Inquisition, is no party grieved.

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.

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.

[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.

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 concur with the intent of the Donor, yet such a Decree cannot be altered, but must be annulled; And therefore,

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 Ufe [11] for High-ways depends upon Symony. [45]

If the King grant the penalty of divers Statutes to a man, to a *Charitable Ufe*, [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.

[p 169]

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,

The Heir, Executor, or Administrator of an Ancestor, Testator, or Intestate, is *pars gravata*.

So is every one that claims by Estoppel, during the time of the Estoppel.

The Chancellors predominant Power.

If the intent of Donor was not lawful, nor the Gift a good ground, though the Decree concur with the Donors intent, yet such a Decree cannot be altered, but must be null.

Nota. Where the Ufe depends upon Symony, the Decree must be null.

Nota. The Kings Grant of the penalties of Statutes, to a Cha. Ufe, and the Commissioners decree accordingly, is not warrantable.

So if an Imposition be granted, for bringing Corn to a Market.

But if for exportation, it is 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 later.

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 employment, 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 converfo*, 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 converfo*, for both are chargeable, if they have Assets; or he may divide the charge at his pleasure.

So if the Decree charge the Overseers for the Poor, he may change it, and lay it upon the Churchwardens, *Et è converfo*, or may divide it between them at his pleasure.

Nota. The Churchwardens instead of the Overseers of the Poor may be charged.

But if a Gift be made general, *ad pios usus*, and the Decree limit the employment 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 generality to a certainty.

Nota. But a Gift general *ad Pios usus*, is not alterable. Nor a General reduced to a Certainty.

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. A Charity given to the Use of *J. S.* shall nominate, is not good, but must be annulled.

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.

Nota. But if to such a Use as the Commissioners shall appoint in Certain, it is good.

[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 Learning, 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] aforefaid. 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 common 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 literally in three Points.

1. To Corporations in *Effie*.

1. It shall extend only to Corporations in *effie*, 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.

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. 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]

To bring a Gift within the Proviso, three things are requisite.

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. Not only the Gift, but the Employment also must be limited to a Corporation, yet if the Gift be to the Chief, or grand Corporation, and the employment limited into an inferior Corporation within it, it shall be exempted.

3. The Corporations, Overseers, or Governors must be able, and have power to execute and employ the use, [11] in as ample manner, as the Commissioners may do;

otherwise, if they cannot cause the use [11] to be employed, the Commissioners may intermeddle, and the Proviso shall not save them.

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 compel the Parson, to distribute the Money.

But if the Gift be to a City, to be employed by the Mayor, it is exempted, because he is part of the Corporation;

so if the Gift be to one Corporation, as to a Colledge, and the employment of the Use, [11] limited to another Corporation, as a Town or City; this is within the Proviso, because, both the property and the employment are appointed to a Corporation, though several, and shall not amount to as much, as if both were one.

Nota. But in two Cases it may by Equity.

1. To petty and inferior Corporations.

2. To the whole University, though Colledges be only mentioned.

Three things requisite to bring any thing within the Proviso of this Act.

Nota. 1. That the Gift be made to a body Politick.

2. That the employment be to a Corporation.

3. The Corporation, &c. must have power to execute

Otherwise the Commissioners may intermeddle.

A Gift to a Colledge, to pay 20 l. per Ann. to a Parson, for Ch. Uses, is not within the Proviso.

But if to a City, to be employed by the Mayor, it is otherwise.

If to one Corporation, and the employment to another Corporation or City, it is within the Proviso.

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 Windfor.

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 Windfor, 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 Firft Part of the Sixth
Division. [PROPERTY]**

The Sixth
Branch.

Provided, that no perfon, who hath purchafed, or obtained, or fhall purchafe or obtain, upon valuable confideration of Money or Land, any Eftate in, or intereft of, in, to, or out of any Lands, Tenements, Rents, Annuities, Hereditaments, Goods, or Chattels, that have been, or fhall be given, limited, or appointed to any of the Charitable Ufes [11] above-mentioned, without Fraud or Covin, having no notice of the fame Charitable Ufes, [11] fhall be impeached by any Decree, or Orders of Commiffioners, for, or concerning the fame, his Eftate or Intereft.

[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] fhall obſerve theſe Points.

Four Points.

1. What fhall be ſaid a Purchaſe, or obtaining upon valuable confideration of Money, or Land, of any Eftate 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 confideration. [170]
3. What fhall 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 confideration, &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 confideration, having notice, And all in Privy of the Eſtate under him, are bound by the Commiſſioners Decree.

Otherwiſe it is, if the firſt Purchaſor had no notice.

IF the firſt Purchaſor gave valuable confideration, and yet hath notice of the Uſe; [11] All that claim in privy under his Eſtate and Title, whether they have notice or not, ſhall be bound by the decrees of the Commiſſioners. But,

If the firſt Purchaſor for valuable confideration, had no notice of the Uſe; [11] none of thoſe which come after him in privy 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. which hath notice of the *Charitable Uſe*, [11] purchaſes the Lands for valuable confideration, 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.

A married Woman which hath notice of the Uſe, [11] purchaſes the Land for valuable confideration, 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.

[p 174]

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 privy, by courſe of Law.

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 confideration, and therefore not within the Proviſo.

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 confideration 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-

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.

Tenant by Courteſy is chargeable, though he have no notice.

A Wife endowed, ſhall be bound by the notice of her Husband.

The Lord to whom Land Eſcheats, is chargeable by the notice of the Tenant.

Feoffee makes a Feoffment of a *Cha. Uſe*, to one that hath notice, the Land is chargeable with the Uſe.

ance, [119] or means, how many soever they be.

If a Disseisor make a Feoffment to a *Charitable Use*, [77] and after makes a Lease to the Dissee, 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 Lessee had notice of the Use, [11] because it was the strength, and cause of the Use [11] it self.

A Purchaser 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.

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.

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.

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]

A Purchaser 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.

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).

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.

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.

And the Infancy of the Woman shall not give her any privilege, because she is a Purchaser, 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.

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 Husband's Land;

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 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.

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 Man and a Woman being an Infant, having notice inter-marry and purchase, &c. they are both chargeable with the Use.

Infancy will not give her privilege, because a Purchaser and this Joynture shall barr her of her Dower.

The Wife shall be bound by the notice of her Husband. After Eviction, she shall be endowed of the rest of her Husband's Estate.

For this is Equity within 27 H. 8. A former Statute may be construed in Equity by a latter.

A Man having notice, marries a Woman purchased, that had no notice. His notice shall not charge him, for he was no party trusted.

A Disseisor makes a Feoffment to a Charitable Use, and Lease afterwards to the Dissee, who hath notice, this Lease shall not be impeached by Decree.

A Purchaser makes a Feoffment, with warranty, to one that hath notice, the Feoffee shall not recover in value.

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.

Two Joynt-Tenants, one hath notice, he shall be charged with the whole. If he dies, the Survivor with a Moity only.

Rent given, be purchased by one that had no notice, descends to a Tenant that had notice. The Rent is extinguished.

Notice of the Testator, shall bind the Executor.

An Executor assents to a Legacy, it is a *Devastavit*, and his own Goods are chargeable.

[p 176]

Two Joynt-Purchafors of Land, one of them hath notice, if he furvive the whole fhall be charged; if the other out-live him that had notice, yet he fhall be charged for a Moity, becaufe he is in by furvivorfhip, and the Ufe [11] was paramount the Joynture.

As if two Joynt-Tenants be, whereof one is an Alien, and he dies, and then an Office is found, the King fhall have a Moity, becaufe the other was in by Survivorfhip, and the Kings Title was Paramount.

Tenant in Tail, Purchafor, having notice, Enfeoffs [40] a Stranger, having no notice of the Ufe; [11] the Feoffee [40] infeoffs [40] the Ifsue of Tenant in Tail, who alfo hath no notice; the Tenant in Tail dies, now the Ifsue fhall be charged, becaufe he is remitted to the Eftate Tail, which was charged with the Ufe. [11]

Two Joynt-Tenants, one an Alien, and dies, and an Office is found. The King fhall have a Moity, becaufe his Title is Paramount. Ifsue of the Tenant in Tail, with remainders over, fhall be charged by the notice of the Tenant in Tail, becaufe he is remitted to the Eftate Tail, which was charged with the ufe.

[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 Conclufions.

1. A mixt Confideration, though it were good upon other Conveyances, [119] yet it is no valuable Confideration within the intent of this Proviſo. As if the Purchafe be in confideration of Money, and a Marriage, or Money and natural Affection; becaufe there fhall be intended, that there is Fraud in Affection, and the mixture of Money, is added but for a colour.

2. If a valuable Confideration be coupled with another, that is invaluable, and void. (As if it be for Money, and in confideration of antient Amity, or ſuch like) becaufe the whole Confideration, refts upon Money, which is valuable and good, the mixture of the other fhall not marr the former. *Utile per inutile non vitiatur*. [171]

If a valuable Confideration mixt with another that is not ſo, the mixture fhall not hurt the former. *Utile per inutile non vitiatur*.

[171] Latin: The useful is not ruined by the useless.

A Purchafe undervalued. If Purchafe Money be paid, and preſently repaid,

3. The Money or Land are not regarded, if either the Purchafe 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

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

or promiſe taken for repayment.

if the Fraud be apparent, as if the fale be to a Servant, a Couſin, or a Brother, it is Fraud by common Intendment of Truſt and Confidence in ſuch perſons.

If the fale be to Servant, Couſin, Brother; all theſe are Frauds within this Act.

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, becaufe Marriage it ſelf is no valuable confideration 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 confiderations within the intent of the word Money. So is Plate, of a known Weight;

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 confideration for Money.

But neither Jewels, nor matters of Pleaſure (though Money be paid for them) are within the meaning of confideration for Money.

But Marriage-Money, Jewels, and things of pleaſure are not.

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, forfeitures, &c. Commons, &c. forfeiture of Marriage, &c.

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.

But extinguiſhments of poſſibilities are not.

But extinguiſhment of poſſibilities, are not within this Proviſo. If the Confideration be for Money and Uſury mixt, the Uſury makes all void.

If the Purchafe be for 110 l. which 10 l. is for Uſe, [11] the confideration is for Money and Uſury, [44] and ſo mixt, that the Uſury [44] ſhall make all void.

[p 178]

6. What confideration 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.

Commiffioners may examine into the truth of a confideration expreſſed, and add to them; or falſify them, though the party be Eſtopped by his Deed.

If the Confideration be exemptory, and not performed, it is out of this Proviso, and Commiſſioners may decree againſt a Purchaſor.

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.

A Feoffment to pay Debts, is no valuable conſideration within the Proviſo of this Act.

[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 employed 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 employed, 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]

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 reſuſe the former; if ſhe takes the latter, ſhe ſhall be chargeable, but this is no Fraud, but ſhe is bound by her own acceptance.

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.

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 decreable, becauſe ſuch a Rent was no good conſideration.

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 *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 given to a *Charitable Uſe*, [11] are ſold in a Market, if the party buy them again, they are decreable; ſo is he chargeable that bought them, if he had notice of 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.

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.

Rent given to deceive a Purchaſor, which was given to a *Cha. Uſe*, is decreable, for, Rent is 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.*

Leſſee to a *Cha. Uſe*, makes a Feoffment to one that hath no notice. Leſſor having notice, enters, the Leaſe is decreable for the apparent Fraud. Goods ſold in a Market, and bought again by the ſeller, is Fraud, if he had notice of the Uſe.

Goods given to a Cha. Ufe pafs by a general Deed of Gift, is fraud.

One that hath Goods given to a *Cha. Ufe*, [11] makes a general Deed of Gift of all his Goods, they ſhall pafs with the other, by the general words, and yet they that were given to the Ufe, [11] are decreable for the Fraud implied in the generalty.

Goods &c. given to ſave another harmleſs, at undervalue, is fraud without notice of the Cha. Ufe.

Goods given to an Ufe, [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 fold over to another, upon good conſideration, the Fraud is purged.

A Sale under the moiety of the value, is fraudulent and decreable.

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. Ufe, is fraud *ab initio*. The Conſideration is Executory.

The Feoffee or Donee to an Ufe, [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 *Pious 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.

Concerning notice of the Ufe, [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 the Father or the Son have notice, where the Father pays the Money, it is ſufficient, where the Son is named the Purchaſor.

So if Father or Son have notice, and the Father pays the Money; if the Son be named 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.

If Guardian of an Infant. Committee of an Ideot. Husband for the Wives Eſtate. To the Factor of a Purchaſor.

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.

To a Dean, Mayor, &c. for the Body Politique, are all good notice.

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 Ufe. [11]

2. To the manner of Notice. Any general information is ſufficient as Church-land, Highway-land, Hoſpital-land, &c.

An Attorney which makes Livery and Seiſin upon a Feoffment, to a *Charitable Ufe*, [77] hath ſufficient notice of the Ufe; [11]

An Attorney that makes Livery and Seiſin, hath thereby ſufficient notice.

ſo have the Witneſſes which hear the Deed read or a Will read, or the effect thereof declared.

So have witneſſes which hear the Deed read, or the Effect declared.

A Scrivener which writes the Will of a Man that deviſes Land thereby, to repair Highways, though the Deviſor afterwards change the employment to repair Churches, yet the Scrivener hath ſufficient notice of the *Cha. Ufe*, [11] to exclude him from being a Purchaſor within the Proviſo.

A Scrivener which writes the Will for a Cha. Ufe, is thereby excluded from being a Purchaſor.

If a Coppyholder ſurrender to another, to a *Charitable Ufe*, [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.

By ſurrender of a Coppyholder, all other Tenants and Suitors, have ſufficient notice.

The notice of the employment, is a ſufficient notice of the Gift,

Notice of the employment, is good notice.

Churchwardens
and Overseers of
the Poor, and all
present at their
Accounts, have
notice enough.

Notice in the
Church.

In a Leet.

Copy of a Will
under the Ordina-
ries Seal.

A Client being
told by his Coun-
sel, of the Cha.
Use, binds the
Client, not the
Counsel.

The Reading of
an Inquisition, or
Deposition, are
all good notice.

The time of No-
tice, must be be-
fore the Purchase.

Notice before
Livery and
Seisin.

Before Attorn-
ment upon a
Grant.

To the Obligor,
before payment
of his Money

Before a Deed de-
livered, are time
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 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.

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.

The Copy of a Will read or declared, under the Seal of the Ordinary, is notice sufficient, but not a Paper Copy.

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, taken concerning the Use, [11] binds those which hear it.

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 upon a Feoffment. [40]

Before Attornment [88] upon a Grant of a Rent or a Reversion, [81] is time enough to bind the Feoffee, [40] and the Grantee.

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.

So is it, if it be before a Deed be delivered, though it were sealed first.

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.

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 uncertainty, what person shall be his right Heir, or his eldest Son, at the time of his death.

Notice before En-
rollment of a
Deed, doth not
bind. The bargain
was good before.
Inrollment is only
a ceremony.

Notice to the right
Heir of *J. S.* is not
good for the in-
certainty.

[p 183]

Upon the Firft 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 recom-
pence 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 Convey-
ance, [119] Gift, Grant, Leaſe, Demiſe, Release or
Converſion whatſoever; and againſt the Heirs, Ex-
ecutors, 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.

Three Points.

- And hereupon I [10] will obſerve;
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 Intef-
tate. [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*
breaching of truſt or defrauding of charitable uſes
within this Act."

If a Husband re-
leaſe a Bond, giv-
en 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 rec-
ompence, becauſe the notice of the Wife
ſhall bind him.

But if it were giv-
en after Cover-
ture, 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 Remain-
der [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.)

A Leaſe for Life is made, and the Remain-
der [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 con-
ſiſt without the Remainder, [81] whereunto it
was annexed, and which was deſtroyed by
the Feoffment; [40] and therefore he ſhall ren-
der recompence.

[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 recom-
pence, becauſe his Eſtate hath that priv-
iledge annexed by Law, that he may cut off
the Remainder [81] lawfully.

[177] The following section within division 7 [FRAUDS] appears to deal
with issue 2, "*What heir, executor or administrator ſhall be charge-
able 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 employed 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 en-
feoffs [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 recom-
pence for the Land, for he brake the Truſt.

The termer to an Uſe, [11] deviſes it to an
Eſtranger, which hath no notice; upon con-
dition, 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;

but if the Deviſee had notice, there ſhall be
no recompence for the leaſe, becauſe, in that

Remainder in Fee
hath notice, and
waves the re-
mainder, this is a
fraud, otherwiſe
it is without no-
tice.

A Uſe in remain-
der cannot con-
ſiſt, in that the re-
mainder, to
which it was an-
nexed.

If Tenant in Tail
ſuffer a common
Recovery, this is
no defrauding of
the Uſe.

Mortgagee hav-
ing notice, is
chargeable with
the Uſe, if notice;
otherwiſe, the
Heir of the Mort-
gagee.

Executors aſſent
to a Legacy, are
chargeable out of
the Teſtators
Eſtate, if Aſſetts,
if not, out of their
own, for recom-
penſe.

But if the Deviſ-
ee had notice, it
is otherwiſe.

case, the Lease it self is to be decreed for the Use. [11]

Disseisor 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 Disseisor 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 Feoffee, 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 shall the Executors, for the notice of their Testator, be answerable in recompence, if they have Assets.

So an Executor by notice to the Testator.

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.

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.

[recte p 185]

[p 183]

If a man wrongfully, by Trespasses, 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;

Trespasser is chargeable with recompence for his wrong.

but if the party, out of whose possession they were taken, recover in an Action of Trespasses, 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 Proprietary, and he may plead the Decree in Barr.

But if recovery be made before recompence, upon an action, the Recoverer is chargeable.

An Administrator *durante minori ætate*, without notice of the Use, [11] employs 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,

Goods employed to the benefit of an Infant, by an Administrator, the Infant is to allow. But if the Administrators commit waste, it is otherwise. The like Law of a Guardian in Soccage. The King remits an Ideot, the Committee 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 if such a Rent be issuing out of the Lands of a Lunatic, the Committees shall be charged with the Rent, without any Suit for allowance, because they have the custody of the Lunatic, for the benefit of the Lunatic, and the King is not entituled to the Profits, but to the disposing of the Custody.

But for a Rent out of the Lands of an Ideot [sic, read lunatic], it is otherwise.

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.

Purchaser in another mans name, sells over, &c. he whose name was used, shall make recompence.

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.

An Accomptant purchaseth in anothers name, &c. the Accomptant is chargeable. But if Bargainee of the King had notice, it is otherwise.

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.

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. [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.

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.

Daughter shall make recompence out of her own Land.

Feoffee releases to the Heir of the Disfeisor, the Heir shall not be charged with recompence, but the Feoffee.

Ancestor collateral releaseth with Warranty, his Executors are chargeable; unless he leave Assets, then the Heir. If Assets be Burrow-English, then the Land, and the Executors of him that released, are chargeable.

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 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.

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 privy of the notice, as Heir to her Father.

The Feoffee to an Use [78] is disseised, the Disfeisor dies seized, and then the Feoffee, [40] in consideration of Money, releases to the Heir of the Disfeisor, 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.

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 Assets, the Heir shall be charged, if not, then his Executors are to be charged; And if the Assets descend to Burrow-English, then that

Land, and the Executors of him that released, shall be charged.

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 the Land 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.

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 Assets; for he hath it *per formam doni*, as much as by descent, and yet,

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.*"

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 Assets in Equity, [91] to make recompence for his Fathers fraud.

So if the party, whose name was used, in feoffe [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.

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 Assets to make recompence, as Heir to a defrauder of an Use. [11]

Executors sell Land to the Testators Heir.

[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 recompence with Lands descended. Heirs in Trust are not.

Heir in Tail of him that leaves Land to descend, that was gained by fraudulent purchase, is chargeable with recompence.

Money in the hands of an Heir, whose Ancestor was a defrauder.

Assets in Equity.

So the Heir of him which puts another in Trust, his Lands are Assets in Equity.

The Lands of an Heir, in as a special Occupant.

Affetts in Equity.
A power of Revocation.

A defrauder sells a Term with a power of Revocation, this power of Revocation in the Executors, is Affetts in Equity [91] to make recompence; because they may sell without Revocation, and then the Money will be Affetts.

Affetts in Equity.
A Copyhold descended, and an Estate by Estoppel.

A Copyhold descended, is Affetts, in Equity, [91] so is an Estate by Estoppel.

Forfeiture of a Term, makes the Term Affetts.

If an Executor take money to forfeit a Term, the Term shall be Affetts. So if the Heir assent to a forfeiture of Land descended, the Land shall be Affetts, 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 Affetts to make recompence.

Remainder of *J. S.* a Frauder, is Affetts.

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]

Affetts in Equity must satisfy Charitable Uses first.
Equity of this Statute above the Equity of Chancery.

Affetts in Equity [91] must satisfy Charitable Uses, [11] before Debts or Legacies; because Affetts 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.

Affetts in Law, must satisfy debts, &c. first.

But Affetts 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 Affetts in Law.