

Pasch. 26 Eliz. *But the Plea began*  
 Pasch. 20 Eliz. Rot. 140.  
*in the Exchequer.*

### HEYDON'S Case.

(a) IN an Information upon an Intrusion in the Exchequer, (a) Moor, 128. Co. Ent. 372. nu. 10. 1 Leon. 42. 333. 4 Leon. 117. Sav. 66. 9 Co. 105. 2. against *Heydon*, for intruding into certain Lands, &c. in the County of *Devon*: upon the general Issue, the Jurors gave a special Verdict to this effect:

First, They found that Parcel of the Lands in the Information were ancient Copyholds of the Mannor of *Oilery*, whereof the Warden and Canons regular of the late College of *Oilery* were seized in Right of the said College; and that the Warden and Canons of the said College, 22 H. 7. at a Court of the said Mannor, granted the same Parcel by Copy, to *Ware* the Father, and *Ware* the Son, for their Lives, at the Will of the Lord, according to the Custom of the said Mannor; and that the rest of the Land in the Information was occupied by *S.* and *G.* at the Will of the Warden and Canons of the said College for the Time being, in the Time of *H. 8.* And further, That the said *S.* and *G.* so possessed, and the said *Ware* and *Ware* so seized as aforesaid, the said Warden and Canons by their Deed indented, dat. 12 Jan. Anno 30. H. 8. did lease the same to *Heydon* the Defendant, for 80 Years, rendring certain Rents severally for several Parcels; and found that the said several Rents in *Heydon's* Lease reserved, were the ancient and accustomed Rents of the several Parcels of the Lands, and found, that after the said Lease they did surrender their College, and all the Possession thereof, to King *H. 8.* And further found the Statute of (b) 31 H. 8. and the Branch of it, scil. by which it is enacted, *That if any Abbot, &c. or other Relig. or Eccles. House or Place,*

## HEYDON'S Case. PART III.

Place, within one Year next before the first Day of this present Parliament, hath made, or hereafter shall make any Lease or Grant for Life, or for Term of Years, of any Mannors, Messuages, Lands, &c. and in the which any Estate or Interest for Life, Year, or Years, at the Time of the making of such Grant or Lease, then had his Being or Continuance, or hereafter shall have his Being or Continuance, and not determined at the making of such Lease, &c. Or if the usual and old Rents and Farms accustomed to be yielded and reserved by the Space of Twenty Years next before the first Day of this present Parliament, is not, or be not, or hereafter shall not be thereupon reserved or yielded, &c. that all and every such Lease, &c. shall be utterly void. And further found, that the particular Estates aforesaid were determined, and before the Intrusion Heydon's Lease began; and that Heydon entred, &c. And the great Doubt which was often debated at the Bar and Bench on this Verdict, was, Whether the Copyhold Estate of *Ware* and *Ware* for their Lives, at the Will of the Lords, according to the Custom of the said Mannor, should in Judgment of Law be called an Estate and Interest for Lives, within the said general Words and Meaning of the said Act. And after all the Barons openly argued in Court in the same Term, *scil. Pasch. 26. Eliz.* And it was unanimously resolved by Sir. Roger Manwood, Chief Baron, and the other Barons of the Exchequer, That the said Lease made to Heydon of the said Parcels whereof *Ware* and *Ware* were seized for Life by Copy of Court Roll, was void; for it was agreed by them, That the said Copyhold Estate was an Estate for Life, within the Words and Meaning of the said Act. And it was resolved by them, That for the sure and true (a) Interpretation of all Statutes in general (be they penal or beneficial, restrictive or enlarging of the Com. Law,) four Things are to be discerned and considered.

(a) Moor, 128.  
Sav. 66. 6 Co.  
37. b. Cro. Car.  
45, 83.

(b) Poph. 74.

(c) 2 Rol. Rep.  
99.

(b) 1. What was the Common Law before the making of the Act.

(c) 2. What was the Mischief and Defect for which the Common Law did not provide.

3. What Remedy the Parliament hath resolved and appointed to cure the Disease of the Commonwealth.

And 4. The true Reason and Remedy; and then the Office of all the Judges is always to make such (d) Construction as shall suppress the Mischief, and advance the Remedy, and to suppress subtil Inventions and Evasions for Continuance of the Mischief, and *pro privato commodo*, and to add Force and Life to the Cure and Remedy, according to the true Intent of the Makers of the Act, *pro bono publico*. And it was said, that in this Case the Common Law was, That Religious and Ecclesiastical Persons

(d) Hard. 27.  
2 Rol. Rep. 314.  
Cro. Car. 83.  
535. Co. Lit.  
381. b. 1 Co.  
123. a. 11 Co.  
73. b. 2 Siderf.  
41. 2 Bullst. 187.  
Hob. 97. 1 Rol.  
Rep. 162, 166.  
Cro. Argument  
40.

sons might have made Leases for as many Years as they pleased, the Mischief was, That when they perceived their Houses would be dissolved, they made long and unreasonable Leases: Now the Statute of 31 H. 8. doth provide the Remedy, and principally for such Religious and Ecclesiastical Houses which should be dissolved after the Act (as the said College in our Case was) that all Leases of any Land whereof any Estate or Interest for Life or Years was then in Being, should be void; and their Reason was, That it was not necessary for them to make a new Lease so long as a former had Continuance, and therefore the Intent of the Act was to avoid doubling of Estates, and to have but one single Estate in Being at a Time: For doubling of Estates implies in it self Deceit, and private Respect, to prevent the Intention of the Parliament. And if the Copyhold Estate for two Lives, and the Lease for 80 Years shall stand together, here will be doubling of Estates, *semel & semel*, which will be against the true Meaning of Parliament.

And in this Case it was debated at large, in what Cases the general Words of Acts of Parliament shall extend to Copyhold or Customary Estates, and in what not; and therefore this Rule was taken and agreed by the whole Court, That when an Act of Parliament doth (a) alter the Service, Tenure, Interest of the Land, or other Thing in Prejudice of the L. or of the Custom of the Mannor, or in Prejudice of the Tenant, there the general Words of such Act of Parliament, shall not extend to Copyholds: But when an Act of Parliament is generally made for the (b) good of the Weal publick, and no Prejudice can accrue by Reason of Alteration of any Interest, Service, Tenure, or Custom of the Mannor, there many Times Copyhold and customary Estates are within the general Purview of such Acts. And upon these Grounds the Chief Baron put many Cases, where he held, That the Statute of (c) *West. 2. De domibus conditionalibus* did not extend to Copyholds; for if the Statute alters the Estate of the Land, it will be also an Alteration of the Tenure, which would be prejudicial to the Lord; for of Necessity the Donee in Tail of Land, ought to (d) hold of his Donor, and do him such Services (without special Reservation) as his Donor doth to his Lord.

2. Littleton saith, *Lib. 1. cap. 9.* That although some Tenants by Copy of Court Roll have an Estate of Inheritance, yet they have it but as the (e) Will of the Lord, according to the Course of the Common Law. For it is said, That if the Lord put them out, they have no other Remedy but to sue to their Lord by Petition, and so the Intent of the Statute *de domibus Conditionalibus* was not to extend (in Prejud. of Lords) to such base Estates, which as the Law was then taken, was but at

Co. Lit. 44. a.  
31 H. 8. c. 12.  
3 Bull. 152.  
Moor, 60.  
1 Leon. 312.

(a) Cro. Car.  
41, 43, 44.  
Moor, 128.  
Godb. 369. O.  
Bentl. 163.  
3 Bull. 152.  
Hard. 433.  
Cawly, 106.

(b) Moor, 128.  
Cro. Car. 42.  
43. O. Bentl. 163.  
1 Rol. Rep. 48.

(c) Moor, 128.  
189. Sav. 67.  
Cap. Eliz. 391.  
307, 149. 1 Leon.  
197. Poph.  
34, 128. 2 Sand.  
422. Hard. 433.  
1 Rol. 838. Lit.  
§. 76. 9 Co.  
105. 2. Co. Lit.  
60. 2. b. 4 Co.  
22. 2.

(d) Cr. Car.  
43, 44

(e) Lit. §. 77.  
2 Co. 17. 2.  
6 Co. 37. b. Co.  
Lit. 60. b. Cro.  
Car. 45. 4 Co.  
21. 2. Heil. 6.  
9 Co. 105. a.

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the Will of the Lord. And the Statute saith, *Quod voluntas donatoris in carta doni sui manifeste express. de cetero observetur*: So that which shall be entailed, ought to be such an Hereditament, which is given, or at least might be given by Deed or Charter in Tail.

3. Forasmuch as great Part of the Land within the Realm, is in Grant by Copy, it will be a Thing inconvenient, and occasion great Suit and Contention, That Copyholds should be (a) entailed, and yet neither Fine nor common (b) Recov. bar them; so as he who hath such Estate can't (without the Agent of the L. by committing a Forfeiture, and taking a new Estate) of himself, dispose of it, either for Payment of his Debts, or Advancement of his Wife, or his younger Children; wherefore he conceived that the Statute *de Donis Conditionalibus* did not extend to Copyholds, *quod fuit concessum per totam Curiam*. But it was said That the Statute, without special Custom, doth not extend to Copyholds; but if the (c) Custom of the Mannor doth warrant such Estates, and a Remainder hath been limited over and enjoyed, or Plaints in the Nature of a *Formedon* in the Descender brought in the Court of the Mannor, and Land so entailed by Copy recovered thereby, then the Custom co-operating with the Statute, makes it an Estate Tail; so that neither the Statute without the Custom, nor the Custom without the Statute, can create an Estate Tail.

And to this Purpose is (d) *Littleton, Lib. 1. cap. 8.* for he saith, That if a Man seized of a Mannor, within which Mannor there hath been a Custom which hath been used Time out of Memory, That certain Tenants within the same Mannor have used to have Lands and Tenements, to hold to them and their Heirs in Fee-simple, or Fee-tail, or for Term of Life, &c. at the Will of the Lord, according to the Custom of the same Mannor; and a little after, That *Formedon* in Descender, lies of such Tenements, which Writ as it was said, was not at the Common Law.

To which it was answered by the Chief Baron, That if the Statute (without Custom) shall not extend to Copyholds, without Question the Custom of the Mannor cannot make it extend to them: For before the Statute, all Estates of (e) Inheritance, as *Littleton* saith, *Lib. 1. cap. 2.* were Fee-simple, and after the Statute, no Custom can begin, because the Statute being made in 13 E. 1. is made within Time of Memory, *Ergo*, the Estate Tail cannot be created by Custom; and therefore *Littleton* is to be intended (inasmuch as he grounds his Opinion upon the Custom, That Copyholds may be granted in Fee-simple, or Fee-tail) of a Fee simple conditional at the Common Law: For *Littleton* well knew, That no Custom could

(a) Moor 189.  
Sav. 67. Cro. El.  
249. 307. 391.  
1 Leon. 175.  
Poph. 34. 128.  
2 Sand. 422.  
Hard. 433. 2.  
9 Co. 105. 2.  
1 Rol. 838. Co.  
Lit. 60. 2. b.  
1 Rol. Rep. 48.  
4 Co. 22. 2.  
Moor 188.  
(b) Cro. Car.  
43. 45. Godb.  
368. O Ecnl.  
165. Poph. 35.  
Cro. Eliz. 391.  
Cart. 238. Cro.  
Car. 45.  
(c) 1 Rol. 838.  
Co. Lit. 60. b.

(d) Lit. S. 77.  
Co. Lit. 60. b.

(e) Co. Lit. 194.  
Cro. Car. 45.  
Poph. 34. 1 Co.  
103. b. 6 Co.  
40. 2.  
(f) Co. Lit. 45.  
124. b. 235. 2.

could commence after the Statute of *Westm. 2.* as appears in his own Book, *Lib. 2. cap. 10.* and *34 H. 6. 36.* And where he saith, that *Formedon* in (a) Descender lies, he also saith that it lies at the Common Law. And it appears in our Books, That in special Cases a *Formedon* in the Descender lay at the Common Law, before the Statute of *West. 2.* which see *4 E. 2. Formedon 50.* (b) *10 E. 2. Formedon 55.* *21 E. 3. 47.* *Plowd. Com. 246. b. &c.*

(a) Co. Lit. 60. b.  
230. b. 19. a.  
Lit. S. 481.  
F. N. B. 217. D.  
Poph. 34.  
(b) O. Benl. 165.  
1 Rol. Rep. 4.  
Co. Lit. 60. b.

And where it was further objected; That the Statute of *West. 2.* cannot without Custom, make an Estate Tail of Copyholds, because without Custom, such Estate cannot be granted by Copy, for it was said, If Estates had been always granted to one and his Heirs by Copy, that a Grant to one and the Heirs of his Body, is another Estate not warranted by the Custom: So that in such Mannors were such Estates of Inheritance have been allowed by Custom, the Statute doth extend to them, and makes them which before were Fee conditional, now by the Statute Estates in Tail, and that the Statute cannot, as hath been agreed before, alter the Custom, or create a new Estate, not warranted by the Custom.

To that it was answered by the Chief Baron, That where the Custom of the Mannor is to grant Lands by Copy in *feodo simplici* (as the usual Pleading is) without Question, by the same Custom Lands may be (c) granted to one, and the Heirs of his Body, or upon any other Limitation or Condition; for these are Estates in Fee-simple, & *eo potius*, that they are not so large and ample as the general and absolute Fee simple is, and therefore the Generality of the Custom doth include them, but not *e converso, ad quod non fuit responsum.* But it was agreed by the whole Court, That another Act made at the same Parliament, *cap. 18.* which gave the *Elegit* (d) doth not extend to Copyholds, for that would be prejudicial to the Lord, and against the Custom of Mannor, that a Stranger should have Interest in the Land held of him by Copy, where by the Custom it cannot be transferred to any without a Surrender made to him, and by the Lord allowed and admitted. But it was agreed by them, That other Statutes made at the same Parl. which are beneficial for the Copyholder, and not prejud. to the Lord, may be by a favourable Interp. extended to Copyholds, as *cap. 3.* which gives the Wife a *Cui* (e) *in vita*, and Receipt, and *cap. 4.* which gives the particular Tenant a *Quod ei desorceat*; and therewith agrees *10 E. 4. 2. b.*

(c) Godb. 26.  
Poph. 35.  
1 Leon. 56.  
Cio. Eliz. 323.  
373. 4 Leon. 64.  
1 Rol. 511.  
4 Co. 23. a. Co.  
Lit. 51. b.  
(d) 1 Rol. 888.  
Cio. Car. 44.  
Hard. 433.  
O. Benl. 163.  
Sav. 67.

And in this Case it was also resolved, That altho' it was not found (g) that the said Rents were the usual Rents, accustomed to be reserved within Twenty Years before the Parliament, yet inasmuch as they have found, that the accustomed Rent was reserved, and a Custom goes to all Times before, for this Cause it shall be intended, that it was the accustomed Rent within the Twenty Years, and so it should be intended, if the contrary be not shewed of the other Side. And Judgment was entred for the Queen.

(e) Cro. Car. 43.  
2 Inf. 343. Sav.  
67. 4 Co. 23. a.  
(g) 4 Co. 65. b.  
Hob. 55. 262.  
1 Leon. 333  
2 Rol. 700.  
2 Co. 74. a. Cr.  
Jac. 413.