(*if he should die without Issue*) being only Words of *Implication*, would not *merge* and *destroy* an express *Estate for Life*, according to the Case of *Bamfield* and *Popham*. But *Parker*, C., exploded the Notion, *that Words of Implication should not turn an express Estate for Life into an Estate-tail*, and said, that if *I devise an Estate* to A. *for Life, and after his Death without Issue then to* B. *this will give an Estate-tail to* A. according to *Sunday*'s Case, 9 *Co. Rep.* 276 (*Sed Q.* for in *Sunday*'s Case there is no express Estate for Life given to the *first* Devisee. *Ibid.* 605, in a Note by the *Editor*). But here being a *Limitation upon* B.'s *Death to his Sons*, and *after to his Daughters*, the Words (*if he should die without Issue*) must be intended, *if he should die without such Issue* (*vide* the Case of *Humberston* and *Humberston*, 2 *Vern.* 737; *Prec. in Chan.* 455; 1 *Will. Rep.* 332; 1 *Vol. Eq. Abr.* 207, *Ca.* 8); and that as to what was agreed, that unless these Words were to create an *Estate-tail in* B. his Son's Daughters could not take, his Lordship said, that it did not appear the Testator intended that *B.*'s Son's Daughters should take, for the Testator might think that on *B.*'s dying without Issue Male, his Name and Family would be determined, for which Reason he might limit it over to the Daughters of *B. himself*; besides, *the Son of* B. *would be Tenant in Tail*, and *when of Age might by docking the Intail give the Premisses to his Daughters. Hil.* 1719, *Blackborn* and *Edgely, et econt'*, 1 *Will. Rep.* 600, 605, 606.

21. *J. S.* seised in Fee of a real Estate, and possessed of a personal Estate, by Will gave one third Part of *all his Estate whatsoever* to his Wife *A.* and devised *to his Son* B. *and his Heirs, two Thirds of all his real and personal Estate*, upon Condition to pay his Debts. *Raymond*, and *Eyre*, Chief Justices, and *Jekyll*, Master of the Rolls, without Difficulty, held, that by the Devise of a third Part of *all the Testator's Estate whatsoever*, the *Lands did pass*, as well as the *personal Estate*, by Virtue of the Word (*whatsoever*); but they conceived that the Wife should have but an Estate for Life therein, the Word (*Estate*) being rather a *Description of the Thing itself*, than of the Testator's Interest in it; and by the next Clause it appeared, and where the Testator intended to give a Fee, **[314]** he took Care to add the Word (*Heir*) to the Word (*Estate*). *Hil.* 1721, at the Council, *Chester* and *Painter*, 2 *Will. Rep.* 335. (But see the Case of *Ibbetson* and *Beckwith*, *P.* 302, *Ca.* 23, where the Devise was of *all my Estate* to *A.* for Life, and to *T. D.* after her Death, he taking the Testator's Name; and if he refused, to *M. B.* and *her Heirs for ever*. The *Master of the Rolls* held *T. D.* took only an Estate for Life, but 11 *Dec.* 1735, Ld. *Talbot* was of Opinion *T. D.* had a Fee, and varied the Decree at the *Rolls*.)

22. *J. S.* was seised *in Fee of the legal Estate of Lands in* H. and *only of the Trust* or *equitable Estate of Lands in* S. which he had formerly purchased in the Name of his Brother *T. S.* and which on his said Brother's Death had descended to his Son *W. S.* (the Testator's Nephew). *J. S.* by Will charged all his Estate with the Payment of his Debts, and *directed said* W. S. *his Nephew and Trustee, to convey his Lands in* S. *to the use of his Will*; then he devised *all his Lands in* S. *and* H. *to said* W. S. *for Life*, and afterwards *to the first Son* or *Issue Male of his Body, lawfully to be begotten*, and *to the Heirs Male of the Body of such first Son*, Remainder *to* W. S.'*s second Son, and his Heirs Male in Tail* (not carrying the Limitations over to his third or other Sons), and then comes this Clause, *viz. that immediately after the Death of the Testator's Nephew* W. S. *without Issue Male of his Body, the Premisses should go to Trustees for Charities.* Afterwards *W. S. suffered a Recovery*, and *died without Issue*; and whether the Recovery barred the *Charities* was the Question? And upon an Appeal from an Order (*b*) made *Feb.* 10, 7 *Geo.* 1, by the Barons of the Exchequer to the House of Lords, all the Lords agreed that as to the Lands in *H.* wherein the Testator had a legal Estate, the Recovery was clearly good, and barred the Charities. But as to Trust Estate in *S.* the Order of the Court of Exchequer was reversed by a Majority, the Effect whereof was only to reverse the Plea allowed by the Exchequer, and so did only put the Respondents to answer over without determining the Right any ways against them. (*c*) *Mich.* 1721, Attorney General, at the Relation of *Folks* and *Battely*, Appellants, and *Sutton* and *Payman*, Respondents, *in Domo Procerum*, 1 *Will. Rep.* 754, 765.

(*b*) By which Order the Barons had allowed the Respondents Plea (*) to an Infor-

(*) *Note*: The Respondents who claimed under the Recovery, pleaded, "*That* "W. S. *the Testator's Nephew, being Tenant in Tail* by *the Will, had suffered a common* "*Recovery, and had thereby barred the Charities.*" *Ibid.* 754.