[671] BIDMEAD *v.* GALE. A match for 25l. a side is a running for 50l. within the Horse-Race Act.

S. C. 4 Burr. 2432.

Covenant for 25l. due on articles, whereby the plaintiff and defendant mutually covenanted to run each a horse, and that the loser should pay the winner 25l. play or pay: and that, at all events, the defendant should pay the plaintiff 5l. before such a day. The breach assigned was, that the defendant did not run his horse or pay the money. Verdict for the plaintiff at Gloucester Assizes.

Hall and Price moved in arrest of judgment, that this, being a match for less than 50l., was contrary to law, and that horse-racing is within the Statute of Gaming; Stra. 1159 (*f*).

Ashhurst and Selwin, contra. That they are not within the Statute of Gaming; Lord Raym. 1366. That Stat. 18 Geo. 2 (*g*), allows by implication horse-racing for 50l. That, by a manuscript report of the case in Stra. 1159, the Court took a distinction between horse-racing and betting thereat. That, at Newmarket, 25l. on a side is held to be 50l., there being a difference of 50l. between winning and losing: and this is the case of all subscription plates. If ten men had subscribed 5l. each, or five men 10l., it would be a plate for 50l. If the 25l. a side had been called a purse of 50l., or laid out in a plate, it would certainly have been good.

Price, in reply, observed, that this was but a running for 45l. even by the Newmarket law; for, according to the articles, the defendant was to return 5l. to the plaintiff: so that the plaintiff subscribed but 20l. and the defendant 25l. (But quære, as the defendant was at all events to pay the plaintiff 5l., whether this was not a subscription of 30l. by the defendant, and 20l. by the plaintiff?)

The Court took time to consider, and afterwards gave judgment for the plaintiff, because two sums of 25l. make 50l.

(*f*) *Goodburn* v. *Marley; Clayton* v. *Jennings*, post, 706, acc.

(*g*) Or rather 13 G. 2, c. 19—see post, 707, n. This statute is confined to bonâ fide horse-racing, and therefore does not legalize a wager to be won by a performance on the road in a post chaise; *Ximenes* v. *Jaques*, 6 T. R. 499: or that one horse shall perform a certain distance on the high road in less time than two; *Whaley* v. *Pajot*, 2 Bos. & P. 51.

[672] PERRIN *v.* BLAKE. Held in K. B. that a devise to J. W. for life, remainder to trustees during the life of J. W., remainder to the heirs of the body of J. W., is an estate for life, there being words of restriction that J. W. shall not sell for any longer than his own life, and the estate being devised to that intent. [But that judgment afterwards reversed in Cam. Scacc., where it was held to be an estate tail: and the latter opinion has been confirmed by all subsequent authorities.]

[Referred to, *Mandeville* v. *Carrick*, 1795, 3 Ridg. P. C. 369; *Doe d. Small* v. *Allen*, 1800, 8 T. R. 504; *Poole* v. *Poole*, 1804, 3 Bos. & P. 628. Discussed, *Montgomery* v. *Montgomery*, 1845, 3 Jo. & Lat. 51. Not applied, *Phillips* v. *Phillips*, 1847, 10 Ir. Eq. R. 519. Considered, *In re Johnson's Trusts*, 1866, L. R. 2 Eq. 720. Referred to, *Pedder* v. *Hunt*, 1887, 18 Q. B. D. 572; *Evans* v. *Evans* [1892], 2 Ch. 188; *Van Grutten* v. *Foxwell* [1897], A. C. 674.]

S. C. 4 Burr. 2579.

Action of trespass: special verdict (*h*).

William Williams, by his last will, after giving portions to his three daughters, disposes of his "temporal estate in manner following: It is my intent and meaning, that none of my children should sell or dispose of my estate for longer term than his life: and, to that intent, I give, devise, and bequeath, all the rest and residue of my estate to my son John Williams, and any son my wife may be ensient of at my death, for and during the term of their natural lives; the remainder to my brother-in-law Isaac Gale and his heirs, for and during the natural lives of my said sons, John Williams and the said infant; the remainder to the heirs of the bodies of my said sons, John Williams and the said infant, lawfully begotten or to be begotten; the remainder

to my daughters for and during the term of their natural lives, equally to be divided between them; the remainder to my said brother-in-law Isaac Gale during the natural lives of my said daughters respectively; the remainder to the heirs of the bodies of my said daughters equally to be divided between them. And I do declare it to be my will and pleasure, that the share or part of any of my said daughters, that shall happen to die, shall immediately vest in the heirs of her body in manner aforesaid." William Williams died, 4th February, 1723, leaving issue one son, named John Williams, and three daughters, Bonneta, Hannah, and Anne, and his wife not ensient. John Williams suffered a recovery, and declared the uses to himself and his heirs.

N.B. This was a case from Jamaica, and in fact, instead of a recovery, the supposed estate tail of John Williams was endeavoured to be barred, by a lease and release enrolled, according to the local law of that country. It came on be-**[673]**-fore a committee of the Privy Council, who directed a case to be stated for the opinion of the Court of King's Bench, who refused to receive it in that shape. And therefore, a feigned action was brought, and the case above stated was by consent reserved at the trial.

It was argued in this, and Trinity terms; the question being merely this, whether John Williams took by this will an estate for life or in tail. And in Michaelmas term following, it was adjudged by Lord Mansfield, C.J., Aston and Willes, Js., that he took only an estate for life: Yates, J., contra, that he took an estate tail. But I was not present, when the judgment of the Court was delivered (*i*).

(*h*) Not so: for the question arose upon a demurrer to a replication. A feigned action of trespass was brought, to which the defendant pleaded the will of W. W. The plaintiff replied a recovery suffered, on the ground that the son took an estate tail; and to this the defendant demurred; 1 Doug. 343, n. 3, where the circumstances of this case are detailed.

(*i*) A full statement of this celebrated case is to be found in 1 Harg. Law Tracts, 490, which also contain Mr. J. Blackstone's very elaborate and valuable judgment. This was a case which gave rise to much discussion at the time, and the judgment of the Court of K. B. seems to have been generally disapproved of: and indeed it was reversed, 1st February, 1772, in the Exchequer Chamber, by six out of the eight Judges there, viz. by Parker, C.B., Adams, B., Gould, J., Perrot, B., Blackstone, J., and Nares, J., against De Grey, C.J., and Smythe, B. Mr. Fearne says, that that reversal restored the venerable uniform train of preceding judgments and opinions upon the same point to its former authority. An appeal was then brought in the House of Lords, but the dispute was eventually compromised between the parties without coming to a decision there. So that it was held to be an estate tail by seven Judges, viz. Yates, Parker, Adams, Gould, Perrot, Blackstone and Nares, and to be an estate for life by five, viz., Lord Mansfield, Aston, Willes, De Grey and Smythe, see 1 Doug, 342. Mr. Fearne also disapproves of the decision in K. B., and has treated the subject so elaborately and at such great length, in his distinguished essay on Contingent Remainders, p. 156 et seq., that it would be in vain to attempt to do more than refer the reader to that learned work. However, it may be remarked, that the ground of the decision of the minority of the Judges was the intention of the testator; and the sole difference of opinion was upon this point, whether such intention or supposed intention should be suffered to supersede an ancient and established rule of law, which is commonly called "the rule in *Shelley's case;*" as to which see *Hayes* v. *Foorde*, post, 698. Mr. Fearne observes upon this head, "Why were not the authorities of *Papillon* v. *Voice*, 2 P. Wms. 471; *Coulson* v. *Coulson*, 2 Stra. 1125, 2 Atk. 246; *Sayer* v. *Masterman*, Ambl. 344, and *Wright* v. *Pearson*, Ambl. 358, 1 Eden, 119, in every one of which there was a limitation to trustees to support contingent remainders, sufficient to rule the case of *Perrin* v. *Blake*. Indeed, upon examining the matter, the limitation to trustees to support contingent remainders, seems to set the force of the two arguments upon the intention, and upon the testator's being inops consilii, in direct opposition to each other. For if we suppose the testator acquainted with the necessity, or use, of limiting an estate to trustees to support contingent remainders, it scarcely seems reasonable to suppose him unacquainted with the legal nature and force of a limitation to the heirs of the body, after a preceding estate for life; and then, as we cannot say he is inops consilii, there exists no pretence for construing his words otherwise than according to their legal import and operation.

On the other hand, if we admit he did not understand the use or intention of the limitation to trustees to support, &c. but only used it, because he had seen it used in some other will or settlement; then no particular intention can be inferred from his inserting that clause. But admitting that those who argue against the strict observance of the rule I have been speaking of, should chance to have the intention of the testator on their side, it remains for them to consider, whether a rule of law, inviolably observed for more than three hundred years past, can ever be a decent sacrifice to the presumptive construction of an undetermined or illiterate testator's intention." He also refers to the following cases decided subsequent to that of *Perrin* v. *Blake*, viz. *Hayes* v. *Foorde*, post, 698; *Hodgson* v. *Ambrose*, 1 Doug. 337; *Thong* v. *Bedford*, 1 Bro. C. C. 313. See also *Roe dem. Thong* v. *Bedford*, 4 M. & S. 362, a case arising upon the same will. Also *Jones* v. *Morgan*, 1 Bro. C. C. 206; *Brouncker* v. *Bagot*, 1 Mer. 271. It is hoped the reader will pardon the foregoing extract from Mr. Fearne's book, as it has been inserted under the impression, that it would be acceptable to those persons who might not have his invaluable work at hand. An abstract of Mr. J. Blackstone's judgment is to be found in 6 Cruise Dig. 355, 3rd ed.

HALL *v.* HARDING. In case of an absolutely stinted common in point of number, one commoner may distrein the supernumerary cattle of another; but not if an admeasurement is necessary—as where the stint has relation to the quantity of the commoner's land.

[Followed, *Cape* v. *Scott*, 1874, L. R. 9 Q. B. 274.]

S. C. 4 Burr. 2426.

In trespass the question was, whether one commoner can distrein the supernumerary cattle of another commoner, having a stinted common in point of number with relation to the quantity of land, viz. two sheep for every acre.

On demurrer and argument, Lord Mansfield, C.J., delivered the opinion of the Court. It is contended by the plaintiff, that Harding (being only a commoner) could not distrein another commoner, but must have a writ of admeasurement or an action on the case:—for the defendant, that this being a stinted common, the supernumerary cattle are as the cattle of a stranger. To support which the Year-Book, 46 Ed. 3, 12, is cited; but from thence nothing can be collected conclusively, as is observed, in 2 Lutw. 1240. Another case cited was, Yelv. 129, Cro. Jac. 208 (*k*). But, in 2 Roll. Abr. 267, the case is otherwise reported, and what was done does not appear, therefore no argument can be conclusively drawn from thence. *Trulock and White*, 1 Roll. Abr. 405, 6, was also cited to shew that the tenant might **[674]** distrein the cattle of the lord. But there by the custom the land was to lie fresh every second year, and therefore the lord had no colour of right to put in any cattle. But, where there is no such manifest exclusion, a commoner cannot distrein the lord's cattle; *Hoddesdon and Grevil*, Yelv. 104. Where there is any colour of right the lord cannot be a trespasser, neither can he be a stranger in his own soil (*l*). *Dixon and James*, 2 Lutw. 1238, Freem. 273, was also relied upon, on both sides.

It is unnecessary to give any opinion on the power of a commoner to distrein, where the number of the cattle is certain in itself, and has no relation to the land. The latter is the case here; it has relation to the land. Two sheep are allowed for every acre. This is the material distinction, upon which the present case will turn. There is no proof necessary, that twenty sheep are more than ten. But in the latter part of the present case a medium is necessary to prove, that the cattle are supernumerary, viz. an admeasurement of the commoner's land, to shew that he has put in more than two sheep for each acre.

The old remedies for a surcharge of common were by assise, &c. Bracton, 4; F. N. B.(*m*).

In *Robert Marys's case*, 9 Co.(*n*), it is said, that case will lie. But a commoner could not lawfully distrein another commoner's cattle, because it is making himself a judge in his own cause, and taking execution in the first instance.

In the case of levancy and couchancy (*o*), one commoner cannot distrein another's cattle for a surcharge; but must try, by a jury, the number accommodated to the land. The same thing is also necessary here, to ascertain what quantity of land the plaintiff had.

give security for his good behaviour for the space of seven years, to be computed from and after the end and expiration of the said twelve calendar months to be computed as aforesaid; to wit, himself, the said defendant, in the sum of one thousand pounds, with two sufficient sureties, in five hundred pounds each. And it is lastly ordered, that he the said defendant be now remanded to the custody of the said marshal, to be by him kept in safe custody, in execution of this judgment, and until he shall have paid the said fine, and given such security as aforesaid.

On the motion of Mr. Attorney-General.

By the Court.

Afterwards, a writ of error was brought, returnable in Parliament, upon each judgment: and both judgments were affirmed, as follows—

Die Lunæ, 16° January 1769.

Counsel having been fully heard to argue the errors assigned in these causes, the following questions were put to the Judges—

"Whether an information filed by the King's Solicitor-General, during the vacancy of the office of the King's Attorney-General, is good in law."

"Whether, in such a case, it is necessary in point of law, to aver upon the record, that the Attorney-General's office was vacant."

[2577] Upon the second record—

"Whether a judgment of imprisonment against a defendant, to commence from and after the determination of an imprisonment to which he was before sentenced for another offence, is good in law."

Whereupon, the Lord Chief Justice of the Court of Common Pleas, having conferred with the rest of the Judges present, delivered their unanimous opinion upon the said questions, with their reasons.

To the first question.—That an information filed, &c. is good in law.

To the second.—That in such a case, it is not necessary.

To the third.—That a judgment of imprisonment, &c. is good in law.

Then ordered and adjudged, that the judgments of the Court of King's Bench be affirmed.

On Wednesday the 7th of February 1770,

Mr. Davenport moved that the defendant might be brought up, either into Court within this term, or before a Judge at chambers after the end of it; to enter into the recognizance required of him by the abovementioned rule of Court:* for, his imprisonment will end upon a day which does not fall within any term; namely, upon Easter Tuesday next.

[2578] The Court told him, they had thought of this already: and they conceived the best method would be, to make a rule for his entering into the recognizance before the marshal, or some other justice of the peace for the county of Surry.

And accordingly, they ordered such a rule to be drawn up: which was done, in these words—

Ordered, that at the expiration of the imprisonment of the defendant, by virtue of the judgment of this Court pronounced against him in this cause on Saturday next after fifteen days from the day of the Holy Trinity in the 8th year of the reign of His present Majesty, the security required by the said judgment to be given by him the said defendant for his good behaviour for the space of seven years, to wit, himself the said defendant in the sum of £1000, with two sufficient sureties in £500 each, may be taken by and before any justice of the peace of and for the county of Surry.

[2579] PERRIN AND ANOTHER, *versus* BLAKE, Widow. (S. C. 1 Bl. 672.) Thursday, 8th Feb. 1770. Whether the testator's manifest intent must not controul the legal operation of the word heirs, as a limitation and turn it into the description of a purchaser remained undecided, and was depending in the House of Lords, May 1776. [See Doug. 329, 330. 4 Durn. 16.]

[Referred to, *Mandeville* v. *Carrick*, 1795, 3 Ridg's. P. C. 369; *Doe d. Allen* v. *Small*, 1800, 8 T. R. 504; *Poole* v. *Poole*, 1804, 3 Bos. & P. 628. Discussed, *Montgomery* v. *Montgomery*, 1845, 3 Jo. & Lat. 51. Not applied, *Phillips* v. *Phillips*, 1847,

* Vide ante, p. 2576.

10 Ir. Eq. R. 519. Considered, *In re Johnson's Trusts*, 1866, L. R. 2 Eq. 720. Referred to, *Peddie* v. *Hunt*, 1889, 18 Q. B. D. 572; *Evans* v. *Evans* [1892], 2 Ch. 188; *Van Grutten* v. *Foxwell* [1897], A. C. 674.]

This was a demurrer to a replication, in an action of trespass: and the question was "whether John Williams took an estate for life, or an estate tail, under his father's will."

The testator, William Williams, at the time when he made his will, had only this one son John, and two daughters: but he thought his wife to be then with child. However, there never was any other child: and one of the daughters was since dead, without issue. One clause of the father's will says—"Provided that should my wife be ensient with child, and it be a female, I give her £2000. And if a male, I give my estate, real and personal, equally to be divided between said infant and my son John, when said infant shall attain his age of twenty-one years." In another clause of it, the testator declares it to be his intent "that none of his children shall sell his estate for longer than his life:" and to that intent, he gives all his estate to his said son John and said infant for their lives; remainder to trustees, to preserve contingent remainders, &c.; remainder to the heirs of the bodies of his said sons; remainder to his daughters, for their lives; remainder to trustees, &c.; remainder to the heirs of the bodies of his daughters; and that the share and part of his said daughters, if either of them should die, should immediately vest in the heirs of their bodies. The defendant claimed under the remainder to the daughters; John being dead. The plaintiff stated in his replication, "that John before his death, entered, and suffered a recovery, to the use of himself in fee; and afterwards demised to the plaintiff, for a term of years:" under which demise, the plaintiff derives his title. The defendant insists that this is a bad title; because John took only an estate for life, and therefore could not suffer a recovery.

No doubt was made of the rule in *Shelly's case*, in Coke Littleton and other books,* "that when the ancestor, by any gift, devise or conveyance, takes an estate for life, with remainder mediately or immediately to his heirs, in fee, or in tail; the word heirs is a word of limitation; and the estate of inheritance shall vest in the ancestor; and the express limitation for life is of no effect."

The reason of the rule (as it is generally agreed) was to preserve to the feudal lords the fruits of the seignory **[2580]** upon the deaths of their tenants. If an estate could have been limited to the ancestor for life, remainder to his heirs, the ancestor might have acted during his life as absolute owner, and conveyed the estate so as to destroy the contingent remainder; and if he chose that it should go to his heir, the heir would have taken it as a purchaser, and consequently not liable to wardship, marriage, or relief. But the policy of the law said—"This shall not be."

Though the reason of the rule has now ceased, and a contingent limitation to the heir of a tenant for life may now be preserved against his act, and feudal tenures are now in effect abolished; yet, the rule having been established, it was conceded, that it must be adhered to: and where there is nothing more in the case, than a devise to A. for life, and afterwards to the heirs of his body, it was admitted on all hands "that A. took an estate tail."

The counsel for the plaintiff did not dispute but that upon this will there were words which shewed the testator's intent to devise his estate in strict settlement. The testator expressly declared "that he meant that none of his children should sell for longer than his life;" and to that intent, devised to trustees, to preserve contingent remainders: which seems equivalent to his saying "they should not have an estate tail;" "and that the heir should take a contingent remainder by such description, as a purchaser, which his ancestor had no power to alien." If the heir was to take the inheritance by succession, there could be no contingent remainder to preserve; and his ancestor might alien. Therefore the counsel for the plaintiff did not dispute the intent: but they contended, that be the intent ever so plain from other parts of the will, the rule holds "that the inheritance must vest in the ancestor."

The counsel for the defendant contended, that if the testator's intent was manifest from other parts of the will, "heirs" might be construed a word of description; and the heir should take the inheritance as a purchaser. That such a devise was contrary to no rule of law. That a testator might limit in this manner, by apt words; and if

* 1 Co. 104. Co. Lit. 22, & 319.

the testator's intent be clear, and what he intends be agreeable to the rules of law, it shall be executed; in what manner soever he may have expressed himself.

The cases cited were many, and difficult to reconcile. Each side had a string of them.

[2581] The case was first argued on Tuesday the 7th of February 1769, by Mr. Walker for the defendant, and Mr. Serjeant Glynn for the plaintiff; and again, on Tuesday the 2d of May 1769, by Mr. Serjeant Burland for the defendant, and Mr. Dunning (then Solicitor-General,) for the plaintiff: after which, it stood for the opinion of the Court, till this day. And now judgment was given for the defendant, upon the opinions of Lord Mansfield, Mr. Justice Aston, and Mr. Justice Willes, against that of Mr. Justice Yates.

The Court not being able, after the most mature deliberation, to concur in opinion, the Judges delivered their sentiments seriatim: and Mr. Justice Yates holding it to be an estate tail; and Lord Mansfield and the other two Judges holding it to be an estate only for life; there was

Judgment for the defendant.

The plaintiffs brought a writ of error in the Exchequer-Chamber: and it was several times argued there. The last argument was the 8th of May 1771.

On the 29th of January 1772, the Judges who composed that Court gave their opinions seriatim. Sir Thomas Parker (then Lord Chief Baron,) Mr. Baron Adams, Mr. Justice Gould, Mr. Baron Perrott, Mr. Justice Blackstone, and Mr. Justice Nares, were of opinion for the plaintiffs. Mr. Justice Blackstone, (who made very able and elaborate argument,) agreed with the majority of the Court of King's Bench, "that if the intent of the testator manifestly and certainly appeared, (by plain expression, or necessary implication from other parts of the will,) that the heirs of the body of A. should take by purchase, and not by descent, then a devise to A. for life, and after his decease to the heirs of his body, not only might but must be construed an estate in strict settlement:" but he thought, it did not manifestly and certainly appear, from the mere intended restraint of the power of alienation in A. that the testator had meant that the heirs of A.'s body should take by purchase, and not by descent; or even that he knew the difference between the two methods of taking. The Lord Chief Justice of the Common Pleas (Sir William de Grey,) and the present Lord Chief Baron, were for affirming the judgment of the Court of King's Bench. The Lord Chief Justice of the Common Pleas, spoke last; and, to the great satisfaction and edification of those who heard him, explained the principles, went through all the cases, and took notice of every thing, which had been said at the Bar, or by any of the Judges from whom he differed: and whoever shall [2582] have the opportunity of seeing his argument, will see the subject exhausted in a most masterly manner. I speak from what was the general voice and sense of Westminster-Hall: but I did not hear, and therefore cannot report it.

The defendant brought a writ of error, in Parliament: which is still depending.

For that reason, and because I did not hear the opinions given in the Exchequer-Chamber, I do not now report those given in the Court of King's Bench. As the case at present stands, it will not settle the general question, "whether a testator's manifest intent may control the legal operation of the word heirs, as a limitation." If the writ of error should proceed to a hearing, it may be settled; and the whole argument may then be fully stated: but I might have been thought too tedious, if, in its present state, I had gone into a long and voluminous disquisition of the cited cases. It is sufficient at present, to say, that one side relied upon the abovementioned rule, and adjudged cases which have made the testator's intention give way to it; and the other side relied upon plain principles in the construction of wills, and adjudged cases which, from the manifest intent of a testator, have, after an estate for life to the ancestor, turned a limitation to his heirs into the description of a purchaser.

The Judges of the King's Bench were above five hours in delivering their opinions. A particular report of them must have run into a vast length; and have been still imperfect, without adding those delivered in the Exchequer-Chamber, which I did not hear, and was incapable of reporting. If the arguments of Lord Chief Justice de Grey and Mr. Justice Blackstone shall ever be made public; and if judgment shall hereafter be given by the House of Lords; it may then be time enough to attempt a complete report of the whole case: at present, I have thought it better to defer it.

It is remarkable that, excepting this case and another in this volume,* there never has been, from the 6th of November 1756, to the time of the present publication, a final difference of opinion in the Court in any case or upon any point whatsoever. It is remarkable too, that excepting these two cases, no judgment given during the same period has been reversed, either in the Exchequer-Chamber or in Parliament: and even these reversals were with great diversity of opinion among the Judges.

[2583] I will endeavour, if life and health shall permit, to continue these publications up to the present time: there are many interesting cases still remaining unpublished. But, for fear of tiring the profession, I propose to shorten the argumentative part, as much as possible.

I am very sensible that I have not done justice to the matter, or perhaps the language, either of the Court or the Bar: but I flatter myself that I have with tolerable accuracy stated the cases and also the points upon which the judgment turned.

The favourable reception of the work, and the increasing demand, I do not impute to any merit of mine, but to the great estimation in which the Court stands.

We who have seen some of the best of former times, cannot help observing the preference due to these; and are equally surprized at the multiplicity of business now brought before the Court, and the ability and celerity with which it is dispatched, with universal satisfaction.

I am informed, that at the sittings for London and Middlesex only, there are not so few as eight hundred causes set down a year; and all disposed of: and though many of them, especially in London, are of considerable value, there are not more, upon an average, than between twenty and thirty ever heard of afterwards, in the shape of special verdicts, special cases, motions for new trials, or in arrest of judgment: of a bill of exceptions, there has been no instance. (I don't include judgments upon criminal prosecutions: they are necessary consequences of the convictions.) My reports give but a very faint idea of the extent of the whole business which comes before the Court. I only report what I think may be of use, as a determination or illustration of some matter of law. I take no notice of the numerous questions of fact which are heard upon affidavits; (the most tedious and irksome part of the whole business). I take no notice of a variety of contestations, which, after having been fully discussed, are decided without difficulty or doubt. I take no notice of many cases which turn upon a construction so peculiar and particular as not to be likely to form a precedent for any other case. And yet, notwithstanding this immensity of business, it is notorious, that in consequence of method and a few rules which have been laid down to prevent delay, (even where the parties themselves would willingly consent to it,) nothing now hangs in Court. Upon the last day of the very last term, if we exclude such motions of the term as by the desire of the parties went over of course, as peremptories, there was not a single matter of any kind that remained undetermined, excepting one [2584] case relating to the proprietary lordship of Maryland, which was professedly postponed on account of the present situation of America.

One might speak to the same effect, concerning the last day of any former term, for some years backward.

I hope, that, in future, some other person, of more ability than myself, (I will not compliment him with greater fidelity,) will supply my place. It would be great pity to leave the decisions of a Court so filled, to the ignorant erroneous and false reports of news-papers, monthly historians, and collectors for book-sellers; or, (what is perhaps still worse,) to the posthumous publication of defective and imperfect notes of gentlemen who cursorily took them, merely for their own use and as helps to their own memories, without any thoughts of making them public.

I have the pleasure of thinking that if my reports have no other merit, they have at least anticipated, and may possibly tend to prevent such kind of publications. And for this reason, I wish to proceed in communicating to the public the materials which I have collected, subsequent to the present publication, and up to the present time.

Inner Temple, 20th May 1776.

The end of Hilary term, 1770, 10 G. 3.

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* I do not reckon the case of *The King and Lookup* a reversal of any opinion of the Court; because the flaw of being laid against the peace of the late King was not discovered till after judgment given and entered.