

THE STATUTE OF USES (1536)

27 Hen. VIII, c. 10;

Statutes of the Realm, vol. III, p. 539 (untr.).

Where by the common laws of this realm lands, tenements and hereditaments be not devisable by testament, nor ought to be transferred from one to another but by solemn livery and seisin, matter of record [or] writing sufficient, made bona fide without covin or fraud; yet nevertheless divers and sundry imaginations, subtle inventions and practices have been used whereby the hereditaments of this realm have been conveyed from one to another by fraudulent feoffments, fines, recoveries and other assurances craftily made to secret uses, intents and trusts, and also by wills and testaments sometimes made by nude parols and words, sometimes by signs and tokens, and sometimes by writing, and for the most part made by such persons as be visited with sickness in their extreme agonies and pains, or at such time as they have scantly had any good memory or remembrance, at which times they being provoked by greedy and covetous persons lying in wait about them do many times dispose indiscreetly and unadvisedly their lands and inheritances; by reason whereof, and by occasion of which fraudulent feoffments, fines, recoveries and other like assurances to uses, confidences and trusts, divers and many heirs have been unjustly at sundry times disherited, the lords have lost their wards, marriages, reliefs, heriots, escheats, aids *pur faire fitz chivaler et pur file marier*, and scantly any person can be certainly assured of any lands by them purchased nor know surely against whom they shall use their actions or executions for their rights, titles and duties; and also men married have lost their tenancies by the curtesy, women their dowers, manifest perjuries by trial of such secret wills and uses have been committed; the king's highness hath lost the profits and advantages of the lands of persons attainted, and of the lands craftily put in feoffments to the uses of aliens born, and also the profits of waste for a year and a day of lands of felons attainted, and the lords their escheats thereof; and many other inconveniences have happened and daily do increase among the king's subjects, to their great trouble and inquietness, and to the utter subversion of the ancient common laws of this realm; and for the extirping and extinguishment of all such subtle practised feoffments, fines, recoveries, abuses and errors heretofore used and accustomed in this realm, to the subversion of the good and ancient laws of the same, and to the intent that the king's highness or any other his subjects of this realm shall not in any wise hereafter by any means or inventions be deceived, damaged or hurt by reason of

such trusts, uses or confidences: it may please the king's royal majesty that it may be enacted by his highness, by the assent of the lords spiritual and temporal and the commons in this present parliament assembled, and by the authority of the same, in manner and form following, that is to say:

1 That where any person or persons stand or be seised, or at any time hereafter shall happen to be seised, of and in any honours, castles, manors, lands, tenements, rents, services, reversions, remainders or other hereditaments, to the use, confidence or trust of any other person or persons, or of any body politic, by reason of any bargain, sale, feoffment, fine, recovery, covenant, contract, agreement, will, or otherwise, by any manner means whatsoever it be; that in every such case, all and every such person and persons and bodies politic that have or hereafter shall have any such use, confidence or trust in fee simple, fee tail, for term of life or for years, or otherwise, or any use, confidence or trust in remainder or reverter, shall from henceforth stand and be seised, deemed and adjudged in lawful seisin, estate and possession of and in the same honours, castles, manors, lands, tenements, rents, services, reversions, remainders and hereditaments, with their appurtenances, to all intents, constructions, and purposes in the law, of and in such like estates as they had or shall have in use, trust or confidence of or in the same; and that the estate, title, right and possession that was in such person or persons that were, or hereafter shall be, seised of any lands, tenements or hereditaments to the use, confidence or trust of any such person or persons or of any body politic be from henceforth clearly deemed and adjudged to be in him or them that have, or hereafter shall have, such use, confidence or trust, after such quality, manner, form and condition as they had before, in or to the use, confidence or trust that was in them . . .¹

[Concerning jointures:]

4² And be it further enacted by the authority aforesaid, that whereas divers persons have purchased, or have estate made and conveyed of and in divers lands, tenements and hereditaments unto them and to their wives, and to the heirs of the husband, or to the husband and to the wife and to the heirs of their two bodies begotten, or to the heirs of one of their bodies begotten, or to the husband and to the wife for term of their lives or for term of life of

1 Section 2 contains a similar provision where several feoffees were seised to the use of any of themselves; and s. 3 enacts that where there was a use for payment of rent, the person entitled to the rent should be deemed to be seised of the rent.

2 Section 6 in *Statutes at Large*.

the said wife; or where any such estate or purchase of any lands, tenements or hereditaments hath been or hereafter shall be made to any husband and to his wife in manner and form expressed, or to any other person or persons and to their heirs and assigns to the use and behoof of the said husband and wife or to the use of the wife as is before rehearsed, for the jointure of the wife: that then in every such case, every woman married having such jointure made or hereafter to be made shall not claim nor have title to have any dower of the residue of the lands, tenements or hereditaments that at any time were her said husband's, by whom she hath any such jointure, nor shall demand nor claim her dower of and against them that have the lands and inheritances of her said husband; but if she have no such jointure, then she shall be admitted and enabled to pursue, have and demand her dower by writ of dower after the due course and order of the common laws of this realm, this act or any law or provision made to the contrary thereof notwithstanding . . .³

[Preservation of status quo:]

94 And forasmuch as great ambiguities and doubts may arise of the validity and invalidity of wills heretofore made of any lands, tenements and hereditaments, to the great trouble of the king's subjects, the king's most royal majesty (minding the tranquillity and rest of his loving subjects) of his most excellent and accustomed goodness is pleased and contented that it be enacted by the authority of this present parliament that all manner true and just wills and testaments heretofore made by any person or persons deceased, or that shall decease before the first day of May that shall be in the year of our Lord God 1536, of any lands, tenements or other hereditaments, shall be taken and accepted good and effectual in the law, after such fashion, manner and form as they were commonly taken and used at any time within 40 years next afore the making of this act; anything contained in this act or in the preamble thereof, or any opinion of the common law to the contrary thereof,⁵ notwithstanding . . .

- 3 There follow three provisos: that dower should not be barred if the jointure was lawfully recovered against the widow without collusion; that the act should not extend to widows whose husbands were dead before it was passed; and that a widow could refuse a jointure assured after marriage and demand dower instead.
- 4 Section II in *Statutes at Large*.
- 5 This presumably refers to *Lord Dacre's Case*; see p. 105, above. The act recognises that the decision had changed the received opinion, and prevents it from having retrospective effect.

THE STATUTE OF ENROLMENTS (1536)

27 Hen. VIII, c. 16;
Statutes of the Realm, vol. III, p. 549 (untr.).

Be it enacted by the authority of this present parliament that from the last day of July which shall be in the year of our Lord God 1536 no manors, lands, tenements or other hereditaments shall pass, alter or change from one to another whereby any estate of inheritance or freehold shall be made or take effect in any person or persons, or any use thereof to be made by reason only of any bargain and sale thereof, except the same bargain and sale be made by writing indented, sealed, and enrolled in one of the king's courts of record at Westminster; or else within the same county or counties where the same manors, lands or tenements so bargained and sold lie or be, before the *custos rotulorum* and two justices of the peace and the clerk of the peace of the same county or counties, or two of them at the least, whereof the clerk of the peace to be one; and the same enrolment to be had and made within six months next after the date of the same writings indented . . . Provided always that [neither] this act, nor anything therein contained, extend to any manner lands, tenements or hereditaments lying or being within any city, borough or town corporate within this realm, wherein the mayors, recorders, chamberlains, bailiffs or other officer or officers have authority or have lawfully used to enrol any evidences, deeds or other writings within their precinct or limits, anything in this act contained to the contrary notwithstanding.

THE STATUTE OF WILLS (1540)

32 Hen. VIII, c. 1;
Statutes of the Realm, vol. III, p. 744 (untr.).

Where the king's most royal majesty in all the time of his most gracious and noble reign hath ever been a merciful, loving, benevolent and most gracious sovereign lord unto all and singular his loving and obedient subjects, and by many times past hath not only shewed and imparted to them generally by his many, often and beneficial pardons heretofore by authority of his parliament granted, but also by divers other ways and means many great and ample grants and benignities, in such wise as all his said subjects been most bounden to the uttermost of all their powers and graces by them received of God to render and give unto his majesty their most humble reverence and obedient thanks and services, with their daily and continual prayer to Almighty God for the continual

preservation of his most royal estate in most kingly honour and prosperity; yet always his majesty, being replete and endowed by God with grace, goodness and liberality, most tenderly considering that his said obedient and loving subjects cannot use or exercise themselves according to their estates, degrees, faculties and qualities, or to bear themselves in such wise as that they may conveniently keep and maintain their hospitalities and families, nor the good education and bringing up of their lawful generations, which in this realm (laud be to God) is in all parts very great and abundant, but that in manner of necessity, as by daily experience is manifested and known, they shall not be able of their proper goods, chattels and other movable substances to discharge their debts and after their degrees set forth and advance their children and posterities: wherefore our said sovereign lord, most virtuously considering the mortality that is to every person at God's will and pleasure most common and uncertain, of his most blessed disposition and liberality, being willing to relieve and help his said subjects in their said necessities and debility, is contented and pleased that it be ordained and enacted by authority of this present parliament, in manner and form as hereafter followeth, that is to say:

1 That all and every person and persons having, or which hereafter shall have, any manors, lands, tenements or hereditaments, holden in socage or of the nature of socage tenure, and not having any manors, lands, tenements or hereditaments holden of the king our sovereign lord by knight's service, by socage tenure in chief, or of the nature of socage tenure in chief, nor of any other person or persons by knight's service, from the twentieth day of July in the year of our Lord God 1540 shall have full and free liberty, power and authority to give, dispose and devise, as well by his last will and testament in writing or otherwise by act or acts lawfully executed in his life, all his said manors, lands, tenements or hereditaments, or any of them, at his free will and pleasure; any law, statute or other thing heretofore had, made or used to the contrary notwithstanding.

2 And that all and every person and persons having manors, lands, tenements or hereditaments holden of the king our sovereign lord, his heirs or successors, in socage, or of the nature of socage tenure, in chief, and having other manors, lands, tenements or hereditaments holden of any other person or persons in socage, or of the nature of socage tenure, and not having any manors, lands, tenements or hereditaments holden of the king our sovereign lord by knight's service, nor of any other lord or person by like service, from the twentieth day of July in the said year of our Lord God

1540 shall have full and free liberty, power and authority to give, will, dispose and devise, as well by his last will or testament in writing or otherwise by any act or acts lawfully executed in his life, all his said manors, lands, tenements and hereditaments, or any of them, at his free will and pleasure; any law, statute, custom or other thing heretofore had, made or used to the contrary notwithstanding.

3 Saving always and reserving to the king our sovereign lord, his heirs and successors, all his right, title and interest of primer seisin and reliefs, and also all other rights and duties for tenures in socage, or of the nature of socage tenure, in chief, as heretofore hath been used and accustomed; the same manors, lands, tenements or hereditaments to be taken, had and sued out of and from the hands of his highness, his heirs and successors, by the person or persons to whom any such manors, lands, tenements or hereditaments shall be disposed, willed or devised, in such like manner and form as hath been used by any heir or heirs before the making of this act; and saving and reserving also fines for alienations of such manors, lands, tenements or hereditaments holden of the king our sovereign lord in socage, or of the nature of socage tenure, in chief, whereof there shall be any alteration of freehold or inheritance made by will or otherwise as is aforesaid.

4 And it is further enacted by the authority aforesaid that all and singular person or persons having any manors, lands, tenements or hereditaments of estate of inheritance⁶ holden of the king's highness in chief by knight's service, or of the nature of knight's service in chief, from the said twentieth day of July [1540] shall have full power and authority by his last will by writing or otherwise by any act or acts lawfully executed in his life to give, dispose, will or assign two parts of the same manors, lands, tenements or hereditaments in three parts to be divided, or else as much of the said manors, lands, tenements or hereditaments as shall extend or amount to the yearly value of two parts of the same in three parts to be divided, in certainty and by special divisions, as it may be known in severalty, to and for the advancement of his wife, preferment of his children, and payment of his debts, or otherwise, at his will and pleasure; any law, statute, custom or other thing to the contrary thereof notwithstanding.

5 Saving and reserving to the king our sovereign lord the custody, wardship and primer seisin or any of them, as the case shall require, of as much of the same manors, lands, tenements or

⁶ By 34 & 35 Hen. VIII, c. 5, s. 3, this is defined to mean estates in fee simple only, so that an entail could not be barred by will.

hereditaments as shall amount and extend to the full and clear yearly value of the third part thereof, without any diminution, dower, fraud, covin, charge or abridgment of any of the same third part or of the full profits thereof.⁷

6 Saving also and reserving to the king our said sovereign lord all fines for alienations of all such manors, lands, tenements and hereditaments holden of the king by knight's service in chief, whereof there shall be any alteration of freehold or inheritance made by will or otherwise as is abovesaid.

[Sections 7–9 provide that a person holding some land in chief by knight service and other land by knight service may devise two-thirds, with a similar saving to the king. Sections 10–11 provide that a person holding land of mesne lords by knight service, and holding other land in socage, may devise two-thirds of the land held by knight service and all the land held in socage, reserving to the lord the wardship of the land held by knight service. Sections 13–16 deal with procedural matters, and s. 14 with joint tenancies and dower.]

EXPLANATION OF THE STATUTE OF WILLS (1542)

34 & 35 Hen. VIII, c. 5;

Statutes of the Realm, vol. III, p. 901 (untr.).

Where in the last parliament⁸ . . . it was . . . enacted how and in what manner lands, tenements and other hereditaments might be by will or testament in writing or otherwise by any act or acts lawfully executed in the life of every person given, disposed, willed or devised, for the advancement of the wife, preferment of the children, [or] payment of debts of every such person, or otherwise at his will and pleasure, as in the same act more plainly is declared; since the making of which statute divers doubts, questions and ambiguities have arisen, been moved and grown by diversity of opinions taken in and upon the exposition of the letter of the same statute: for a plain declaration and explanation whereof, and to the intent and purpose that the king's obedient and loving subjects shall and may take the commodity and advantage of the king's said gracious and liberal disposition, the lords spiritual and temporal and the commons in this present parliament assembled most

⁷ This is explained by 34 & 35 Hen. VIII, c. 5, s. 9, as extending to lands which descend to the heir of the deviser in fee tail as well as in fee simple.

⁸ Statute of Wills (1540); see p. 115, above.