That this case was too strong for the Court to attempt to get over, and to do it would create great confusion; and it would be to no purpose for any one to make deeds, if the argument of convenience or inconvenience should prevail to over-rule them. Bill dismissed.

(*a*) Though the doctrine mentioned at the beginning of the case, and established in the cases of *Greaves and Maddison*, and in *Gerard* v. *Gerard*, 2 Vern. 458, are received as law, the inclination of the Courts has been, ever since the case of *Corbett and Maidwell*, against raising portions in the life of the father; and they have endeavoured, if possible, to distinguish cases from the general rule; as in *Butler* v. *Duncombe*, 1 P. Wms. 448, where the trust was to raise portions *after the commencement of the term*. So *Churchman* v. *Harvey*, Amb. 335. *Keresby* v. *Newland*, 2 P. Wms. 93. 2 Bro. R. C. 487, where the portion was to be paid at eighteen or marriage, or as soon after as it could be *conveniently* raised; and there was a proviso, that if the father should die without any daughter *living at his decease*, the term to be void, and a power with the trustees' consent *to revoke* the uses. *Brome* v. *Berkley*, 2 P. Wms. 484. 3 Bro. P. C. 437, where lands were limited to the husband for life, remainder to the wife for life, remainder to sons in tail, remainder to trustees, in case there should be no son, to raise a portion payable at twenty-one or marriage, with a *maintenance* in the mean time, the *first payment whereof* to be made on the first of certain feasts which should happen *after the estate* limited *to* the *trustees should take effect in possession*. *Stephens* v. *Dethick*, 3 Atk. 39, where it was provided that the daughters should, out of the premises comprised in the term, receive a yearly maintenance, and that the residue of the rents should, *in the mean time*, till the portions became payable, be received by such persons as should be entitled to the reversion immediately expectant upon the determination of the term. *Vide Sandys* v. *Sandys*, 1 P. Wms. 707. *Hebblethwaite* v. *Cartwright*, Ca *temp.* Talb. 31. *Stanley* v. *Stanley*, 1 Atk. 549. *Hall* v. *Carter*, 2 Atk. 354. *Goodall* v. *Rivers*, Mos. 395. *Lyon* v. *Duke of Chandos*, 3 Atk. 416. *Smith* v. *Evans*, Ambler 633. *Conway* v. *Conway*, 3 Bro. Ch. 267.

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13. WHITECOMB *contra* JACOB.

[Trin. 9 Ann. In Canc.]

[Applied, *Scott* v. *Surman*, 1742, 43, Willes 402. Referred to, *Taylor* v. *Plumer*, 1815, 3 M. & S. 575. Applied, *In re West of England, &c. Bank*, 1879, 11 Ch. D. 775. Explained, *In re Hallett's Estate*, 1879, 13 Ch. D. 713. Referred to, *Patten* v. *Bond*, 1889, 60 L. T. 585; 37 W. R. 375.]

Merchant's goods in the hands of the factor not liable to debts of a superior nature; otherwise of money. 2 Vern. 638.

If one employs a factor, and entrusts him with the disposal of merchandize, and the factor receives the money, and dies indebted (*in*) to debts of a higher nature, and it appears by evidence that this money was vested in other goods, and remains unpaid, those goods shall be taken as part of the merchant's estate, and not the factor's; but if the factor have the money, it shall be looked upon as the **[161]** factor's estate, and must first answer the debts of a superior creditor, &c. for in regard that money has no ear-mark, equity cannot follow that in behalf of him that employed the factor (*a*).

(*a*) The principles of this case have been confirmed and extended by the following authorities; concerning which it is to be observed, that every decision arising upon the bankruptcy of the party entrusted is applicable *a fortiori* to other contingencies, on account of the provision in stat. 21 Jac. 1, c. 19, s. 10, 11, concerning bankrupts having goods, &c. in their possession by consent of the true owner. *Copeman* v. *Gallant*, 1 P. Wms. 314. 2 Eq. Ca. Ab. 113. Goods assigned by A. to C. in trust, to pay A.'s debts, are not affected by the bankruptcy of C. Per Ld. Mansfield; *Howard* v. *Jemmett*, 3 Bur. 1369. If an executor becomes bankrupt, the commissioners cannot seize the specific effects of his testator, not even money which can specifically be distinguished and ascertained to belong to such testator. Per Buller J. *Rex* v.

Eggington, 1 T. R. 369. If a sum of money, collected by an overseer who became bankrupt, had been kept by itself, the assignees could not have touched it. Per Ld. Ch. King, *Godfrey* v. *Furzo*, 3 P. Wms. 185. A factor to whom goods are consigned has no property in them, nor will they be affected by his bankruptcy. *Zinck* v. *Walker*, 2 Bl. Rep. 1154. Bills of exchange sent to an agent or banker to indemnify him against acceptances, ruled to be the same as goods consigned to a factor. *Vide*, as to that point, *Ex parte Dumas*, 1 Atk. 232. 2 Vez. 582. *Ex parte Oursell*, Ambler 297. *Ex parte Emery*, 2 Vez. 674, *dict.* that where a note has been taken for the money [on goods sold by a factor who became bankrupt], the Court followed the note, *Farr* v. *Newman*, 4 T. R. 621. Goods in the hands of an executor cannot be taken in execution for the executor's own debt. *Miller* v. *Race*, 1 Bur. 457. On bankruptcies, *bank notes* cannot be followed as identical and distinguishable from money, but are always considered as money or cash.

14. VANE *versus* LORD BERNARD.

[Mich. 1 Georg. In Canc. S. C. Prec. Ch. 454. Gilb. Ch. 193. 1 Eq. Ab. 400].

Injunction to prevent the pulling down a castle granted against tenant for life, dispunishable of waste. 2 Chan. Cas. 32. 2 Vern. 738.

Lord Bernard upon his marriage, in consideration of a portion of 10,000l. settled the castle of Raby, &c. to the use of himself for life, without impeachment of waste, remainder to his son for life, &c. The son brought a bill against his father the Lord Bernard, to enjoin him from pulling down the castle; and Cowper, Lord Chancellor, granted an injunction, because this was an abuse of the power, and derogatory to the grant; the intent of that privilege being only in order to cut down timber, and open new mines (*a*).

(*a*) *Vide* Prec. Ch. 454. 1 Brown. 166. 1 Vern. 23. 1 Rol. 379. 3 Atk. 215, 219. 1 Vez. 264, 521. Ambler 107. 1 P. Wms. 526. 2 Bro. 88. 22 Vin. Ab. 420.

CHAPLAIN.

BROWN *versus* MUGG.

[Mich. 12 W. 3, B. R. 2 Ld. Raym. 791, S. C.]

King's chaplain extraordinary is not capable of a plurality within 21 H. 8, c. 13 & 14. 3 Salk. 389, S. C. Holt 137.

Trespass for taking his tithes in Inkborow. By a special verdict it was found, that the defendant being possessed of the benefice of Stockton, and a chaplain extraordinary to the King, was presented, instituted, and inducted to the Rectory of Inkborow, being above the annual value of 8l. per annum; that the benefice of Stockton did thereby become void, and continued so for two years, when the defendant was presented to it again by the King, as upon a title of lapse, and thereupon instituted and inducted; and that Stockton was above the value of 8l. per annum. *Et per Cur.* 1st, A presentation of the King of his own chaplain does import a dispensation which the King himself, as Supreme Ordinary, has a power to grant, and he shall have the benefit of holding a plurality without any previous dispensation: but if the King's chaplain be presented to a second benefice by a subject, a dispensation is necessary, and must be obtained before his institution to the second living. 2dly, A chaplain extraordinary **[162]** is not a chaplain within the benefit of the statute of the 21 H. 8, c. 13 & 14, but only the chaplains in ordinary. Judgment for the plaintiff, which was affirmed in *Cam. Scacc.* by a majority of one. *Note*, He has no waiting time, but has only an entry of his name in the book of chaplains. A chaplain within the 21 H. 8, ought to be retained under seal. 3 Cro. 424. Godb. 41. If the King have a special title, and present generally, it is void. Hob. 302. *Et per Holt*, After institu-