

DUMPOR'S CASE.

as it had been held in the course of the case of *Stukely v. Butler*,* that, if assigns were mentioned, there could be no restraint by condition against alienation, the result was that no conditions against alienation could be made which would operate beyond the life of the lessee. The former notion was, however, corrected by later decisions. †

In the same spirit of literal and strict construction, the doctrine of the non-apportionment of conditions seems to have been established; if, indeed, it should not rather be said to have been assumed. The authorities on the point seem certainly to justify the latter phrase.

In *Dumpon's Case*, three cases are referred to as conclusive on this doctrine. ‡ The first of these was upon the apportionment of the condition as a severance of the reversion. It seems to have been very fully discussed, as if the point were still new, and is given in several different reports; § that in Leonard being at the greatest length, but that in Dyer the clearest. The case, which was decided 14 Eliz. (1572), was that, after a lease for years of three several manors rendering rent, with a condition, if the rent or any part of it were behind, of re-entry into "all of said manors," the lessor granted the reversion of part of manor A to one person, and of the residue of A and all the other manors to another.

The question was, whether the latter grantee could enter for condition broken. It was held not. "All agreed that, by a grant of the reversion of part of the lands, the condition is confounded in all,

for it is a thing penal and entire and cannot be apportioned. . . . And the lessor may not enter into these lands for condition broken, for then he might destroy his own grant, and therefore he cannot be as to that of his former estate." "All except Mounson thought that the assignee ought to be of the entire reversion, as it was in the lessor himself who made the condition, and not of part of the reversion, for divers inconveniences," &c. And there can be no doubt that, on a strict construction, this was a just conclusion, for the condition in this case was to re-enter into "all the manors," which clearly meant that the reversionary title should remain in one person only, for if this right accrued to each parcel grantee of the reversion, their claims to the whole would at once conflict.

If, however, a sensible instead of this strict and literal construction had been adopted, and the condition taken distributively, there would seem to be no violation of legal principle in apportioning, even in this case, the condition, any more than the covenant it was inserted to enforce; and the true effect of the rule that the lessor should be in of his old estate, would be merely that he should be relieved from all intermediate incumbrance or derivative title or claim created by the lessee, not that he should be construed to claim what he had effectually parted with; in other words that, as the condition was inserted for his benefit, he could waive its operation in part, though he should not be prejudiced by intermediate acts of the lessee.

That a similar construction was given in the second of the cases referred to is not by any means clear. Here it was not the reversion which was severed, but the premises demised. The case, as given in Rolfe's Abridgment,* is certainly broad enough. "Si A leas terre al 3 sur condition que eux ou aucun de eux nalienent sans license del lessor et puis lun alien per license del lessor, ceo discharge tout le condition quant a lalters deux aussi." In Godbolt,† however, the report is, that "the lessor made a license that A., B., or C. might alien:" the question seems to have been whether "the same is a good license, notwithstanding

in *in invitum*, as by act of law: *Windsor v. Berry* (24 Eliz.), *Dyer*, 45 b n.; *Anon.*, *Dyer*, 6 a; *Anon.*, *Dyer*, 45 a; *Moore v. Farrand*, *Leon.* 3; *Anon.*, 3 *Leon.* 67; *Doe v. Carter*, 8 T. R. 57; *Doe v. Bevan*, 3 M. & S. 353; *Smith v. Putnam*, 3 Pick. 221; *Bemis v. Wilder*, 100 Mass. 446; *Jackson v. Sheetz*, 18 Johns. 174, &c.; and, as such legal assignee ought not to be incumbered with the term, his assignment was not prohibited by a like condition: *Moore v. Farrand*, and *Doe v. Bevan*, *supra*; though *Anon.*, *Dyer*, 6 a, seems *contra*.

* Hobart, 168, 170.

† *Dennis v. Loring*, *Hard.* 27; *Weatherall v. Geering*, 14 Ves. 511.

‡ *Winter's Case*, *Dyer*, 308; *Anon.*, *Dyer*, 152; *Lyllys v. Crompton*, 1 Rolfe Abr. 472; s. c. *nom.* *Leeds v. Crompton*, *Godb.* 93.

§ As *Winter's Case*, *Dyer*, 308; s. c. *nom.* *Lee v. Arnold*, 4 *Leon.* 27; s. c. *nom.* *Appowel v. Monnoux*, *Moor.* 97.

* I. 472.

† P. 93.