Title:
Principles of Law and Equity - Grounds and Rudiments of Law and Equity, Alphabetically Digested
(London 1751)

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[...]

2. Actori incumbit onus probandi.

1. HE, who intends to avoid a deed of bargain and sale by reason of non-inrolment within six months, must make good proof thereof. 4 Co. 70, 71.b.

2. When you will recover any thing from me, it is not enough for you to destroy my right, but you must prove yours better than mine; for melior & tutior est conditio possidentis. Hob. 103.

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56. Contracts are to be taken according to the intent of the parties, expressed by their own words.

1. ALL contracts are to be taken according to the intent of the parties expressed by their own words, and if there be any doubt in the sense of the words, such interpretation must be made as is most strong against the grantor or obligor, that he may not by obscure wording of the contract find means to evade and elude it. Gilb. 249.

See rules, Law regards the intention of the parties. Equity is to execute the intent of the parties. In things of election the party is to shew, that he bath made it.

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302. Nemo plus juris ad alium transferre potest, quam ipse habet.

1. A Release or confirmation, made by him who had no right at the time, is void, though a right come to him after; unless made with warranty, and then the warranty shall bar him to all right which may come to him after. Doct. & Stud. lib. I. cap. 8.

2. The guardianship of an infant is not assignable over; being but a bare power or trust. 2 Mod. Ca. 40, 42. Vaugh. 180. 2 Rep. Chan. 237.
3. Error on a judgment in C. B. in ejectment, wherein a special judgment was found to this effect; H. seised in fee, deviseth to his wife for life, and then to be at her disposal to any of her children who shall be then living. H. dies, leaving a son and a daughter and his wife; who then enters and married a second husband, and he and she by lease and release convey the lands to A. and his heirs, to the use of the wife for life, Jans impeachment of waste; remainder to her daughter and the heirs of her body; remainder to the son and his heirs, with a power to revoke and limit new uses. The first question was, Whether the wife had an estate in fee, or only an estate for life, with power to dispose of the inheritance? And the court held this to be only an estate for life, with a power to dispose of the inheritance. Et per Parker, lord chief justice, The difference is, where a power is given with a particular limitation and description of estate, and where generally: as to executors to sell or give; for he that can give or sell an estate in fee, must have an estate in fee. 2. The question was, Whether this power could be construed as a power appendant to the estate for life, so as by the destroying of that, it might be destroyed or extinguished; or a collateral one? And Powell justice said, this was not a power appendant or appurtenant, nor in the nature of an emolument to the estate, like a lease for life, with a power to make a lease for 21 years; for that effects the estate for life and is concurrent with it, and has its being and continuance, at least for some part, out of it; but the power here ariseth out of the estate, and has its effect upon another interest; so that the estate for life is perfect without it, and no ways altered or affected by the execution of it. Et adjournatur, and afterwards at another day, lord chief justice Parker, (afterwards earl of Macclesfield and lord high chancellor) delivered the opinion of the court, that this was only an estate for life, and that the disposing power was a distinct gift; because the estate given is express and certain, and the power comes in by way of addition; and that this differs from the other cafes, which are general and indefinite, viz. a devise to J.S. and that he shall sell, or a devise to J.S. to sell, &c. in these cafes, because the party is impowered to convey a fee, he is construed to have one; he having no express estate divided from the power; but here the power is a separate gift distinguished from the estate, and the estate given is a certain and express estate. Salk. 239, 240.


5. See rules, He who can sell or give an estate in fee must have an estate in fee. Quod per me non possum nec per alium.

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402. **Qui tacet confentire videtur.**

1. REferences, 2 Lev. 152. Gilb. 85.

2. Rules, Wherever there is suppressio veri, &c. Qui potest et debet vetare jubet.

[...]

**Referring Principles:**

- I.3.1 - Limitation of transfer of rights
- IV.2.2 - Silence by offeree
- IV.5.1 - Intentions of the parties
- XII.1 - Distribution of burden of proof