

compell the said Factor his heirs or assignees to convey and settle such lands upon the master and his heirs No man can be reasonably encouraged to trade in that Country, But if the said Conveyances were taken in the names of the said Bateman and of the pet^r joyntly and for a joynt estate, then I conceive clearly that by the death of Bateman the whole estate remains vested in the petitioner and his heirs as the surviving joyntenant. Liber FF

Secondly As to the title of the said Lands upon the Devise made by Bateman to his wife And upon the devise made by the said wife to her Daughter I humbly conceive that if the petitioner was a joynt purchaser named in the Conveyances then it is cleare nothing is wrought by either of the said Devises For the will of John Bateman could not receive a consumation to take effect as a will but by the death of the testator And at the very instant of the death of the said Testator the whole estate which he had in joyntenancy by Operation of Law vests immediately in the pet^r by Survivorshipp And this being the Act of the Law It workes so as to prevent the Devise which is the Act only of the party from takeing any effect Then the Devise of Bateman to his wife being void the Devise of the wife to her Daughter as to that particular must be void also, But if the pet^r was not a joynt purchaser but that the said Conveyances were taken in the name of the said Bateman Only then the said Bateman being a Trustee and seized in trust for the pet^r and his heirs The Devisee Mary must make the estate subject to the same trust 1^o Because a will is a voluntary settlement without valuable consideration And therefore if there were no notice of a trust yet the devisor haueing the estate meerely in trust the Devise shall not barr or extinguish the trust to which it was subject in the hands of the devisor, And the Devisee shall be compelled by a Court of equity to convey the estate to the party for whom the Devisor was entrusted and to his heirs accordingly So also shall the devisee of the devisee 2^o Because in this case Mary the wife who was the Devisee had notice of the trust and therefore if she had not come in by a devise but as a purchaser for a valuable consideration she haveing notice of the trust before she purchased the estate should in her hands haue been subject to the trust And it should haue been adjudged her folly to haue taken an estate which was subject to a trust.

Secondly As to the personall estate of the said pet^r in the hands of the said Bateman at the time of his death I humbly conceive that according to Law and more particularly according to the Lawes of y^r Lōppps said province the same shall not be Assetts in the hands of Batemans executrix so as to be charged with or for the proper debts of the said Bateman Because if they should be so charged or chargeable there can be no security in trade or for merchants trading thither, much lesse shall they be subject to be charged with debts incurr'd by Bateman before he was imployed as a Factor for the