V. A Confirmation of Leases made before the Statute by certain persons, and upon certain Conditions.

VI. The Husband's only Act of the Wife's Land shall not prejudice her or her Heirs. Explained by 34 & 35 H. 8, c. 22 (not in force here). 6 Ed. 1, c. 3. 13 Ed. 1, Stat. 1, c. 3 & 40. Moor. 58, pl. 164. Moor. 872, pl. 1215. 2 Inst. 681. Hob. 243, 261. Dyer, 72, 264, 368. Co. Litt. 326. 2 Roll. 410, 491, 499.

VII. Leases made by the Husband and the Wife of the Inheritance of the Wife. Goldb. 102, pl. 119.

This Statute is not in force as to ecclesiastical persons. I have therefore excluded those parts relating to churches, and the last section, and all clauses relating to church leases. Stat. 34 & 35 H. 8, c. 22, which explains the 6th section, concerns the force of recoveries and deeds enrolled by women covert in certain corporate towns, &c. in England, but is not in force here, Kilty Rep. 76.

At common law a wife was by marriage disabled to make any disposition of her possessions, the power of dealing with them being transferred to the husband. But to prevent his abuse of this power and making leases which might be to her prejudice, the wife was at liberty after her husband's death (for the term was good during his life) to affirm a lease made by him, by acceptance of rent accruing thereafter, or other act, as bringing an action for it, or bringing an action of waste, &c., or to avoid it by entry or by bringing trespass, &c., see Jordan v. Wikes, Cro. Jac. 332. And in case of her death before her husband, this liberty descended to her heir, or other person claiming in privity by her, Jeffrey v. Guy, Yelv. 78; Smallman v. Agborow, Cro. Jac. 417. And so even if she joined in a lease for years by indenture, not *made pursuant to this Stat- **326** ute, she was at liberty to affirm or avoid it, as if she had not been a party thereto; and there are in the books several nice questions of pleading, according as such demises were to be treated as leases of the husband and wife, or of the husband alone; see the Statute cited on a similar point in Howard v. Ramsay, 7 H. & J. 113, where it was held, that a lease by husband and wife of the wife's land is a joint lease during coverture, but becomes the several lease of the wife after the death of the husband, if she survive him. But this doctrine of the wife's power to avoid or affirm such a lease for years did not apply to a lease of her lands *by parol*, for that determined absolutely by the death of the husband, Walsal v. Heath, Cro. Eliz. 656.

In the same way the issue in tail had an election at common law to avoid or affirm leases made by the tenant in tail. The Statute now gives tenant in tail power to bind his *issue* by leases made according to its provisions. But the lease of tenant in tail though according to the Statute is absolutely determined by his death without issue, the Statute not affecting those in remainder or reversion, and no acceptance of rent or the like by the latter can make it good, Co. Litt. 44 a. Upon this principle of the derivative falling with the original estate, it is holden that a lease according to the Statute by tenant in tail with warranty is not a discontinuance, for the warranty determines with the estate also, Vaugh. 383.