gage debt in equity.[26] It is said, however, that where a lessee transfers all his interest to another, reserving a rent to himself, it operates as a lease, and may be good by parol, and is not required to be in writing as an assignment, Preece v. Corrie, 5 Bing. 24, but the lessor could not distrain, though he might sue in debt or assumpsit for the sum reserved; see the note to 4 Geo. 2, c. 28. Surrenders fall under the like rule. In Lammott v. Gist, 2 H. & G. 433, a parol agreement between the landlord and his tenant that the latter should surrender the residue of his term to a purchaser, the landlord agreeing to give up the arrears of rent, was held void. "The release of the rent," said the Court, "and the surrender of the property form one agreement and cannot be separated, and to make the agreement available it ought to have been in writing;" and see Foquet v. Moore, 7 Exch. 870. But in Lamar v. McNamee, 10 G. & J. 116, it was determined that, as when a landlord gives his tenant a parol license to quit and accepts a third person as his tenant, the acceptance of the substituted tenant operates as a surrender in law of the interest of the first tenant (Thomas v. Cook, 2 B. & A. 119), so the same result follows where the landlord in such a case himself takes possession (see Phene v. Popplewell, 12 C. B. N. S., 334), and consequently, where it having been agreed by parol between the landlord and the tenant, that the tenant should surrender the premises and give up certain claims for repairs done by him, in consideration of which the landlord agreed to pay him a certain sum of money, and the tenant surrendered accordingly, it was held that he might maintain an action for the money; see also Gore v. Wright, 8 A. & E. 118. But such agreements for a surrender between the tenant and a third person desirous to take his place, though assented to by the landlord and in part performed, are not enforceable at law as to the residue unperformed, Kelly v. Webster, 12 C. B. 283; Hodgson v. Johnson, E. B. & E. 685. So it is well settled, that a mere cancellation of the deed without writing is no surrender since the Statute (except where it is by operation of law, as if lessee for years accepts a new lease by parol, Com. Dig. Surrender, I (1),) Roe v. Archbp. of York, 6 East, 86; Doe v. Thomas, 9 B. & C. 288; however, it may be evidence of a surrender under particular circumstances, Walker v. Richardson, 2 M. & W. 882, see also Lord Ward v. Lumley, 5 Hurl. & N. 87, 656; and as to surrenders in law generally, Nicholls v. Atherstone, 10 Q. B. 944; Hurtt v. Woodland, 24 Md. 393.[27] But there cannot be a surrender to operate *in futuro*, Doe v. Milward, 3 M. & W. 328. As to a note in writing, see Farmer v. Rogers, 2 Wils. 26.

The words "act or operation of law" apply to inheritances, successions, remitters, estates by the curtesy and in dower. It was held in Morris v. Harris *supra*, that dower might well be assigned by parol. It may be conveniently stated here, that although it was held in Boring's lessee v. Lemmon, 5 H. & J. 223, that a sale by the sheriff under an execution vested the title in the purchaser by operation of law, and that a deed from the sheriff is not necessary, yet the sale is within the Statute of Frauds and

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[26] But see now Code 1911, Art. 66, sec. 25.

[27] Wallis v. Hands, (1893) 2 Ch. 75; Baring v. Abingdon, (1892) 2 Ch. 381.