

Will of Thomas Herbert (1656-1733)

Note: Paragraph breaks have been added to make the will easier to read; underlines _____ indicate words that I could not read; square brackets [] are words where I am uncertain of the transcription.

In the Name of God Amen

I Thomas¹ Earl of Pembroke and Montgomery do make my last Will and Testament in manner following

I give One hundred pounds for the Benefit of the Poor of the City of Salisbury not receiving Alms of any Parish there (desiring to be buried there in a private manner) to be disposed of and distributed in such manner as the Mayor and Aldermen of the said City or the major part of them shall think proper

And I also give One hundred pounds for the Benefit of the Poor of the Town of Wilton in the County of Wilts not receiving Alms of the Parish to be distributed and disposed of as the Mayor and Aldermen of the said Town or the major part of them shall think proper

And I give and bequeath to my dear Wife Mary² Countess of Pembroke the Sum of Two Thousand pounds to be paid to her immediately after my decease

Having heretofore made provisions for all my younger Children I give and bequeath unto my four younger Sons Robert Herbert³, Thomas Herbert⁴, William Herbert⁵ and Nicholas

¹ Thomas Herbert (1656-1733) [[Wikipedia](#)], 8th Earl of Pembroke, 5th Earl of Montgomery, the Testator, son of Catherine née Villiers (1625-1669) and Philip Herbert (1621-1669) [[Wikipedia](#)], 5th Earl of Pembroke; husband of (i) Margaret née Sawyer (1657-1706), (ii) Barbara née Slingsby (1668-1721) and (iii) Mary née Howe (1705-1749).

² Mary Herbert née Howe (1705-1749), wife of the Testator, daughter of Juliana née Alington (1665-1747) and Scrope Howe (1648-1713) [[Wikipedia](#)], 1st Viscount Howe; wife of (ii) John Mordaunt (1709-1767).

³ Robert Sawyer Herbert (1693-1769) [[Wikipedia](#)], son of the Testator and Margaret née Sawyer (1657-1706), husband of Mary née Smith (1688-1757).

⁴ Thomas Herbert (1699-?), son of the Testator and Margaret née Sawyer (1657-1706).

⁵ Major General William Herbert MP (1702-1757) [[Wikipedia](#)], son of the Testator and Margaret née Sawyer (1657-1706), husband of Catherine Elizabeth née Tewes (1719-1770).

Herbert⁶ and unto my Daughters Rebecca⁷ Lady Abergavenny, Barbara North⁸, Margaret Herbert⁹ and Elizabeth Herbert¹⁰ the Sum of One hundred pounds a piece

And I give and bequeath unto the Wife¹¹ of my Son Robert Herbert and to Lord Abergavenny¹² and M^r North¹³ who married two of my Daughters and to Sir William Morris Sir John St Aubin Sir John Molesworth the Sum of One hundred pounds apiece for Mourning

And I give to each of my Servants being in my Service at the time of my decease a years Salary or Wages besides what shall be due to them respectively at my death

And to the End that my House at Wilton may not be found naked to the great Expense of any following Earl of Pembroke I give and bequeath All the Statues Bustos Basso Relievos and Miscellanies (of which there is a Catalogue divided into those four Branches) in or belonging to my said House at Wilton And also All the Pictures in my Houses at Wilton and in Saint James's Square of which there is a Catalogue made my Signior Gamborim and printed And also All the Medalls and Coins collected by me which are specifyed and described in a Book engraven printed and published by Mr Nicholas Haym in five parts And also All the Books in my Library in S^t James's Square which are bound in Turkey or Morocco Leather (not only because they are scarce but of great Use in Literature) to John Sawyer of Haywood in the County of Berks Esquire and George Sawyer¹⁴ of the Parish of Saint James in the Liberty of Westminster in the County of Middlesex Esquire their Executors and Administrators In Trust to preserve them for and to permitt the same to be used by such of my Issue to whom the freehold of the said House at Wilton shall for the time being belong or appertain To the Intent the same may go as heirloomes together with the said House for the Use and Benefit of such Person

⁶ Nicholas Herbert (1706-c1775), son of the Testator and Margaret née Sawyer (1657-1706), husband of Anne née North (1708-1789).

⁷ Rebecca Neville née Herbert (?-1758), daughter of the Testator and Margaret née Sawyer (1657-1706), wife of William Neville (1695-1744) [\[Wikipedia\]](#) 16th Baron Bergavenny.

⁸ Barbara North née Herbert (1711-1755), daughter of the Testator and Barbara née Slingsby (1668-1721), wife of Dudley North (1707-1764).

⁹ Margaret née Herbert (?-1752), daughter of the Testator and Margaret née Sawyer (1657-1706), she never married.

¹⁰ Elizabeth née Herbert (?-?), daughter of the Testator.

¹¹ Ann Herbert née Smith (c1688-1757), daughter in law of the Testator, daughter of Anne née Strickland and John Smith MP (1654-1723) [\[Wikipedia\]](#), wife of Robert Sawyer Herbert (1693-1769).

¹² William Neville (1695-1744) [\[Wikipedia\]](#) 16th Baron Bergavenny, son in law of the Testator, son of Hannah née Thorpe and Edward Nevill (1664-1701), husband of Rebecca Neville née Herbert (?-1758).

¹³ Dudley North (1707-1764), son in law of the Testator, son of Catherine née Yale (1688-1715) and Dudley North (1675-1730), husband of Barbara North née Herbert (1711-1755).

¹⁴ Presumably George Sawyer (c1655-1684), brother in law of the Testator, son of Margaret née Suckeley (1635-1706) and Robert Sawyer (1633-1692), husband of Anne née Winstoneley.

and Persons respectively so far as by the Rules of Law or Equity the same can possibly go and be limited

It not being my Intention to entail the Rest of my Books but that those should go to the Person immediately succeeding me It being of more Use to have a Liberty to exchange or add when better Editions or Books may come out

And Whereas the Estate in Land having been much lessened before it came to me I found it necessary to live upon the Interest only rather than spend the Principal of a large Sum of Money left to me by my Mother and more added by my two Sisters and also upon the Interest of the Portion I had from S^r Robert Sawyer¹⁵ by which Means I was enabled to settle and service a Joynture upon that Marriage for the Lands in that Settlement were entailed by the Crown except some Lands which lye intermixt But the whole was secured by the Money abovementioned And for this reason I have directed a considerable Sum of Money to be laid out in the Purchase of Lands to be entailed as is hereinafter mentioned

Now I do hereby give and bequeath all my ready Money Securities for Money South Sea Annuities and Stocks in the Publick funds (Except such part thereof as upon my Marriage with my present Wife was vested in Trustees for securing a Provision for her Maintenance and such other part thereof as is vested in Trustees for raising Portions for my Daughters and younger Sons) unto Thomas Page¹⁶ Esquire who married the Eldest Sister next to my Wife¹⁷ and Charles Mordaunt¹⁸ Esquire who married my Wife's youngest Sister¹⁹ and the said John Sawyer and George Sawyer their Executors and Administrators (to each of which four Persons I give One hundred pounds) in Trust to call in receive sell and dispose of the same and thereout in the first place to pay my funeral Expenses and all the just Debts I shall owe at my death and then the severall pecuniary Legacies given and bequeathed by this my Will and which by any subsequent Codicill or Writing under my hand I shall give bequeath or dispose of And also upon trust that they the said Thomas Page Charles Mordaunt John Sawyer and George Sawyer and the Survivors and Survivor of them and the Executors and Administrators of such

¹⁵ Presumably Robert Sawyer (1633-1692) [[Wikipedia](#)], father in law of the Testator, son of Anne née Whitmore (1608-1651) and Edmund Sawyer (1579-1676), husband of Margaret née Suckeley (1635-1706).

¹⁶ Thomas Page (c1700-1763), brother in law of the Testator, son of Mary née Trotman (1673-?) and Gregory Page (1669-1720) [[Wikipedia](#)], 1st Baronet Page of Greenwich, husband of Juliana née Howe (1701-1780).

¹⁷ Juliana Page née Howe (1701-1780), sister in law of the Testator, daughter of Juliana née Alington (1665-1747) and Scrope Howe (1648-1713) [[Wikipedia](#)], 1st Viscount Howe, wife of Thomas Page (c1700-1763).

¹⁸ Charles Mordaunt (1708-1762), son of Ann née Martin (1665-?) and Brigadier General Lewis Mordaunt (1665-1713), husband of Anne née Howe (1704-1753), sister in law of the Testator.

¹⁹ Anne Mordaunt née Howe (1704-1753), sister in law of the Testator, daughter of Juliana née Alington (1665-1747) and Scrope Howe (1648-1713) [[Wikipedia](#)], 1st Viscount Howe, wife of Charles Mordaunt (1708-1762).

Survivor shall and do lay out apply and dispose of the Residue of the Money Stocks and Effects hereby given and bequeathed to them which shall remain after payment of my funeral Expenses Debts and Legacies (in Case such Residue shall not amount to more than the sum of One Hundred Thousand pounds) in one or more Purchase or Purchases of Lands Tenements and Hereditaments in that part of Great Britain called England in fee Simple in Possession But in case such residue or Surplus shall amount to more than the Sum of One Hundred Thousand pounds Then upon Trust that the said Trustees their Executors or Administrators shall and do lay out the said full sum of One Hundred Thousand pounds in such Purchase or Purchases as aforesaid And immediately after such Purchase and Purchases shall respectively be made shall and do settle convey and assure the Lands Tenements and Hereditaments so to be purchased to and for the several Uses Intents and Purposes and subject to the Provisoes hereinafter mentioned expressed and declared concerning the same that is to say

To the Use Intent and Purpose that my said Dear Wife Mary Countess of Pembroke shall and may from and after my decease have receive and enjoy for and during her natural Life out of the Lands Tenements and Hereditaments so to be purchased One Annuity or yearly Rent Charge of ffifteen Hundred pounds of lawfull Money of Great Britain free from all Deductions whatsoever for or in respect of of any Taxes or Impositions taxed or to be assessed upon the Lands and Hereditaments to be charged with the said Annuity by any present or subsequent Act of Parliament and all other Reprizes or Deductions whatsoever and to be payable and paid at or on the feasts of the Annunciation of the blessed Virgin Mary and Saint Michael the Archangel in every year by equal Portions The first payment thereof to begin and be made at or on such of the said feasts as shall first and next happen after my decease

And also To the End and Intent that the said Mary Countess of Pembroke and her Assigns may have and enjoy such Powers of Entry and Distress upon and perception of the Rents and Profitts of the Lands and Hereditaments to be charged with the said Annuity or Rent Charge in Case of Nonpayment thereof at any of the said feasts as are usual in Cases of Rent Charges

And which said Annuity or yearly Rent Charge I will and declare shall be paid to my said Wife in Augmentation of and over and above the Provision made for her in and by the Settlement made upon and in Consideration of our Marriage

And Subject to the said Rent Charge and the said Remedies and Powers for better securing and receiving the same To the Use of my Eldest Son Henry²⁰ comonly called Lord Herbert for his Life without Impeachment of [Wast]

And from and after the Determination of that Estate To the Use of two persons in the said intended Settlement to be named and their Heires during the Life of the said Henry Lord Herbert In Trust to support and preserve the Contingent Uses and Estates

²⁰ Henry Herbert (1693-1750) [\[Wikipedia\]](#), 9th Earl of Pembroke, 6th Earl of Montgomery, son of the Testator and Margaret née Sawyer (1657-1706), husband of Mary née FitzWilliam (1707-1769).

hereinafter directed to be limited thereof from being defeated and destroyed And for that purpose to make Entries and bring Actions as Occasion shall require Yet nevertheless to permit and suffer the Rents Issues and Profitts of the same Lands and Hereditaments to be received by the said Henry Lord Herbert and his assigns during his Life And immediately from and after the decease of the said Henry Lord Herbert To the use of the first Son of the said Henry Lord Herbert lawfully to be begotten and the Heirs Male of the Body of such Issue To the Use of the second third fourth fifth and all and every other Son and Sons of the said Henry Lord Herbert lawfully to be begotten severally successively and in Remainder one after another in Order and Course as they respectively shall be in Priority in Birth and the several and respective Heirs Male of the Body and Bodies of all and every such Son and Sons issueing Every Elder of such Sons and the Heirs Male of his Body being always preferred and to take before a younger of them and the Heirs Male of his Body

And in default of such Issue To the Use of my said Son Robert and his Assigns for his Life without Impeachment of Wast with the with the like Provision for preserving the Contingent Remainders and from and after his decease To the use of his first second third fourth fifth and all and every other his Son and Sons lawfully begotten severally successively and in Remainder One after another as they respectively shall be in Priority of Birth and the Severall and respective Heirs Male of the Body and Bodies of all and every such Son and Sons lawfully issueing Every Elder of Such Sons and the Heirs Male of his Body being always preferred and to take before a younger of them and the Heirs Male of his Body

And in default of such issue To the Use of my said Son Thomas Herbert and his assigns for his Life without Impeachment of Wast with the like Provision to preserve the contingent Remainder And from and after his decease To the Use of his first second third fourth fifth and every other his Son and Sons lawfully begotten severally successively and in Remainder one after another as they respectively shall be in Priority of Birth and the severall and respective Heirs Male of the Body and Bodies of all and every such Son and Sons lawfully issuing Every Elder of such Sons and the Heirs Male of his Body being always preferred and to take before a younger of them and the Heirs Male if his Body

And in default of such Issue To the Use of my said Son William Herbert for his Life without Impeachment of Wast with the like Provision for supporting and preserving the Contingent Remainders And from and after his death to the Use of his first second third fourth fifth and all and every other his Son and Sons lawfully begotten severally successively and in Remainder One after another as they respectively shall be in Priority of Birth and the several and respective Heirs Male of the Body and Bodies of all and every Such Son and Sons lawfully issueing Every Elder of Such Sons and the heirs Male of his Body being always preferred and to take before a younger of them and the Heirs Male of his Body

And in default of such Issue To the Use of my Said Son Nicholas Herbert for his Life without Impeachment of Wast with the like Provision for supporting and preserving the Contingent Remainders And from and after his decease To the Use of his first second third fourth fifth and all and every other Son and Sons lawfully begotten several successively and in Remainder One after another as they respectively shall be in Priority of Birth and of the several and respective Heirs Male of the Body and Bodies of all and every such Son and Sons lawfully issuing Every Elder of such Sons and the Heirs Male of his Body being always preferred and to take before a younger of them and the Heirs Male of his Body

And in default of such Issue To the Use of my own right Heirs In which said Settlement or Settlements so to be made as aforesaid there shall be contained a Power for the said Henry Lord Herbert Robert Herbert Thomas Herbert William Herbert and Nicholas Herbert when and as they respectively shall be in the Actual Possession of the Lands and Hereditaments so to be purchased by virtue of the Limitations hereby directed to be made thereof by Indenture or Indentures under their respective Hands and seals to demise lease and grant the same Lands and Hereditaments or any part or parts thereof unto any Person or Persons for any Term or a number of years not exceeding Twenty one years to take Effect in Possession and not in Reversion remainder or Expectancy Subject nevertheless and without Prejudice unto the said Annuity or Yearly Rent Charge of ffifteen hundred pounds per Annum herein before given and directed to be made payable to my said Dear Wife So as there be reserved upon every such Lease the best and most improved yearly Rent and Rents that at the time of making thereof they respectively can get for the same without taking any fine Premium or fforegift²¹ So as there be contained in all such Leases Conditions of Reentry for Non Payment of the Rents thereby respectively to be reserved And so as the Lessees execute Counterparts of all such Leases And so as no Clause contained in any of such Leases giving power to any Lessee to commit Wast or exempting him or them from punishment for committing the same And also a Power or Powers for them the said Henry Lord Herbert Robert Herbert Thomas Herbert and Nicholas Herbert when and as they respectively shall be in the actual Possession of the Lands and Hereditaments so to be purchased by virtue of the Limitations hereby directed to be made thereof to grant limit and appoint any of the Lands Tenements and Hereditaments in such intended Settlement to be Comprized whereof the Rents shall not together exceed the yearly Sum of ffifteen hundred pounds above all Reprizes and Outgoings Except Parliamentary Taxes unto upon or to the Use of any Woman or Women that they respectively shall marry either before or after Marriage for the Life or Lives of such Woman or Women and for and in Lieu of her and their Joynture and Joyntures Subject nevertheless and without Prejudice unto the said Annuity or Yearly Reny Charge of ffifteen hundred pounds per Annum herein before given and directed to be made payable by my said dear Wife

²¹ Foregift: A payment in advance; an advance payment or premium paid by a lessee on taking or renewing a lease, distinct from the rent. [[Wiktionary](#)]

And my Will is And I do hereby direct that the said Thomas Page Charles Mordaunt John Swyer and George Sawyer and the Survivors and Survivor of them and the Executors and Administrators of Such Survivor Shall and do in the mean time and untill such Purchase and Purchases can be made of Lands and Hereditaments for the purposes aforesaid stand and be possessed of and interested in the Money Stock and Effects hereby directed to be applied and laid out for that purpose In Trust to continue the same upon the present ffunds or Securities whereon or whereby the same shall at the time of my death be placed out or secured or to call in the same and place the same out again at Interest on Government or other good Security or Securities and so from time to time to call in the Principall Money so to be placed out shall be always subject to such Trusts Applications Intents and Purposes as are herein before declared provided and directed of and concerning the said Residue of the Effects hereby given and bequeathed to my said Trustees to be laid out in purchasing Lands as aforesaid

And the Interest Dividends and Produce accrewing and arising from the same Securities shall from time to time be paid to such person and persons as would be entitled to the rents and Profitts of the Lands and Hereditaments so to be purchased in Case the same were actually purchased and settled pursuant to this my Will, particularly and in the first place the said Annuity of ffifteen hundred pounds per Annum shall by the said Thomas Page Charles Mordaunt John Sawyer and George Sawyer or the Survivor of them and and the Executors or Administrators of Such Survivor be paid out of the said Interest Dividends and Produce by half yearly payments clear of all Taxes and Deductions as aforesaid to my said Dear Wife Mary Countess of Pembroke

And in Case the Residue of the Money Stock and Effects hereby given and bequeathed to the said Thomas Page Charles Mordaunt John Sawyer and George Sawyer upon the Trusts aforementioned that shall remain after payment of my ffuneral Expenses Debts and Pecuniary Legacies shall exceed the Sum of One hundred Thousand pounds Then my Will is And I do hereby direct that the said Thomas Page Charles Mordaunt John Sawyer and George Sawyer their Executors Administrators and Assigns shall stand possessed of and interested in such Surplus over and above the Sum of One Hundred Thousand pounds In Trust for my said Son Henry Lord Herbert to and for his own Use and Benefit And I hereby give and bequeath such Surplus to him accordingly

And Whereas in Prospect of and previous to my Marriage with my present Wife Mary Countess of Pembroke I transferred the Sum of Thirty five Thousand pounds in South Sea Annuities unto the Right Honourable Scroope Viscount Howe²² of the Kingdom of Ireland and the said George Sawyer which by Indenture Quadripartite dated on or about the Twelfth day of June Anno Domini One Thousand seven hundred and Twenty five and made between my self of the first part the Right Honourable Juliana Viscountess

²² Scroope Howe (1648-1713) [[Wikipedia](#)], 1st Viscount Howe, son of Annabella née Scroope (1629-1704) and John Grobham 'Jack' Howe (1625-1704) [[Wikipedia](#)], husband of (i) Anne née Manners (1655-1698) and (ii) Juliana née Alington (1665-1747).

Dowager Howe²³ and my said Wife by the Name of the Honourable Mary Howe of the second part the said Scroope Viscount Howe and George Sawyer of the third part and Sir Francis Molyneux Baronet and the said Thomas Page of the fourth part was agreed and declared to be vested in the said Scroope Viscount Howe and George Sawyer In Trust after my decease out of the Dividends of the said South Sea Annuities to pay to my said Dear Wife the Annuity or yearly Sum of One Thousand pounds Sterling free from Taxes during her Life for or in Lieu of her Jointure and in Barr of her Dower And subject thereto In Trust for my Executors Administrators and Assigns Which said Indenture and Settlement I do hereby ratifye and confirm

And Whereas on or about the Thirtieth day of June Anno Domini One Thousand seven hundred and Twenty five I transferred the Sum of fforty Thousand pounds in South Sea Annuities unto the said John Sawyer and George Sawyer which by Indenture Tripartite dated on or about the same Thirtieth day of June and made between my self of the first part my said Sons Thomas Herbert William Herbert and Nichols Herbert and my said Daughters Lady Margaret Herbert Lady Elizabeth Herbert Rebecca Lady Abergavenny and Lady Barbara North of the second part and the said John Sawyer and George Sawyer of the third part was agreed and declared to be vested in the the said John Sawyer and George Sawyer In Trust for raising Six Thousand pounds apiece for my said four Daughter Margaret Elizabeth Rebecca and Barbara and ffive Thousand pounds apiece for my said three Sons Thomas Herbert William Herbert and Nicholas Herbert to be paid at Such times and in such manner as in the said Indenture Tripartite is mentioned And subject thereto In Trust for me my Executors Administrators or Assigns Which said Indenture Tripartite I do hereby ratify and confirm In which said last mentioned Indenture are contained several Clauses or Provisoos declaring that in Case any of my said Sons or Daughters thereby provided for should dye before their respective Portons should become payable Then the Portons thereby secured for such of them so dying or so much thereof respectively as should not by them respectively be bequeathed assigned disposed of pursuant to a Power or Provision in the same Indenture for that purpose should be In Trust for or result to me or the next Earl of Pembroke for the time being being Issue of me the said Thomas Earl of Pembroke

And Whereas upon the Marriages of my said Daughters Rebecca Lady Abergavenny and Lady Barbara North I advanced and paid two several Sums of Six Thousand pounds each for their respective Portons in Satisfaction of the several Sums to which they might be Entitled under the said Indenture Tripartite Now I do hereby give bequeath and appoint so much and such part of the said several Sums of Thirty five Thousand pounds and fforty Thousand pounds South Sea Annuity Stock as by virtue and in pursuance and according to the Tenour and Purport of the said several Indentures Quadripartite and Tripartite respectively have resulted or shall or ought to result to me and be subject to and fall under my Disposition unto my said Son Henry Lord Herbert

²³ Juliana Howe née Alington (1665-1747), daughter of Juliana née Noel (1645-1667) and William Alington (1639-1685), wife of Scrope Howe (1648-1713), 1st Viscount Howe.

And as I have out of my great Love to my said Son and a Regard to his Interest forborn to cut great Quantities of Timber and Wood in the Woods called the Earldoms though fit to be felled and cut down and which are worth and might have raised a great many Thousand pounds I do hereby will and direct that my said Son Henry Lord Herbert shall lay out apply and dispose of the Sum of Twenty Thousand pounds part of the Money and Effects hereby last given and bequeathed to him in the purchase of Lands Tenements and Hereditaments in that part of Great Brittain called England in ffee Simple in Possession And immediately after such Purchase and Purchases settle convey and assure the same To for upon and subject to such and the same Uses Trusts Estates Power Provisoes and Limitations as are hereinbefore appointed to be limited treated and declared of and concerning the Lands Tenements and Hereditaments hereby first directed to be purchased out of the Money Stock and Effects hereinbefore given and bequeathed to the said Thomas Page Charles Mordaunt John Sawyer and George Sawyer or such and so many of the said Uses Trusts Powers and Limitations as shall be then existing undetermined or capable of taking Effect (Except the said Use for raising and paying an Annuity or yearly Rent Charge of ffifteen hundred pounds to my Wife)

And I give and devise all my Lands Tenements and Hereditaments situate lying and being in the County of Wilts whereof I have suffered One or more Comon Recovery²⁴ or Comon Recoveries and whereof I or any Person or Persons In Trust for me am or are seized in ffee Simple and which are not entailed by the Crown and all other Lands Tenements and Hereditaments whatsoever in the County of Wilts with their and every of their Rights Members and Appurtenances (Except my House in Saint James's Square with the Appurtenances) unto my said Son Henry Lord Herbert for his Life without Impeachment of Wast

And I give and devise my said House in Saint James's Square in the County of Middlesex with the Outhouses Offices Gardens Yards and Appurtenances thereunto belonging unto my Dear Wife Mary Countess of Pembroke for and during her natural Life And immediately after her decease Unto my said Son Henry Lord Herbert for his Life

And I give and devise All the Premises in the Counties of Wilts and Middlesex and elsewhere hereinbefore devised to the said Lord Herbert for his Life as aforesaid with their and every of their Appurtenances immediately after the Determination of the said Estate for Life of the said Lord Herbert therein unto the said Thomas Page and George Sawyer and their Heirs during the Life of the said Henry Lord Herbert In Trust by the Ways and Means aforementioned to support and preserve the contingent Estates and Remainders herein after limited or devised yet nevertheless to permit the Rents and Profits thereof to be received by the said Lord Herbert and his Assigns during his Life And immediately from and after the Decease of the said Lord Herbert Unto his first Son lawfully begotten and the Heirs Male of the Body of such first Son Lawfully issuing And in default of such Issue Unto the second third fourth fifth and all and every other Son

²⁴ Common Recovery [[Wikipedia](#)]

and Sons of the said Henry Lord Herbert lawfully to be begotten severally successively and in Remainder one after another in Order and Course as they respectively shall be in Priority of Birth and the several and respective heirs Male of the Body and Bodies of all and every such Son and Sons issueing Every Elder of such Sons and the Heirs Male of his Body

And in default of such Issue Unto my said Son Robert Herbert and his Assigns during his Life without Impeachment of Wast And immediately after the Determination of that Estate Unto the said Thomas Page and George Sawyer and their Heirs during the Life of the said Robert Herbert In Trust by the Ways and Means afore mentioned to preserve the contingent Estates and Remainders hereinafter Limited or Devised Yet nevertheless to permit the Rents and Profits of the same Premises to be received by the said Robert Herbert and his Assigns during his Life And immediately after the decease of the said Robert Herbert Unto his first second third fourth fifth and all and every his Son and Sons lawfully begotten severally successively and in Remainder One after another in Order and Course as they respectively shall be in Priority of Birth and the several and respective Heirs Male of the Body and Bodies of all and every Such Son and Sons lawfully issueing Every Elder of such Sons and the heirs Male of his Body being always preferred and to take before a younger of them and the Heirs Male of his Body

And in default of such Issue Unto my said Son Thomas Herbert and his Assigns for his Life without Impeachment of Wast And immediately after the Determination of that Estate Unto the said Thomas Page and George Sawyer and their heirs during the Life of the said Thomas Herbert In Trust by the Ways and Means aforementioned to support and preserve the contingent Estates and remainders hereinafter limited or devised Yet nevertheless to permit and suffer the Rents Issues and Profitts of the same Premised to be received by the said Thomas Herbert and his Assigns during his Life And immediately after the decease of the said Thomas Herbert Unto his first second third fourth fifth and all and every his Son and Sons lawfully begotten severally successively and in Remainder One after another in Order and Course as they respectively shall be in Priority of Birth and the several and respective Heirs Male of the Body and Bodies of all and every such Son and Sons lawfully issueing Every Elder of such Sons and the Heirs Male of his Body being always preferred and to take before a younger of them and the heirs Male of his Body

and in default of Such Issue then to my said Son William Herbert and his Assigns for his Life without Impeachment of Wast And immediately after the Determination of that Estate unto the said Thomas Page and George Sawyer and their Heirs during the Life of the said William Herbert In Trust by the Ways and means aforementioned to support and preserve the contingent Estates and Remainders herein after limited or devised Yet nevertheless to permit the Rents and Profitts of the same Premises to be received by the said William Herbert and his Assigns during his Life And immediately after the Death of the said William Herbert Unto his first second third fourth fifth and all and every other his Son and Sons lawfully begotten severally successively and in Remainder One after

another in Order and Course as they respectively shall be in Priority of Birth and the several and respective Heirs Male of the Body and Bodies of all and every such Son and Sons lawfully issueing Every Elder of such Sons and the heirs Male of his Body being always preferred and to take before a younger of them and the Heirs Male of his Body

And in default of such Issue unto my Son Nicholas Herbert and his Assignes during his Life without Impeachment of Wast And immediately after the Determination of that Estate Unto the said Thomas Page and George Sawyer and their Heirs during the Life of the said Nicholas Herbert In Trust by the Ways and Means aforementioned to support and preserve the contingent Estates and remainders hereinafter limited or devised Yet nevertheless to permitt the Rents and profits of the same premises to be received by the said Nicholas Herbert and his Assignes during his Life And immediately after the decease if the said Nicholas Herbert Unto his first second third fourth fifth and all and every other his Son and Sons lawfully begotten severally successively and in Remainder One after an other in Order and Course as they respectively shall be in Priority of Birth and the several and respective heirs Male of the Body and Bodies of all and every such Son and Sons lawfully issueing Every Elder of such Sons and the Heirs Male of his Body being always preferred and to take before a younger of them and the Heirs Male of his Body And in default of such Issue Unto my own Right Heirs for ever

Provided always and my Will and Mind is That it shall and may be lawfull to and for the said Henry Lord Herbert Robert Herbert Thomas Herbert William Herbert and Nicholas Herbert when and as they respectively shall be in actual possession of the premises hereby last devised to them as aforesaid by Indenture or Indentures under their respective Hands and Seals to demise lease and grant the same premisses or any part or parts thereof unto any Person or Persons for any Term or Number of Years not exceeding Twenty one years to take Effect in possession and not in Reversion Remainder or Expectancy So as there be reserved upon every such Lease to continue payable half yearly during the Terms in such Leases to be granted the best and most improved yearly Rent they respectively can get for the same without taking any ffine Premium or fforegift And so as there be contained in all such Leases Conditions of Reentry for Non Payment of the Rents thereby respectively to be reserved And so as the respective Lessees execute Counterparts of all such Leases and no Clause be contained in any of such Leases giving Power to any Lessee to committ Wast or Exempting him her or them from Punishment for committing the same

Provided also that It shall and may be lawfull to and for the said Henry Lord Herbert Robert Herbert Thomas Herbert William Herbert and Nicholas Herbert when and as they respectively shall be in actual possession of the same premises hereby last devised as aforesaid to grant limit and appoint any of the Lands Tenements and Hereditaments herein last before devised and whereof they respectively shall be in the actual possession by virtue of this my Will and whereof the Rents shall not exceed in the whole the yearly Sum of ffifteen hundred pounds above all Reprizes and Outgoings Except Parliamentary Taxes Unto upon or to the use of any Woman or Women that they

respectively shall marry either before or after Marriage for the Life or Lives of Such Woman or Women and for or in Lieu of her and their Jointure or Jointures Provided nevertheless And it is my Will and Intention that it shall not be in the power of any of my said Sons to limit or appoint any Jointure or Provision of Livelyhood to any Woman whom any of them shall respectively marry either out of the Lands hereby actually devised or out of any Lands and Hereditaments hereby directed to be purchased and settled as aforesaid or out of the Lands to be purchased with the said Twenty Thousand pounds herein before directed to be laid out by my said Son Henry Lord Herbert as aforesaid or out of the ffund or Effects hereby given or appointed to be laid out in such Purchase or out of all or any of them jointly or seperately which shall exceed in the whole the Annual Rent or yearly Sum of ffifteen hundred pounds above all Reprizes and Outgoings Except Parliamentary Taxes Any Thing in this my Will contained to the contrary notwithstanding

And I give and bequeath the Use but not the property or disposing power of all my Plate in my Houses at Wilton and in Saint James's Square and all of my Household Goods Pictures and ffurniture in and belonging to my House in St James's Square (of which Plate and Pictures I desire a Scedule or Catalogue may be made and signed by my Wife and lodged in the Hands of my Executors hereinafter named) Unto my said Dear Wife Mary Countess of Pembroke during her Life And after her decease I give and bequeath the same Plate ffurniture and Household Goods (reasonable Wear and unavoidable Accidents during the Life of my said Dear Wife being excepted) unto such of my Sons or their Issue to whom the ffreehold of the said Houses shall then belong or appertain to and for his and their own Use and Benefit

And I hereby give all the Residue of my Books not before disposed of to my Said Son Henry Lord Herbert But nevertheless I direct that all the Books in my House in Saint James's Square as well those which I have given to go as Heirlooms as the others may continue in the Library there during my Wife's Life And that not only my said Dear Wife but also all and every other Person or Persons to whom the Use of such Books shall for the time being belong may have free Recourse to the said Library and the use of the Books there during her life when and as She shall think ffit

And I also direct that all the Pictures which are in my House in Saint James's Square shall remain there during my Wife's Life

And I give and bequeath all other my Goods Chattells and Personal Estate not herein before otherwise given bequeathed and disposed of Unto my said Son Henry Lord Herbert to and for his own Use and Benefit

And I make constitute and appoint the said Thomas Page and George Sawyer Executors of this my last Will and testament In Trust for the due performance thereof

And as to Charity I do not recomend any to be continued from me not doubting but those who succeed me will be inclined to Charity and the best judge how to dispose of ir

And my Will and Desire is that the said Trustees and Executors herein named for the purposes afore mentioned shall not nor shall any of them be answerable or accountable for any Sum or Sums of Money to be received by virtue of the Trusts hereby in them reposed any otherwise that each Person for such Sum or Sums of Money as he shall respectively actually receive And that no One of them shall be answerable or accountable for any Loss that shall happen without his willful Neglect or Default nor for the Acts Receipts Neglects or Defaults of the other of them And also that they the said Trustees and Executors their respective Executors and Administrators shall and may out of the Estate and Effects hereby vested in them retain to and reimburse themselves for all Costs Charges Damages and Expenses that they respectively shall or may sustain or be put into in and about the Execution of the Trusts hereby in them respectively reposed

And I hereby also revoke all former Wills by me made In Witness whereof I have to this my Will contained in four Skins of Parchment set my hand to the three first of the said Skins and my Hand and Seal to the fourth and last Skin thereof this Twenty second day of December in the Sixth year of the Reign of Our Sovereign Lord George the Second by the Grace of God of Great Britain France and Ireland King Defender of the Faith &c Anni__ Domini 1732 ./ *Pembroke* ./ Signed Sealed Published and Declared by the said Testator Thomas Earl of Pembroke as and for his last Will and Testament in the presence of us who in his presence and at his request have subscribed our Names as Witnesses to the same ./ *Rob^t Sherard. Mordecai Hilton. W^m Geary* ./ Exc

Proved at London 5 February 1733 - in Latin and not transcribed

Transcribed from images in the file downloaded from The National Archives [here](#).