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GRATIS

THE FIRST PART OF THE INSTITUTES OF THE Laws of England: OR, A COMMENTARY UPON LITTLETON,

Not the Name of the Author only, but of the LAW it ſelf.

Quid te vana juvant miſeræ ludibria chartæ?
Hoc lege, quod poſſis dicere jure meum eſt. Mart.

Major hæreditas venit unicuique noſtrum à jure & legibus, quàm à parentibus. Cicero.

Hæc ego grandævus poſui tibi, candide Lector,
Authore EDWARDO COKE, *Milite.*

Alſo three learned Tracts of the ſame Author: The firſt, his **Reading** upon the 27th of *EDWARD* the Firſt, Entitled, **The Statute of Levying Fines**: The ſecond, Of **Bail and Mainprize**: And the third, his **Compleat Copyholder.** To the whole is added, the Treatiſe of the **Old Tenures of the Laws of** ENGLAND.

The **Twelfth Edition,** (carefully corrected from the Errors of the former Impreſſions) With two new TABLES; and many References to the Modern Law Caſes, never printed before.

In the SAVOY:

Printed by E. and R. Nutt, and R. Gosling, (Aſſigns of *Edward Sayer*, Eſq;) for **R. Gosling**, at the *Crown and Mitre*, and **H Lintot**, at the *Croſs Keys*, in *Fleet-ſtreet*. MDCCXXXVIII.

THE PREFACE TO THIS EDITION.

OUR Authors are ſo well known, that the Reader need only be informed of what has been attempted in this Edition, of which he may take the following Account.

1. *The Text of the Authors has been preſerved without the leaſt Variation, and though the Publiſher found himſelf engaged to remark a Miſtake or Two in my Lord* Coke's *Preface, yet he would not preſume to incorporate his Obſervations, however juſt, with the leaſt material Part of this Work; but hath placed them (as he ought) at the Bottom of the Page.*

2. *The Text has been carefully corrected from an infinite Number of Errors, and the Bookſeller having procured the Original* Rohan *Edition of* Littleton's Tenures, *(which my Lord* Coke *ſo juſtly prized) the Publiſher hath on all Occaſions conſulted it, and by Means thereof hath corrected many material Errors, and reſtored the genuine Reading in the* 569*th Section from an Error that has manifeſtly corrupted the Senſe, and has nevertheleſs been*

continued

The Re-eſtabliſhment of his Poſterity, by the Matches of his three Sons, with Virtue and good Blood.

Matches for theſe three Sons, in virtuous and ancient Families, that is to ſay, for his Son Sir *William*, *Ellen* Daughter and Coheir of *Thomas Welſh* Eſquire, who by her had Iſſue *Johan* his only Child, married to Sir *John Aſton* of *Tixal* Knight: And for the ſecond Wife of Sir *William*, *Mary* the Daughter of *William Whittington* Eſquire, whoſe Poſterity in *Worceſterſhire* flouriſh to this Day. For *Richard Littleton* his ſecond Son, to whom he gave good Poſſeſſions of Inheritance, *Alice* Daughter and Heir of *William Winsbury* of *Pilleton Hall* in the County of *Stafford* Eſquire, whoſe Poſterity proſper in *Staffordſhire* to this Day. And for *Thomas* his third Son, to whom he gave good Poſſeſſions of Inheritance, *Anne* Daughter and Heir of *John Botreaux* Eſquire, whoſe Poſterity in *Shropſhire* continue proſperouſly to this Day. Thus advanced he his Poſterity, and his Poſterity by Imitation of his Virtues have honoured him.

He gave Poſſeſſions of Inheritance to his younger Sons for their better Advancement.

His Laſt Will.

He made his Laſt Will and Teſtament the 22d Day of *Auguſt*, in the twenty-firſt Year of the Reign of King *Edward* the Fourth, whereof he made his three Sons, a Parſon, a Vicar, and a Servant of his, Executors; and conſtituted Superviſor thereof, his true and faithful Friend, *John Alcock*, Doctor of Law, of the famous Univerſity of *Cambridge*, then Biſhop of *Worceſter*, a Man of ſingular Piety, Devotion, Chaſtity, Temperance, and Holineſs of Life, who amongſt other of his pious and charitable Works, founded *Jeſus* College in *Cambridge*; a fit and a faſt Friend to our honourable and virtuous Judge.

His Executors, his Superviſor.

His Age. His Departure.

He left this Life in his great and good Age, on the 23d Day of the Month of *Auguſt*, in the ſaid twenty-firſt Year of the Reign of King *Edward* the Fourth: For it is obſerved for a ſpecial Bleſſing of Almighty God, that few or none of that Profeſſion die *Inteſtatus & improles*, without Will, and without Child; which Laſt Will was proved the 8th of *November* following, in the Prerogative Court of *Canterbury*, for that he had *Bona notabilia* in divers Dioceſes. But yet our Author liveth ſtill *in ore omnium Juriſprudentium*.

1 *H.* 7. *fol.* 27. 21 H. 7. *fol.* 32. *b.*

Littleton is named in 1 *H.* 7. and 21 *H.* 7. Some do hold, that it is no Error either in the Reporter or Printer; but that it was *Richard* the Son of our Author, who in thoſe Days profeſſed the Law, and had read upon the Statute of *W.* 2. *quia multi per malitiam*, and * unto whom his Father dedicated his Book: And this *Richard* died at *Pilleton-Hall* in *Staffordſhire* in 9 *H.* 8.

W. 2. *cap.* 11. *See *Littleton*, *Sect.* 749.

His Sepulchre.

The Body of our Author is honourably interred in the Cathedral Church of *Worceſter*, under a fair Tomb of Marble, with his Statue or Portraiture upon it, together with his own Match, and the Matches of ſome of his Anceſtors, and with a Memorial of his principal Titles, and out of the Mouth of his Statue proceedeth this Prayer, *Fili Dei miſerere mei*, which he himſelf cauſed to be made and finiſhed in his Life-time, and remaineth to this Day. His Wife *Johan*, Lady *Littleton*, ſurvived him, and left a great Inheritance of her Father, and *Ellen* her Mother, Daughter and Heir of *John Grendon* Eſquire, and other her Anceſtors, to Sir *William Littleton* her Son.

Moy ſemble ſi fine ſoit levy devant aſcun per force de *Dedimus poteſtatem*, que n'eſt Judge, Abbe, Chivaler, ne Serjeant, que ceo eſt error, & poet eſtre reverſe en Banke le Roy per Brief *de error:* Mes dicitur in *Vet. N. B.* que Serjeant jure al Roy poet prender Conuſans per *Dedimus poteſtatem*, & uncore il n'eſt noſme en l'eſtatute.

Si un Chivaler ſoit create, & fait un Counte, uncore il poet prender Conuſans per *Dedimus poteſtatem:* Mes ſi un Abbe ſoit create un Eveſque, il ne poet prender Conuſans.

Si fine ſoit levy a un des Juſtices del Common Banke, ou a un Serjeant del Ley, ou a un Chivaler, & meſme le Juſtice, Serjeant, ou Chivaler, priſt le Conuſans del fine, ceo eſt tout ouſterment voide, *quia Judex in propria cauſa.* 8 H. 6. per *Martyn.*

Sans Dedimus Poteſtatem.

Si un Serjeant ad Patent le Roigne deſtre le Chief Juſtice del Common Bank, il poet prender Recogniſance, devant que il ſoit jure, ſans *Dedimus poteſtatem.*

Nota que eſt purviewe per l'eſtatute de 18 *E.* 1. que eſt appel l'eſtatute *de Finibus*, que fine covient eſtre levy al meins devant quater Juſtices del Bench, ou en Oyer: Mes ore eſt purviewe per l'eſtatute de 4 *H.* 7. que fines levy devant les Juſtices del Common Bank ſerra bone. Iſſint que ſi ſont deux Juſtices, le fine levy devant eux eſt bone: Mes ſi touts ſont mort forſque un, fine levy devant luy (come moy ſemble) n'eſt pas bone, ne available, mes erroneous.

Le Chief Juſtice del Common Bank poet prender Conuſans en pais ſans aſcun Brief de *Dedimus poteſtatem*, & iſſint ne poet le Chief Juſtice de Angleterre, ne aſcun auter Juſtice noſtre Seignioreſſe le Roigne, & ceo ſemble deſtre per Cuſtome & Uſage: Car jeo ne trove aſcun tiel eſpecial authoritie done al Chief Juſtice del Common Bank, per aſcun eſtatute.

Eſt aſcavoir, que le direct Order & Courſe de levier un Fine eſt, primerment de ſuer *Brief de Covenant*, ou auter Original Brief; & donques le *Dedimus poteſtatem*, & donques a faire le Conuſans; car le *Dedimus poteſtatem* recite le *Brief de Covenant* deſtre pendant, & uncore eſt communement uſe, a prender le Conuſans primerment, & donques a purchaſer le *Brief de Covenant* ove antedate.

Si le *Dedimus poteſtatem* ſoit de pluis eigne date, que eſt le original *Brief de Covenant*, ceo eſt Error.

Nota. *Conuſans void per mort le Roy.*

Si Juſtic. priſt un Conuſans, & puis le Roy moruſt devant aſcun *Brief de Covenant*, ou *Dedimus poteſtatem* ſur le conuſans, eſt tout ouſterment voide. Iſſint ſerra (come moy ſemble) al Common Ley, ſi *Brief de Covenant* ou *Dedimus poteſtatem* uſt eſte ſue, & conuſans priſe, & puis le Roy moruſt, que tiel Conuſans ne ſerra reſceive; Mes ore a ceſt jour, auterment eſt; car ore un Brief ne abatera per le mort le Roy: Mes en meſme le Caſe ſi le Silver le Roy uſt eſte enter ſur le Dorce del Conuſans, donques le mort del Roy, ne le mort del Conuſor, ne del Conuſee, ne ſerra le Conuſans voide: Mes ſi le Silver le Roy ſoit enter, coment que ne ſoit certifie en le Conuſans, ceo eſt aſſets bone; come ſi fine ſoit conus devant un Judge, & le Conuſor moruſt, ceo poet eſtre enrolle apres.

Si le Judge priſt le Conuſans & moruſt, un *Certiorari* ſerra agard a ſes Executors a certifier le Conuſans. *Fitz.* 147.

Lectura Decima.

Fine ſans Original.

ET eſt aſcavoit que ſi les Juſtices accept un fine ſans aſcun *original Brief*, ceſt fine n'eſt pas voide, mes avoidable per Error en Bank le Roy; car ceo n'eſt pas *Coram non Judice*, entant quo le Juſtices ont power del choſe, coment que ils procedont *inverſo ordine.* Iſſint eſt en Original Brief, ſi le pleint ſoit retreate, & un *Retraxit* enter, & puis le parties accord en Court en nature d'un fine, & le Court ceo accept, ceſt Error; car le Original eſt determine, & les parties n'ont jour in Court. 37 *Aſſ. p.* 17. *Br. Fines* 82.

Sur quel Brief Fine poet eſtre levy.

En *Brief de Annuitia*, le Defendant poet levy fine al pl. Iſſint en un Brief de *Rationabilibus diviſis*, ſi un piſcharie ou auter choſe ſoit ject per les demiſors al un des parties, en conſideration de ceo, ceſtuy partie poet levier fine d'un Annual Rent al auter pur le dit piſcharie, & ceſt fine eſt aſſets bone, & reſceivable. En Brief de *Meſne* le defendant poet conuſer le Acquital per fine. 20 *H.* 6. 3. *a.*

En *Warrantia Chartæ* quod warran. unam acram, le defendant poet conuſter tout ſon droit, que il ad en ceſt acre al pl. & le fine aſſets bien reſceivable: Iſſint ſi a ceo jour le defendant voile levy fine de meſme le acre, & d'un auter acre, le fine n'eſt bone pur le auter acre, car ceo n'eſt compriſe deins le original. 20 *H.* 6. 3. *a.*

En *Attainte* ſur *Brief de Ayel* fine poet eſtre levy: Iſſint en un *Quod permittat* d'un chemin, fine poet eſtre levy de ceo.

En Antient temps en *Quare Impedit* fine puit aver eſtre levy d'un Advowſon; mes a ceſt jour tiel fine n'eſt reſceivable, pur ceo que n'eſt que perſonal action. Mes en temps le Roy *H.* 3. fines ſolent eſtre levy en tiels perſonal actions; mes en *Brief de meſne*, *Warrantia Chartæ*, *Quem redditum reddit*, *Per quæ ſervitia*, *Quid juris clamat*, fine poet eſtre levy des terres compriſe deins le Brief; & uncore nul terre eſt demande ou ſerra recover en eux. Mes come *Statham* dit, en touts Briefs ou terre eſt demande, ou ſur auter Brief, que charge terre, un fine poet eſtre levy de le terre compriſe deins le Brief.

Maxim. En temps paſſe fines fueront cy uſualment levy ſur un Brief *de Warrantia Chartæ*, come ore ils ſont ſur *Brief de Covenant:* Mes en touts actions ou terre n'ſt demande, ne deſtre charge, fine ne poet eſtre levy; & en perſonal actions fine poet eſtre levy. En un *Aſſiſe de darrein preſentment* le pl. conuſt l'advowſon, per quel la feme grante Annuitie.

Et uncore ſi le ville ſoit omiſe en le fine, le *Scire facias* doit expreſſe ceo, & iſſint en ceſt Caſe le *Scire facias* variera del fine. 38 *E.* 3. 19.

Iſſint eſt dit en aſcun livers, que ſi Fine ſoit levy en Hamlet, le *Scire facias* covient eſtre port en un ville. 21 *E.* 3. 14. 38 *E.* 3. 19.

Lectura decima Quarta.

PUR l'order del Common Ley, ſi Fine uſt eſte levy *ſur Conuſans de Droit come ceo que il ad de ſon done*, & le Conuſee uſt grante & render les tenements al Conuſor en fee, iſſint que le Conuſor continue touts foits en poſſeſſion ſans aſcun tranſmutation, & l'an & jour paſſe, uncore ceſtuy que droit ad, ne fuit lie per l'order del Common Ley; Come *tenetur* pur le melior opinion en 7 *E.* 3. meſme le ley come la dicitur de *Brief de droit*, que ſi un judgment ſoit done, & nul execution ſue, que ne beſoigne a ceſtuy, que droit ad, de faire entry, ou claime, & tiel opinion eſt affirme in *Pl. Com.* 357.

L'an & jur en que eſtranger eſt a faire ſon claim, eſt del Fine levie, & nemy del execution ſue.

Mes moy ſemble, que per l'order del Common Ley, ſi fine uſt eſte levy *ſur Grante & Render*, ou auter fine executorie, & ceſtuy que ad droit, ne enter, ou feſoit ſon claime, deins l'an & jour apres le fine levy, coment que execution ne fuit ſue, que touts eſtrangers fueront barres, cibien ſur un fine executed, come ſur fine executorie & execution ſue. Et ceo pur deux cauſes. Un pur ceo que l'an & jour ſerra accompt del fine levy, & nemy apres execution ſue. Car ſi fine uſt eſte levy *Termino Michaelis*, & execution ſue *Termino Hillarii*, l'an & jour ſerra accompt del fine levy, & nemy del execution ſue. Car mittimus que execution ſoit ſue apres l'an, puis le fine levy, ceſtuy que droit ad, navera un an & jour apres l execution ſue. Auter reaſon eſt pur ceo que le cauſe que un fine eſt un final barre a touts eſtrangers n'eſt per le tranſmutation del poſſeſſion, & le Notice que poet vener per ceo, mes en le ſolemnitie que eſt en le Court le Roy ſur le levying d'un Fine fait ceo d'eſtre bone barre a touts eſtrangers. Car eſt deſtre intend, que le ſtrangers auront plus toſt notice del fine, ove tiel ſolemnitie levie appertment en Court le Roy, que d'un execution ewe, que poet eſtre fait privement, *&c.* Et de tiel opinion ſont deux livers, 4 *E.* 4. 46. & 11 *R.* 2. Et nota que dicitur en le fine de noſtre eſtatute, *Fines in Curia noſtra levandi, publice, & ſolemniter legantur, & quod placita interim ceſſent: Et hoc fiet per duos dies in ſeptimana.* Meſme le ley en *Brief de droit*, l'an & jour ſerra accompt del judgment done, & nemy del execution ſue. Et le reaſon, que en *Brief de droit* un judgment ſerra final, fuit pur le tryal per grand Aſſiſe, ou per Battaile, quel tryal eſt publique, famous & notorious. Mes quant judgment apres le miſe joyne, uſt eſte done per default, proclamations en tiel caſe ſolont eſtre fait devant judgment, per quel homes poent aver greinder notice. Mes ſi judgment uſt eſte done ſur default, & nemy apres le miſe joyne, ceo n'uſt eſte barre al eſtrangers per le Common Ley. 7 *H.* 4.

En *Brief de droit* al Common Ley, ſi le tenant uſt vouche, & le grand Aſſiſe paſſe pur le Demandant per que le Demandant ad judgment envers le tenant, & le tenant ouſter envers le vouchee, en ceſt caſe de terres recovers envers le tenant, ceſtuy que ad droit, covient mitter ſon claime, ou faire ſon entry deins an & jour apres judgement. 26 *H.* 8. 10 *H.* 6. Mes de terres recov. en value nul beſoigne eſt de faire clayme, neque puis judgment, neque puis execution. *Cauſa patet.*

Lectura decima Quinta.

SI Diſſeiſor eſt diſſeiſie, & le ſecond Diſſeiſor levy un fine, & deins l'an le primer diſſeiſor mitte eins ſon claime, mes le Diſſeiſee ne enter ne claime, l'an & jour paſſe, ore le Diſſeiſee eſt barre: Mes ſi le primer diſſeiſor enter per reaſon de ſon claime fait deins l'an & jour, ore le fine eſt avoid, & le primer diſſeiſee poet enter ſur luy. 19 *E.* 2. *Fitz. Continual claime.*

Entre revive apres que fuit barre.

Meſme le Ley, ſi diſſeiſor uſt fait feoffment en fee ſur condition, & le Feoff. levy fine, & l'an & jour paſſe, ore le diſſeiſee eſt barre; Mes ſi le Feoffor enter pur le condition enfreint, ore le diſſeiſee poet enter ſur luy. *Pl. Com. Stowel's* Caſe.

Si diſſeiſor de deux acres levy fine de ambideux, le diſſeiſee poet enter en l'un acre ſolement, & ceo ne ſerra entry en ambideux, coment que ils ſont en le ſeiſin d'un meſme perſonne, & d'un meſme title. Iſſint ſi home fait leaſe pur vie de deux acres ſur condition, & puis le condition eſt enfreint, le leſſor poet enter en l'un acre ſolement & waive le benefit del auter acre, & uncore le Condition eſt entier, *per Cotteſmore.* 1 *H.* 6. 4.

De ingreſſibus. Ou entry en part veſt tout in luy, a que il ad droit, & ou nemy.

Si diſſeiſor fait ſeveral leaſes pur vie, ou feoffments en fee de divers parcels, ſi le diſſeiſee enter ſur le diſſeiſor en noſme de tout, ou ſur l'un leſſee, ou feoffee in noſme de tout, ceo ne deveſtera le franktenement, que eſt en l'auter perſon, coment que eſt tout d'un meſme title. Mes ſi diſſeiſor ſoit de tres acres & leſſa un d'eux a *I. S.* pur ans, & auter a *I. N.* pur vie, & le tres il reteine en ſon poſſeſſion, & le diſſeiſee enter ſur le diſſeiſor, en noſme de touts; ceo veſtera en luy, cibien l'acre que fuit en leaſe pur ans, come le acre qui fuit en ſeiſin del diſſeiſor, & le reaſon de ceſt diverſitie eſt pur ceo que cheſcun entry covient enſuer le nature de ſon action, & ſi come le diſſeiſee covient aver ſeveral *Præcipes* envers ſeveral tenants de Franktenement, iſſint il covient de faire ſeveral entries.

Lectura viceſima Tertia.

Tryal.

EST aſcavoir, que touts matters en ley ſont triable per les Juſtices; touts matters en fait, ſi non en eſpecial caſes, ſont triable per Pais.

Et *nota*, que en ancient temps avoient eſtre 6 Juſtices de l'un Bank & l'auter; iſſint que ſi inferior Court commit aſcun error, ceo ſerra determine, & revers per auters 6. Car come matters en fait ſerra trie per 12 Jurors, iſſint matters en ley per 12 Juſtices. Mes gager del ley de non Summons en *Præcipe* fuit permitte per deux mains, 38 *E.* 3. 10. *a.* Et iſſint appiert en noſtre livers, ſi un voile gager ſon ley en Dette, le ley voit, que il portera ove luy 12. de ſes vicines, que jure, que ils intendont en lour conſciences, que il dit vray.

Un des tryals per noſtre Ley eſt Inſpection, & View; come ſi infant levie fine, ou ſuffer recoverie per default, ou conuſt un Recogniſance, il reverſera eux durant ſon minoritie, & ſon nonage ſerra trie per inſpection & view des Juſtices, & nemy per Pais.

Un auter tryal eſt per Proofs, & nemy per les Juſtices, ne per Pais: Et ceo eſt quant Feme port *Brief de Dower*, & le tenant dit, que ſon baron, de quel poſſeſſion el demand dower, eſt en vie, ceo ſerra trie per proofs, & ceſtuy que produce melior aver judgment.

Un auter tryal eſt per Summoners & Veyors; come ſi *Recovery* ou *Præcipe* ſoit plead, & l'auter dit, nient compriſe deins le record, ceo ſerra trie per les ſummoners & veyors, & nemy per les Juſtices, nemy per Pais.

Si aſcun Record ſoit denie, ceo ſerra trie per le Record, & nemy per les Juſtices, ne per Pais.

Nient attache en Aſſiſe ſerra trie per examination del Bailiff, & nemy auterment. 8 *H.* 4. 7. *a.* Mes ſi le Bailiff n'eſt preſent d'eſtre examine, les Juſtices prender l'Aſſiſe per Cur. & l'Aſſiſe (come ſemble) doit enquire, s'il fuit attache, ou nemy. 9 *H.* 4. 1. 6.

Touts eſpiritual choſes, come le Droit de marriage, le Droit de diſmes inter ſpiritual perſonnes, le manner de profeſſions, inſtitutions, abilities de Clerks, plenarty des Eſgliſes, ſerra trie per l'Eveſque, & certifie per luy.

Reſignation eſt triable per le Certificat del Eveſque, & nemy per Pais; car ceo eſt Spiritual. 3 *H.* 4. 11. 6. *Thirning.*

ſufficient Mainucaptors, and that cannot be unleſs there be two at the leaſt: And (as me ſeemeth) it may well be collected by the Book in 33 E. 3. and 36 E. 3. for there it is ſaid. Ils ſont ſes gardens & ils rendra del eſcape, and again one ſuch Mainucaptor: But here may a Queſtion ariſe, How often for one Offence a Man may be let to Bail?

CHAP. IX.

How often for one Offence a Man may be let to Bail.

If a Man be impriſoned, indicted, or appealed for any Offence, for the which he is bailable, and is accordingly let to Bail, and afterwards make Default, and doth not appear according to the Condition of his Bail and his Mainprizers Recognizance, and afterwards is arreſted and apprehended again, in this Caſe a Juſtice of Peace may deny him Bail. And that the Law ſhould be ſo, it is proved by the Book-caſe 2 H. 4. fol. 24. by the Opinion of all the Juſtices, where it is ſaid in the like Caſe, Que il ne ſerra my per Mainprize apres. Mainprize.

But becauſe it may fall out, that to be let to Bail, may be denied to him that is bailable by the Law, it is good to ſee what Remedy the Law hath provided for the Priſoner ſo detained in Priſon, to be let to Bail.

CHAP. X.

What Remedy a Man in Priſon, and bailable by the Law, hath to be let to Bail.

He that is impriſoned for any Offence, whereof he is bailable by the Law, may have a Writ de Manucaptione, directed to the Sheriff of the ſame County, that he ſhall take Sureties of him to appear, and to let him at large; which Writ in divers Forms, and in ſpecial Caſes appeareth in the Regiſter.

If a Man be wrongfully detained in Priſon, he may have a Writ De Homine replegiando, which doth alſo appear in the Regiſter.

It appeareth by Bracton, that in his Time there was a Writ in Uſe for this Purpoſe, which was called a Writ De odio & Atia, touching which the Words be theſe: Sed cum iniquum eſt quod innocentes, ſicut illi qui criminoſi non ſunt diu incluſi detinen' in carcere, ideo ad lachrymoſam querelam parentum & amicorum de gratia Domini Regis fieri ſolet Inquiſitio, utrum hujuſmodi impriſonati de morte hominis culpabiles eſſent de morte illa, vel de hujuſmodi inquiſitione nullum debere derogari, and there ſetteth down the Words of the Writ.

Now it is to be underſtood, that at that Time when Bracton writ, and ſo long Time after, the Sheriff by Writ or Commiſſion to him directed, uſed to take Securities and Judgments of Murther and Felony, and to hold Pleas of the Crown, which afterwards being denied unto him by the Statute of 2 E. 3. ca. 4. as I take it, de Odio & Atia, hath loſt his Force.

But here a Queſtion may be demanded, whether a Man committing any Offence upon the Sea, or within the Juriſdiction of the Admiralty; for which, if the ſame had been committed upon the Land, he might have been bailed: Whether the Commiſſioners of the Admiralty may let him to Bail, or no, either before or after Indictment?

CHAP. XI.

In what Caſes the Commiſſioners of the Admiralty may let Priſoners to Bail, either before or after Indictment.

And firſt I take it (ſine præjudicio melioris ſententiæ) that the Commiſſioners of the Admiralty cannot let to Bail any Perſons impriſoned for any Offence, or for Suſpicion of any Offence committed upon the Sea, or within the Juriſdiction of the Admiralty, before the Perſon ſo impriſoned be thereof indicted, although in that Caſe if the Felony or Offence had been done upon the Land, the Party had been bailable: And I am induced to be of that Opinion for the Conſideration following:

Firſt it is to be agreed, That before the Statute 28 H. 8. ca. 13. All Murthers, Robberies, Piracies, and other Offences done upon the Sea, were determined by the Civil Law, which Law was in that Behalf found very defective: Foraſmuch as by that Law none of the ſaid Offences ſo committed, could be puniſhed without the Teſtimony of two competent

Tempeſt to the Ground, yet might he without Danger riſe of himſelf again: So he that hath the Adminiſtration of Juſtice, and in all his Occaſions is guided and directed by the Rule of the Law, neither abuſing his Authority, nor exceeding his Commiſſion, ſtandeth on a ſure Ground which will bear him up at all Seaſons: Sapientis eſt cogitare (ſaith Cicero) tantum ſibi eſſe permiſſum, quantum ſit commiſſum & creditum. And good was the Counſel (as thoſe that follow it find) whoſoever gave it, (viz.) Exceed not thy Commiſſion: And albeit it is truly ſaid, That Judicium eſt legibus & non exemplis; and as the Logician ſaith, Exempla demonſtrant, non probant; yet undoubtedly it is a great Contentment and Satisfaction to an honeſt Mind and a good Conſcience, eſpecially in Caſes that concern the Life and Liberty of a Man, to follow the Precedent and Example of grave and reverend Men: Howbeit forasmuch as all good Laws are inſtituted, and made for the repelling of thoſe Evils that moſt commonly happen, (For ad ea quæ frequentius accidunt jura adaptantur) and principally do reſpect the general Peace and Profit of the People: And therefore we uſe to ſay, That a Miſchief is rather to be ſuffered than an Inconvenience; that is to ſay, that a private Perſon ſhould be puniſhed or damnified by the Rigour of the Law, than a general Rule of the Law ſhould be broken, to the general Trouble and Prejudice of many; it is therefore very neceſſary, that the Law and Diſcretion ſhould be concomitant; and the one to be an Accident inſeparable to the other, ſo as neither Law without Diſcretion, leſt it ſhould incline to Rigour; nor Diſcretion without Law, leſt Confuſion ſhould follow, ſhould be put in Ure: My Meaning hereby is not to allow of every Man's Diſcretion that ſitteth on the Seat of Juſtice: (for that would bring forth a monſtrous Confuſion) But I mean that Diſcretion that ariſeth upon the right Diſcerning, and due Conſideration of the Time and neceſſary Circumſtances of the Matter; and as we commonly uſe to ſay, That Common Law is nothing elſe but common Reaſon; and yet we mean thereby nothing leſs, than that common Reaſon wherewith a Man is naturally endued, but that Perfection of Reaſon which is gotten by long and continual Study: So in aſſociating Diſcretion ſo near to Law, it is not meant to prefer to that Society each Man's Diſcretion, which commonly rather deſerveth the Name of Affectation and Self-will, than of Diſcretion indeed: But that Diſcretion only we allow of in this Place, that either grave and reverend Men have uſed in ſuch Caſes before, or riſes of the Circumſtances of the Matter (as is aforeſaid): As for Example, being not alſo impertinent to the Matter of our Treatiſe, if it were a Queſtion, Whether in an Appeal of Mayhem, the Defendant were to be let to Bail or Mainprize, or no? It is neceſſary to be examined, whether the Manner of the Mayhem were horrible or heinous; for the Defendant may be denied Bail and Mainprize, whether the ſame were done upon a ſudden Affray, or of the Plaintiff's Aſſault, or againſt the Intent of the Defendant, &c. For the Defendant may be let to Bail: And this I take to be a lawful Diſcretion; for to that End is the Book, and Reaſon of the Book in 6 H. 7. fol. 2. where in an Appeal of Mayhem, the Juſtices of the King's Bench denied the Defendant to be bailed; for that upon the Examination of the Matter it appeared to be moſt cruel and horrible, and therefore in Reſpect of the abominable Heinouſneſs of the ſame, the Juſtices would not ſuffer the Defendant to be bailed. And with this agreeth the Opinion of Bracton, in the ſecond Treatiſe of his third Book; ca. 8. Appellati vero de morte hominis, & de pace & Plagis periculoſis ſaltem capiantur, & in Priſonam detrudantur, & ibi cuſtodiantur, donec per Dominum Regem per Pleg' dimittantur, vel per Judicem deliberentur, &c. Whereby I Note that he ſaith, Plag' periculoſis, inſinuating a Difference inter plagas periculoſas & minus periculoſas, in that he ſaith, Donec per Dominum Regem per pleg' dimittantur, it is to be underſtood, until by that Court where the Offence is to be determined and judged they be let to Bail; and this Particular may ſuffice to the Reſolution of the General.

To conclude, The Author of all Wiſdom and true Knowledge, thought it requiſite, that thoſe that were Judges of the Earth, ſhould be both wiſe and learned, whom I beſeech God to bleſs with his true Knowledge and Wiſdom.

F I N I S.

unto every Manor, ſo that every Lord of a Manor may keep a Court-Baron; but few have Leets: For inferior Lords of Manors cannot keep Courts-Leet without ſpecial Preſcription, or ſome ſpecial Patent from the King. 5. In this, that in Courts-Baron the Suitors are Judges; but in Courts-Leet the Steward is Judge. 6. In this, that in Courts-Baron the Jury conſiſteth oftentimes of leſs than Twelve, in Courts-Leet never. The Reaſon of that is, becauſe none are impanelled upon the Jury in Courts-Baron but Freeholders of the ſame Manor, but in Courts Leet Strangers are oftentimes impanelled. 7. In this, that Courts-Baron cannot ſubſiſt without two Suitors *ad minimum*; but Courts-Leet can well ſubſiſt without any Suitors. 8. In this, that Courts-Baron enquire of no Offences committed againſt the King; but Courts-Leet enquire of all Offences, under High Treaſon, committed againſt the Crown and Dignity of the King. In many other reſpects they differ: As that a Writ of Error lieth upon a Judgment given in a Court-Leet, but not in a Court-Baron. So in a Court-Leet a *Capias* lieth; but in a Court-Baron, inſtead of a *Capias*, is uſed an Attachment by Goods. So in a Court-Baron an Action of Debt lieth for the Lord himſelf, becauſe the Suitors are Judges; but in a Court-Leet the Lord cannot maintain any Action for himſelf, becauſe the Steward is Judge. But omitting theſe, with many more, I come to the Etymology of a Manor. Some derive the word Manor, *à manendo*; and then it taketh its Name either from the Manor-houſe, which the Lord maketh his Dwelling-place; or elſe *à manendo, quia Dominus ac Tenentes in Manerii ſui circuitu cohabitant ac manent.* Some think 'tis termed Manor from manuring the Ground; and then it taketh its Name either from the Lords Demeſnes, which the Tenants are bound to manure; or elſe from the Land remaining in the Tenants Hands, which are likewiſe tilled and manured. Others are of Opinion that it is derived of the French word *Meſner*, which ſignifieth to govern or guide, becauſe the Lord of a Manor hath the guiding and directing of all his Tenants within the Limits of his Juriſdiction. And this I hold the moſt probable Etymology, and moſt agreeing with the Nature of a Manor: For a Manor in theſe Days ſignifieth the Juriſdiction and Royalty incorporate, rather than the Land or Site.

Thus much touching the Etymology: A Word touching the Diviſion of a Manor. A Manor is twofold; 1. *Re & nomine.* 2. *Nomine tantùm. Re & nomine*, as where the two material Cauſes of a Manor, the efficient Cauſe, and *Cauſa ſine qua non*, do meet and join together. *Nomine tantùm*, as where any of theſe Cauſes is wanting. As to inſiſt in the two material Cauſes: If the Lord will transfer over to ſome Stranger the Services of all his Tenants, and reſerve unto himſelf the Demeſnes; or if he will paſs away the Demeſnes, and reſerve the Services; in both Caſes the Lord peradventure hath a Manor *nomine*, but not otherwiſe; becauſe in the one Caſe he wanteth Demeſnes, in the other Services. So if a Manor deſcendeth to Copartners, and they make Partition, and the intire Demeſnes are allotted to the one, and the intire Services to the other; the Manor is now in Suſpence, for neither of them hath any Manor, but in name only: But if Part of the Demeſnes, and Part of the Services, be allotted to each one, then have they each of them a Manor, not *nomine tantum*, but *re & nomine.* To inſiſt in the efficient Cauſe: If the King at this Day will grant a great Quantity of Land to any Subject, injoining him certain Duties and Services, and withal willeth that this ſhould bear the Name of a Manor; howſoever this may chance to gain the Name of a Manor, yet it will not be a Manor in the Eſtimation of the Law. To inſiſt in this Cauſe, *ſine qua non:* If the King grant away a Manor to *J. S.* excepting the Courts and Perquiſites, the Grantee hath a Manor in Name only. So if all the Freeholders die but one, if the Lord purchaſe all the Freeholders Land, or paſs away the Services of the Freeholders, or releaſe unto his Freeholders all their Services; notwithſtanding the Demeſnes, and the Services of the Copyholders, yet the Lord hath but a Manor in Name, becauſe the Freeholders are wanting, which are the Maintainers and Upholders of the Court-Baron, and conſequently a neceſſary Help to the Perfection of a Manor. So if the Lord granteth away the Inheritance of all his Copyholders, or demiſeth all his Lands granted by Copy to another for 2000 Years; the Grantee in the one Caſe, and the Leſſee in the other, have a Kind of Seigniority in Groſs, and may keep a Cuſtomary Court, where the Steward ſhall be Judge, and ſhall take Surrenders, and make Admittances: And this in the Eye of the World is a Manor, though in the Judgment of the Law it cometh far ſhort of one.

Thus much touching the Diviſion of a Manor. I might here handle many collateral Juriſdictions appropriated to Lords of Manors; as that of erecting Dove-houſes, of proving the Wills of their Tenants deceaſed within their Precincts in many Places, of incloſing Common, leaving ſufficient beſides for the other Commoners, with many the like: *Sed hæc lubens libenſque omitto*

And thus cloſing up this Part of my Treatiſe touching Manors, I come to the other Part, touching Copyhold.

Sect. 32. I need not ſtand to diſcourſe at large the Antiquity of the Copyholders; for if you caſt your Eye back to that is paſt, you ſhall eaſily perceive that Copyholders, though very meanly deſcended, yet they come of an ancient Houſe: And therefore if in this Point

tura, and able to take by Virtue of the Grant preſently upon the Grant made, it is merely void: But in cuſtomary Grants upon Surrenders the Law is otherwiſe: For though at the Time of the Surrender the Grantee is not *in eſſe*, or not capable of a Surrender; yet if he be *in eſſe* and capable at the Time of the Admittance, that is ſufficient: And therefore if I ſurrender to the Uſe of him that ſhall be Heir to *J. S.* or to the Uſe of *J. S.*'s next Child, or to the Uſe of *J. S.*'s next Wife; though at the Time of the Surrender *J. S.* had no Heir, Child, or Wife; yet if afterwards he hath a Child, or taketh a Wife, his Heir, his Child, or his Wife, may come into the Court, and compel the Lord to admit according to the Surrender. So if I ſurrender to the Uſe of him that ſhall come next into *Paul*'s after ſuch an Hour; whoſe Fortune ſoever it is to come firſt, the Lord muſt admit him, and I ſhall never avoid it. The ſame Law is, if I ſurrender to the Uſe of him that *J. S.* ſhall nominate, or that I my ſelf ſhall nominate to the Lord at the next Meeting.

The Reaſon of the Law is this: A Surrender is a Thing executory, which is executed by the ſubſequent Admittance, and nothing at all is inveſted in the Grantee before the Lord hath admitted him according to the Surrender; and therefore if at the Time of the Admittance the Grantee be *in rerum natura*, and able to take, that will ſerve.

Beſides, in cuſtomary Grants the Intent of the Grantor is more reſpected than it ſhould be by the ſtrict Rules of the Law: Which appeareth by this, That if a Surrender be made of a Copyhold to the Uſe of a laſt Will, and the Surrender or deviſeth it unto two, the one is admitted according to the Purport of the Will, this ſhall inure to both. But though the Surrender be a Thing executory, and the Intent of the Grantor ſo much favoured; yet if a Copyholder will ſurrender to the Uſe of the right Heirs of *J. S.* he being alive, this is void, becauſe it cannot take Effect according to the Intent of the Grantor; for he would have the Grant to be executed preſently, which cannot be, in Regard that *J. S.* can have no Heir till after his Death. So much of the Grantee: And I now come to the Grant it ſelf.

Sect. 36. A Copyhold Intereſt cannot be transferred by any other Aſſurance than by Copy of Court-Roll, according to the Cuſtom.

If I will exchange a Copyhold with another, I cannot do it by an ordinary Exchange at the Common Law, but we muſt ſurrender to each other's Uſe, and the Lord admit us accordingly.

If I will deviſe a Copyhold, I cannot do it by Will at the Common Law, but I muſt ſurrender to the Uſe of my Laſt Will and Teſtament, and in my Will I muſt declare my Intent.

If I am ouſted by a Copyholder, a Releaſe made to him is void, becauſe it would be a Prejudice to the Lord; and beſides there is no cuſtomary Right upon which the Releaſe may inure: But a Releaſe inuring by the Way of Extinguiſhing, where no Prejudice accrueth to
Co. 4. fol. 25. the Lord, will ſerve to drown a Copyhold Right; and therefore if I ſurrender out of Court upon Condition to the Uſe of *J. S.* and the Preſentment is made abſolute in Court, and the Admittance framed accordingly, this Admittance and Preſentment differing from the Effect of the Surrender are both void. Yet becauſe upon the Admittance the Lord is ſatisfied of his Fine, and ſo nothing at all prejudiced, and beſides here is a cuſtomary Right upon which the Releaſe may be grounded; I may by a Releaſe at the Common Law ſufficiently confirm this void Eſtate. And ſo upon the ſame Reaſon, if I am ouſted of a Copyhold, and the Lord admit him according to the Cuſtom, a Releaſe made by me at the Common Law will extinguiſh my Right: But if I make a Leaſe for Years of a Copyhold, I cannot by my Releaſe paſs my Reverſion, becauſe this Releaſe inureth by Way of Inlargement to transfer an Intereſt, and not by Way of Extinguiſhment to drown a Right; but my Way is to ſurrender my Reverſion into the Hands of the Lord, and he to grant it over to the Leſſee.

Sect. 37. If Copyhold Land come into that Plight that it cannot paſs by Copy, it is become not alienable: And therefore if the Lord of a Manor will grant to me a Copyhold in Fee, and after will grant the Inheritance of this Copyhold to a Stranger, in Regard that now my Copyhold is become no Parcel of the Manor, and ſo I cannot ſurrender into the Hands of the Lord and the Grantee of the Inheritance, though I am to him a Tenant, and am tied to do unto him all Manner of Services which are due without keeping of Court, as to pay Rent, to diſcharge Heriots, and all other Duties of the ſame Nature; yet becauſe the Grantee cannot keep a Court, and ſo is incapable of taking a Surrender, or making an Admittance, therefore I cannot by any Means alien; for no Conveyance at the Common Law will ſerve, becauſe it remaineth ſtill Copyhold notwithſtanding; and what Cuſtoms ſoever were incident to the Land before Severance, do remain ſtill undeſtroyed:
Co. 4. fol. 24. As if the Land were Borough Engliſh or Gavelkind before, it ſo continueth; and a Decree in Chancery will ſerve no more than an ordinary Aſſurance at the Common Law; for that bindeth my Perſon only, not my Intereſt. Sithence therefore Copyhold Eſtates cannot be conveyed away otherwiſe than by Copy of Court-Roll, according to the Cuſtom, let us examine the Nature of theſe cuſtomary Grants, wherein three Branches are to be conſidered.

Deviſe of a Term is made to *J. S.* and the Executors agree that *J. S.* and *J. N.* ſhall have this Term, this Conſent is void to *J. N.* for after the Conſent of the Executors *J. S.* is in by the Deviſe. Yet ſome are of Opinion, That if I ſurrender to the Uſe of *J. S.* in Fee, and the Lord admits *J. S.* together with his eldeſt Son and Heir apparent, that this is an Eſtate by Eſtoppel to *J. S.* and that he ſhall only claim jointly with his Son, becauſe he might have refuſed an Admittance in this Manner: But I can hardly be brought to think that this Admittance, giving a preſent Intereſt in the Son, who by Surrender was to have no Intereſt till the Death of his Father, ſhould be any ſuch Eſtoppel. Co. 4. fol. 28.

If I ſurrender to the Uſe of *J. S.* for Life, and the Lord admits him in Fee, an Eſtate for Life only paſſeth. So if I ſurrender without mentioning any certain Eſtate, becauſe by Implication of the Law, Eſtate for Life only paſſeth, though the Lord admit in Fee, no more doth paſs than the Implication of Law will warrant. If I ſurrender with the Reſervation of a Rent, and the Lord admits, not reſerving any Rent, or reſerving a leſs Rent than I reſerved upon the Surrender, this Admittance is wholly void: But if the Lord reſerveth a greater Rent, then is the Reſervation void only for the Surpluſage, and the Admittance ſo far currant as it agreeth with my Surrender. If I ſurrender upon Condition, and the Lord omits the Condition, the Admittance is wholly void: But if my Surrender be abſolute, and the Lord's Admittance be conditional, the Condition is void, but the Admittance in all Points elſe is good. Co. 4. fol. 29. Co. 4. fol. 25.

The Reaſons of theſe Diverſities are theſe. Where an Authority is given to any one to execute any Act, and he execu eth it contrary to the Effect of his Authority, this is utterly void: But if he executeth his Authority, and withal goeth beyond the Limits of his Warrant, this is void for that Part only wherein he exceedeth his Authority.

Theſe Admittances upon Surrender differ from Admittances upon Diſcents, in this, that in Admittances upon Surrender nothing is veſted in the Grantee before Admittance, no more than in the voluntary Admittances; but in Admittances upon Diſcents the Heir is Tenant by Copy immediately upon the Death of his Anceſtor, not to all Intents and Purpoſes; for peradventure he cannot be ſworn of the Homage before, neither can he maintain a Plaint in the Nature of an Aſſize in the Lord's Court before, becauſe till then he is not compleat Tenant to the Lord, no farther forth than the Lord pleaſeth to allow him for his Tenant. And therefore if there be Grandfather, Father and Son, and the Grandfather is admitted, and dieth, and the Father entreth, and dieth before Admittance, the Son ſhall have a Plaint in the Nature of a Writ of Ayel, and not an Aſſize of Mortdauncеſtor. So that to all Intents and Purpoſes, the Heir till Admittance, is not compleat Tenant; yet to moſt Intents, eſpecially as to Strangers, the Law taketh Notice of him as of a perfect Tenant of the Land inſtantly upon the Death of his Anceſtor; for he may enter into the Land before Admittance, take the Profits, puniſh any Treſpaſs done upon the Ground; ſurrender into the Hands of the Lord to whoſe Uſe he pleaſeth, ſatisfying the Lord his Fine due upon the Diſcent, and by Eſtoppel he may prejudice himſelf of his Inheritance: So if an Eſtranger come and ſurrender to the Uſe of him and his Wife before Admittance, he ſhall ever claim jointly with his Wife, and never be taken as ſole Tenant. And the Lord may avow upon him before Admittance for any Arrearages of Rent or other Services. Co. 4. fol. 23.

And laſt of all, upon an actual Poſſeſſion, there ſhall be *poſſeſſio Fratris* before Admittance: For if a Copyholder in Fee have Iſſue a Son and a Daughter by one Venter, and a Son by another Venter, and dieth ſeiſed, and his Son by the firſt Venter entreth in the Land, and dieth before Admittance, the Daughter ſhall inherit as Heir to her Brother; and not the Son by the ſecond Venter as Heir to his Father. And many Times the Poſſeſſion of a Guardian or a Termor, without an actual Entry, or any Claim made by the Heir, will make *poſſeſſio Fratris:* As if a Copyholder in Fee, having Iſſue a Son & a Daughter by one Venter, and a Son by another Venter, by Licence of the Lord maketh a Leaſe for Years, and dieth, and the Son of the firſt Venter dieth before the Expiration of the Term, being neither admitted, nor having made any actual Entry, or any Claim; yet this Poſſeſſion of the Leſſee is ſufficient, and the Reverſion ſhall deſcend to the Daughter of the firſt Venter, and not to the Son of the ſecond Venter. But if the Leaſe had been determined living the Son by the firſt Venter, and afterwards he had died before any actual Entry made, the Law would have fallen out otherwiſe, becauſe there was a Time when he might have lawfully entred. Therefore where ſome have imagined that nothing ſhould be inveſted in the Heir before Admittance, becauſe every Admittance of an Heir upon a Diſcent amounteth to a Grant, and ſo may be pleaded; they are in an Error: For tho' it be true, that after Admittance the Heir may in Pleading alledge this as a Grant, and that hath been allowed, to avoid the Inconveniencies that otherwiſe ſhould enſue; for if the Copyholder ſhould be driven in Pleading to ſhew the firſt Grant, either that was made before the Memory of Man, and ſo is not pleadable, or ſince the Memory of Man, and then Cuſtom fails; for this Reaſon the Law hath allowed a Copyholder in Pleading to alledge any Admittance, as well upon a Diſcent as upon a Surrender, as a Grant: And yet he may, if he will, alledge the Admittance of his Anceſtors, as a Grant, and ſhew the Diſcent to him, and that he entred, and well, without any Admittance. But the Heir cannot plead that his Anceſtor was ſeiſed in Fee at the Will of the Co. 4. fol. 22. b. Co. 4. fol. 22. b.

If the Under Steward hold a Court within the Manor, and grants Copies by Court-Roll, without the Authority of the Lord or of the High Steward, the Grants are good. But contrary it is, if he do it out of Court, as it ſeemeth. And there it is a *Quære*, if the High Steward out of Court may grant Lands by Copy. But it is clearly holden, that he cannot admit a Copyholder upon a Surrender out of Court, without a ſpecial Authority from the Lord ſo to do. 2 E. 6. Br. Tenant per Copie 26.

A Deputy Steward may take a Surrender out of Court, if the Office be granted to the Steward and his ſufficient Deputies, or to be exerciſed by him and his ſufficient Deputies, as it was reſolved 19 *Eliz.* in the Court of Common Pleas. 19 Eliz. in C.B.

The Lord of a Manor may retain a Steward by Word, and ſuch a Retainer ſhall be good until he be diſcharged, and ſuch a Steward may take a Surrender out of Court, as it is holden in *Coke* 4 Part, in the Lady *Holcroft*'s Caſe. And ſo was it reſolved, *Trin.* 41 *Eliz.* in *Harris* and *Jay*'s Caſe in *B. R.* But *Quære* of the firſt Point. For that *Trin.* 31 *Eliz.* in *C. B.* in *Blagrave* and *Wood*'s Caſe the Opinion of the Juſtices was, That a Surrender to a Steward who was by Word only, out of Court, was not good. 8 Eliz. Dyer 248. Co. 4 part, Holcroft's Caſe. Tr. 31 Eliz. C B. Blagrave and Wood's Caſe, Godb. 142.

In 17 *Eliz. in C. B.* it was ſaid by *Dyer* and *Mounſon*, That without a Preſcription a Surrender of Copyhold Land could not be out of Court, nor an Admittance out of Court, neither to the Lord himſelf nor his Steward. But in divers Places it is uſed by Cuſtom ſo to be. And then and thereupon the doing of Fealty, and the paying of the Lord's Fine, ſhall be preſented by the Homage to be done at the next Court. And all theſe Things they ſaid are to be done by the Cuſtom. And in that Caſe it was ſaid by the Lord *Dyer*, That a Surrender out of Court might be to the Lord himſelf, to go by the Way of Extinguiſhment. M. 17 Eliz. in C. B. and Dyer and Mounſon.

A Copyholder in Fee did, according to the Cuſtom of the Manor, ſurrender his Copyhold Lands into the Hands of two Tenants; but the Surrender was to the Uſe of *J. S.* to take effect immediately after his Death. In this Caſe it was reſolved, That as unto the Surrender into the Hands of two Tenants, that might be good, although it was out of Court, by Cuſtom. But becauſe in that Caſe the Surrender was unto the Uſe of *J. S.* to take effect immediately after the Death of the Surrenderor, and a Freehold cannot begin *in futuro*, or at a Day to come, by the Common Law, and for that the Eſtates of Copyholders ſhall be directed according to the Rules of the Common Law; for that Cauſe only the Surrender was holden to be void.

But although a Surrender out of Court may be good into the Hands of Tenants of the Manor by Cuſtom; yet until ſuch Surrender be preſented by them in the Court of the Lord of the Manor, the Eſtate of the Lands doth remain in the Surrenderor, and nothing paſſeth thereby. M. 14 Jac. B. R. Froſwell and Welſhe's Caſe, Bridgeman 52.

A Copyholder in Fee did ſurrender into the Hands of two Tenants, according to the Cuſtom, to the Uſe of *A.* and *B.* who thereupon entred into and upon the Lands, and paid the Rent to the Lord; but before any Court was kept for the Manor, the Tenants to whom the Surrender was made, as alſo the Copyholder the Surrenderor, all of them died, and thereupon the Heir of the Copyholder Surrenderor entred upon the ſaid *A.* and *B.* and made a Leaſe for Years of the Lands, which Leaſe was warranted by the Cuſtom. In that Caſe it was reſolved, That the Leaſe for Years was well made, becauſe that before ſuch Time that the Preſentment was made in Court of the Surrender, the Intereſt of the Copyholder did remain in the Surrenderor, and his Right deſcended unto and upon his Heir, and he might take and receive the Rents and Profits of the Lands; for that no Perſon can have a Copyhold, or a Copyhold Eſtate, but ſuch a Perſon who comes into the ſame by the Cuſtom of the Manor, *viz.* by Admittance of the Lord, which in this Caſe *A.* and *B.* did not do. But in that Caſe it was doubted by the Juſtices, but not reſolved, Whether the Acceptance of the Rent by the Lord at the Hands of the ſaid *A.* and *B.* did amount to an Admittance, or not.

There were two Jointenants in Fee of Lands which were holden by Copy. One of them, according to the Cuſtom, ſurrendred into the Hands of two Tenants to the Uſe of his Laſt Will, and afterwards he made his Will, and thereby deviſed the Lands. In that Caſe it was holden by the Juſtices, That becauſe the ſaid Surrender was preſented by the Tenants in the Court of the Lord, that the ſaid Surrender ſhould bind the Survivor; for that it ſhall have a Relation to the firſt Time of the Surrender. But if in that Caſe the Copyholder who made the Surrender had died before the ſame had been preſented, then the Copyhold had ſurvived to the ſurviving Jointenant. M. 9 Jac. Cro. 2 Part. Porter Porter's Caſe.

Two Coparceners, Copyholders, were in Poſſeſſion; the one did ſurrender her Reverſion in the Moiety after her Deceaſe. It was judged a void Surrender, becauſe a Freehold could not commence *in futuro*, as well of Copyhold Lands as of Freehold Lands. P. 10 Jac. B. R. Godb. 141.

A Copyholder ſurrendred a Meſſuage and twenty Acres of Lands into the Hands of two Tenants out of Court, to the Uſe of *J. S.* and his Heirs, upon Condition, that if he paid *J. S.* 100 *l.* before ſuch a Day, the Surrender to be void. Before the Day of Payment he ſurrendred one Acre, Parcel of the twenty Acres, unto *J. D.* and his Heirs, and afterwards he performed the Condition by paying the 100 *l.* and afterwards in Court he ſurrendred the ſaid Meſſuage and twenty Acres of Lands into the Hands of the Steward, to the Uſe of *J. N.* and his Heirs. It was found by the Jurors that the firſt Surrender made to *J. S.* was never preſented, but the M. 8 Jac. in B. R. Cro. 3 part, Burgoyne and Spurling's Caſe.

Sect. 9. *Of Forfeitures of Copyhold, and Copyhold Eſtate; and what Act or Things done by the Copyholder ſhall amount unto or be adjudged a Forfeiture of the Copyholder's Eſtate, what not.*

THE general Grounds of Forfeitures of Copyholds, or of their Eſtates, are declared in the former Part of this Treatiſe, unto which I ſhall refer you. That which I ſhall now ſay, is but by Way of Amplification of thoſe Grounds, with ſome Judgments and Authorities in ſeveral Caſes upon ſundry Differences. All Forfeitures may be reduced unto theſe Heads: Either voluntary Acts done to the Prejudice of the Lord, or negligent or wilful Refuſal to do and pay his Duties and Services to the Lord, which by the Laws and Cuſtoms of the Manor he ought to do and perform.

Coke, 4 part, Murrel's Caſe. A Copyholder makes a Leaſe either for Life or Years of his Copyhold Lands, which is not warranted by the Cuſtom of the Manor: Now although ſuch Leaſe ſhall be a good Leaſe as betwixt the Copyholder and his Leſſee, and he ſhall not avoid his own Leaſe; yet as unto the Lord it is a Forfeiture of the Copyhold and of his Eſtate, and the Lord ſhall take Advantage of ſuch Forfeiture, and may enter upon the Lands leaſed.

H. 37 Eliz. Eaſt and Harding's Caſe. So if a Copyholder makes a Leaſe of his Copyhold for three Years by Word, to begin at *Michaelmas*, or at a Day to come; although it is a good Leaſe as betwixt the Parties to it, yet it is a Forfeiture of the Copyhold to the Lord; and ſo it was holden, *Hill.* 37 *Eliz.* in *Eaſt* and *Harding*'s Caſe.

P. 10 Jac. in C. B. the Lady Mountague's Caſe, Cro. 2 part, act. A Copyholder of a Manor made a Leaſe of his Freehold Lands for ten Years, and, to avoid a Forfeiture, made a Leaſe of his Copyhold Lands for one Year; but covenanted with his Leſſee, that he ſhould enjoy the Copyhold Lands *de anno in annum*, during the ten Years. It was the Opinion of the Juſtices in this Caſe, That becauſe this Demiſe of the Copyholder was but only a Covenant on the Part of the Leſſee, that he ſhould hold it for a longer Time, that this was no Forfeiture, although the Lord pretended the ſame to be a Forfeiture.

M. 27 Eliz. in C. B. by Anderſon, Moore 184. The Lord licenſed his Copyholder to make a Leaſe of his Copyhold Lands for twenty-one Years, to begin at *Michaelmas* following: The Copyholder by Indenture made a Leaſe accordingly; but afterwards, before *Michaelmas*, he made another Leaſe by Indenture to another Perſon, to begin at *Michaelmas* following. It was the Opinion of the Lord *Anderſon* Chief Juſtice, *Mich.* 27 *Eliz.* in *C. B.* That the making of this ſecond Leaſe, being without the Licence of the Lord, was a Forfeiture of his Copyhold.

Worlidge and Banbury's Caſe, Cro. 2 part. A Copyholder for Life hath Licence of the Lord to make a Leaſe for three Years, if he ſo long live, and he makes a Leaſe for three Years without ſuch Limitation: It was holden to be no Forfeiture of his Eſtate in the Copyhold, becauſe the Law makes ſuch a Limitation to the Eſtate which he makes, that it ſhall continue but during his Life. But if he had been a Copyholder in Fee, it had been a Forfeiture of his Eſtate to have made ſuch an abſolute Leaſe, becauſe he had done more than he was licenſed to do by the Law. And ſo it was adjudged in *Hall* and *Arrowſmith*'s Caſe, which ſee in *Popham*'s Rep. 185.

M. 15 Jac. in B. R. M. 8 Jac. in B. R. Ward's Caſe. If a Copyholder without Licence of the Lord doth erect a new Houſe upon his Copyhold Lands, ſome Opinions hath been, That the ſame is a Forfeiture of his Eſtate. But I doubt much of that Caſe, becauſe the Act done is for the Benefit and Advantage of the Lord, and not to his Prejudice. *Quære* of it.

Sect. 10. *Where Denial or Refuſal to pay his Rent, Fine, or to do his other Cuſtoms and Services, ſhall be a Forfeiture of his Copyhold and Copyhold Eſtate, and where not.*

Hill. 33 Eliz. Criſpe and Fryer's Caſe in Moore. A Copyholder in Fee was ſeiſed of Land rendring Rent at *Michaelmas* and our *Lady-day*. The Lord at the laſt Inſtant of the Day of Payment demanded the Rent upon the Land, and the Copyholder was not there, nor any for him, to pay it. It was a Queſtion, If his Non-payment of the Rent was a Forfeiture of his Copyhold, or not? And the better Opinion of the Court ſeemed to be, That it was a Forfeiture, becauſe the Copyholder was to take peremptory Notice of the Day of Payment of his Rent, and his not being there ſeemed to imply that it was a voluntary Denial, or Refuſal at the leaſt, of doing the ſame. But *Quære* of it; for it was reſolved in another Caſe, *Tr.* 21 *Jac.* in *C. B.* That Non-payment of Rent, or of the Fine upon Admittance to his Copyhold, was no Forfeiture of his Copyhold Eſtate, without there was ſome expreſs verbal Denial of it, which there was not in this Caſe.

Tr. 21 Jac. in C. B.

M. 37 Eliz. B. R. Tavernor and Lord Cromwel's Caſe, Cro. 1 part. A Copyholder ſeiſed by Force of ſeveral Copies of Black-acre by the Rent of 4 *d.* White-acre by the Rent of 4 *d.* and Green-acre by the Rent of 6 *d.* denied the Rent of Black-acre. In that Caſe it was holden to be a Forfeiture of that Acre, but no Forfeiture of the other two Acres, becauſe although they were all in one Hand, yet becauſe they were holden by ſeveral Rents, the Forfeiture of the one Acre cannot be the Forfeiture of the other two Acres.

Vide Co. 4 part. 28. in Sands's Caſe. No Fine is either due or payable to the Lord, but either upon a Diſcent, or upon an Admittance. But if ſuch a Copyholder upon his Admittance ſhall make an abſolute Refuſal to pay the Fine to the Lord, the ſame is a Forfeiture of his Copyhold and of his Eſtate. But there ſuch a Fine muſt be reaſonable. For if the Fine aſſeſſed by the Lord be an un-

If Husband and Wife be Joint-Copyholders of the Purchaſe of the Husband; during the Coverture the Husband is attainted of Felony, and dieth: It is no Forfeiture of any Part of the Copyhold. But if the Purchaſe be made before the Coverture, then it is a Forfeiture of the Moiety.

M. 5 Jac. in Scaccario Godb. 169.

The King being Lord of a Manor, a Copyholder within the Manor made a Leaſe of his Copyhold for three Lives; and the ſurviving Tenant for Life continued the Poſſeſſion of Lands for forty Years. Though the making of ſuch a Leaſe for three Lives was in Law a Forfeiture of the Copyhold; yet becauſe it did not appear upon the Indorſement of the Deed that Livery was made, it was holden, That the King could not take Advantage of the Forfeiture.

If a Copyholder doth bargain and ſell his Copyhold Lands by Deed indented and inrolled, it was reſolved, The ſame was no Cauſe of Forfeiture of the Copyhold of which the Lord can take Advantage, becauſe the Copyhold did not paſs by the Deed: And ſo it was ſaid it was adjudged in *London*'s Caſe.

35 Eliz. Bullock's Caſe.

So if a Copyholder for Life ſurrendreth to the Uſe of another in Fee, and beſides that makes Livery of the Land; this is no Forfeiture of his Copyhold, becauſe the Eſtate paſſeth by the Surrender, and not by the Livery.

1 Rot. 509. 1 part, 163. Winch 62.

If a Copyholder for Life cuts down Timber Trees, it is a Forfeiture of his Copyhold: And ſo it was adjudged in *Belfield* and *Adams*'s Caſe. But if a Copyholder makes a Leaſe for Years, and the Leſſee cuts down Timber Trees, or commits other Waſte upon the Copyhold Lands, the Lord cannot enter upon the Land for a Forfeiture; but in ſuch Caſe the Lord is put to his Action upon the Caſe againſt the Wrong-doer.

Sect. 11. *Where the Act of the Lord, and what Act of his, ſhall diſpenſe with a Forfeiture made by his Copyholder; where, and what not.*

Paſch. 5 Jac. Cro. 1 part, Mantlie and Willington's Caſe.

A Copyholder commits Waſte, and after the Waſte done, the Lord accepts of the Rent from the Hands of the Copyholder. *Quære*, If it ſhall bar him to enter for the Forfeiture? It is a *Quære* not reſolved.

P. 5 Eliz. Moor 49.

If Lands be demiſable to two by Copy for Life *ſucceſſive*, and the Cuſtom of the Manor is, that they may not cut Trees: If the firſt of them cutteth down Trees, it is a Forfeiture both of the Eſtate of the preſent Tenant for Life, and of the Eſtate of the other in Remainder over.

If a Copyholder levies a Fine, makes a Feoffment, or ſuffers a Common Recovery, which deſtroys the Eſtate: In ſuch Caſe no Acceptance of the Rent, nor Act done by the Lord, ſhall be available to make the Eſtate again good. But where the Cuſtom of the Manor only is broken; as if the Copyholder makes a Leaſe of his Copyhold Lands for more Years than one Year, or denies to pay his Rent, or denies to be Sworn of the Homage, or commits Waſte: There his Eſtate may be afterwards confirmed, and there and in ſuch Caſe the Acceptance of the Rent by the Lord will amount to a Confirmation of the firſt Eſtate.

In ſome Caſes, where an Eſtate of a Copyholder is forfeited by Law, yet by Cuſtom and the Act of the Lord in his Court of the Manor, the Forfeiture may be mitigated, and the Land ſhall not be utterly forfeited or deſtroyed. As where the Cuſtom is, That for Waſte Copyhold ſhall be forfeited, a Cuſtom for to amerce the Tenant for the Waſte done, and to diſtrain for the Amercement, will be a good Cuſtom to mitigate the Forfeiture of the Copyhold.

17 Car. in B. R. Thorne and Tyler's Caſe.

The Cuſtom of the Manor where Copyhold Tenements were demiſable for Lives was, That if any ſuch Copyholder ſuffered his Meſſuage to be ruined for want of Repairing, or by committing of Waſte, if the ſame was preſented by the Homage, the Lord uſed to diſtrain the Cattle as well of the Copyholder himſelf as of his Under-Tenant levant and couchant upon the Lands, for the ſaid Amerciament. It was objected, That the Cuſtom was not good, for that it was an unreaſonable Cuſtom, that the Under-Tenant ſhould be puniſhed for the Offence of the Copyholder, for the Under-Tenant is a Stranger to the Cuſtom, and Cuſtoms ſhould be taken ſtrictly. But it was reſolved that the Cuſtom was good. For by the Law, the Suffering of the Copyhold Meſſuage to fall to ruin, or to be waſted, was a Forfeiture of the Copyhold, and the Cuſtom did abridge and mitigate the Forfeiture, and the Under-Tenant for a Year was a Tenant to the Lord, and diſtrainable for the Rents and Services, and the Charge lies upon the Land, and not upon the Perſon; and therefore it was adjudged, That the Cuſtom was good, and the Amerciament lawful, and the Diſtreſs of the Cattle of the Under-Tenant levant upon the Land was lawful, all of them being by the Act of the Lord in his Court, and by the Cuſtom of the Manor, in Mitigation of the Forfeiture of the Land, and ſo for the good of the Copyholder.

Sect. 12. *Whether Copyhold Lands be within the Statute of* Weſtm. 2. *and may be entailed, or not; and where and by what Acts the Iſſue in Tail may be barred; and ſhall be a Diſcontinuance of the Eſtate, what not.*

WHether Copyhold Lands are within the Statute of *Weſtm.* 2. *cap.* 1. *de Donis, &c.* or may be entailed, hath been much controverted, and many Judgments and Reſolutions have been on both Sides; and it ſeemeth to be a Point not fully agreed upon at this Day.

THE
Old TENURES
OF THE
LAWS of *ENGLAND.*

Service de Chivaler.

TEnir par ſervice de chivaler, eſt a tenir per homage, fealtie, & eſcuage: Et tret a luy garde, mariage & relief. ¶ Et nota que ſervice de chivaler eſt ſervice de terre ou de tenement, pur armes porter en guerre en defence du roialme, & doit garde, mariage, relief, de power ne poet aver conuſance d'armes port avant q̃ il ſoit d'age de xxi. ans. Et pur tant q̃ l'ſeignour ne pdra ceo, q̃ de droit il doit aver, & q̃ la powar de le roialme de rien ne ſoit enfeble: Le ley voet p cauſe de ſa tendre age, que ſon ſeigniour luy adta en ſa garde, tanq̃ al plein age de luy ſeſtaſſavoir, xxi. ans.

Grande Sergeantie.

TEnir p grande ſergeantie eſt ſicome un home tient certein terres ou tenẽtz de roy daler ove luy en ſon hoſt, ou de trover un home pur port ſon baner ove luy en ſes guerres, ou a meſner ſon hoſte, ou de trover home d'armes, ou chival, ou hauberk, ou tiel ſemblable ſervice que eſt a faire p corps de home. ¶ Et la appent garde, mariage, & relief, ſicome il appiert en le treatiſe de gardez & relief.

Petit Sergeantie.

TEnir per petit ſergeantie eſt ſicome un home tient de roy terres ou tenements rendant a luy un cotel, un eſcu, un ſete, un arke ſauns corde, ou autre ſer-

villeyn nad pas conuz en court de recoyde luy estre son villeyn.

¶ Et nota que en brē de Moise ne purt es mys plusours neifz que deux taunt solement: & hoc introductum fuit prius in odium servitutis. Mes en brē de Libertate probada purrōt estre mys taūtz dez niefz come le pleyntife voudra.

¶ Et nota que si le nief dun seignour soyt sue en ancien demesne de roy, ou autre ville privilege deins lan & le jour, le seignour puit luy seisier, & sil demurre en la dit ville ou lieu franchise par un an & un jour saūs le sūd de son seignour, il nad mye power de luy seisier en apres, sil ne va en estraye dehors le suisdit franchise.

Fee-Tayle.

TEnir en la tayle est lou home tiēt certeyn trres ou tenementes, a luy & a ses heires de son corps engendres, &c.

¶ Et nota que si la terre soit don a un hōe & a ses heires males, & il ad issue male, il ad fee simple, & ceo fuit ajuge en le parlemēt nre seignour le roy. Mez lou terres ou tenemētz soūt dones a un hōe & a ses heyres males de son corps engendres & il ad issue female, donques il ad fee taile & l'issue female ne serī mye enherite, ut patet anno decimo quarto E. iii. en un assise.

Fee-tayle apres possibilitee.

TEnir en le taile apres possibilite de issue extient est lou terre est done a un home & a sa feme & a les heires de lour ii. corps engendres, si lun de eux survesquist l'autre saūs issue entre eux issuaūt, il tiendra la terre a ūme de sa vie demesne cōe tenaunt en la tayle apres possibilitie dissue extient. ¶ Et nō obstante que il face waste il ne serra james empeche de cel waste fait en son temps demesne per fyne ne par nul autre maū sil mesme ne voet de son eigne degere.

¶ Et nota sil alien, celuy en la reversion navera briefe Dentre en consimili casu ut dicitur. Mes il puit enter, & son entre est congeable, per Robertum Thorpe chief Justice de roy.

Frankmariage.

TEnir en frankemariage est a tenir en le secunde taile limite en l'estatute de Westm secunde, Capitulo primo. Et le donour quitera le donee de toutz maūs dez services tanque le quarte degre soit passe, & le donour ferra toutes les services p suytes duraunt le dit terme. Et puis les heires le donez lez ferroiēt, pur ceo que le privyte de sanke est passe. Et sil soit distrē pur services, il avera briefe de Mesne envers luy, supp̄ que il tient les terres de luy. Mes il navera pas le forjugement, sil ne soit en avauntage de ses issues.

¶ Et nota que apres l'quart degree soit passe il serra attendant de tantz dez services a le donour, come le donour est attendaunt al seignour paramount. Et sil face felonye pur quoy il est atteynt, le roy avera sa terre pur terme de sa vie naturel, & apres son mort son issue serra enherite come per force de la taile. ¶ Et en cest cas nul avera sa terre par voie deschete nient pluis que en autre taile, ut dicitur.

parcel ô lez deners suisditz. Mez nota sil ad fait pluis wast q̃ le avaundit summe d'argent q̃ suit a estre leve amounte, p̃ xx. li. oustre, celuy que ad dzoit serra discharge mayntenant de toutz les deneers suisditez, & rec̃ sa c̃re pur supplupte de waste fait oustre e q̃ amounta le dit summe & il rec̃ sez damages sc̃gles, & mesme la ley est de ses execut̃, & auxy de cestuy que ad son estate. ¶ Et nota sil alien en fee ou a terme de vie, ou en le taile tout la c̃re ou parcel de la terre q̃ il tient par Elegit, si le alienation soit fait deins le term̃ ou apzes, cestuy que ad dzoit avera vers luy un assise de no. dissm̃. Et covient que ilz soient mise en l'assise ambideux auxibien l'alienee come l'alienour: Et non obstante que l'alienour devie mayntenant: Uncoze cestuy que ad dzoit avera vers alienee soule assise, come sil ust este son simple tenant a terme dans, & c̃ est p̃ lequite del estatute de Westm. ii. cap. xxi. pour ceo q̃ il nad sinon chatel en effect. Et mesme la ley est de sez executours, & de cestuy que ad son estat. come est suisdit.

¶ Et nota q̃ en Elegit, si la p̃tie pleintier demaunde execution de lez terres q̃ le dettour avoit jour de reconisans fait, si le vic retourne q̃ il n'avoit riens jour de la reconisaunce fait. Mes q̃ il pourchace terre puis le temps, adonques la partie pleint̃ avera bzief q̃ est appelle Fieri facias. Mes la ley d'un estatut̃ marchaunt est autre, ut patet Hillar. 16.

¶ Et nota si hõe sue execution de dette due sur un reconisaunce p̃ un Fieri facias, & le vic retourna q̃ le reconisour nad riens de c̃res ne de chateux, il navera nul action de terre ou chateux, sinon par Elegit, ut dicitur, a quel bzief si le vic retourne q̃ il nad riens de t̃re ne de chateux le jour, &c. le reconisee est sauns recovere: Non obstante q̃ apzes le Elegit le reconisour happe chateux: Quar apzes le Fieri facias lome puit aver le Elegit: Mes non e contra: Entaunt q̃ le Elegit est de pluis haute nature q̃ le Fieri facias.

¶ Et nota q̃ si home recover p̃ bzeve de Dette, & sue un Fieri facias, & le vic retourne q̃ le partie nad riens dount il puit faire gree a la partie, donq̃s le partie aver̃ un Capias, Sicut alias, & Pluries, & si le vic retourne a le Capias mitto vobis corpus, & il nad riens dount il puit faire gree a la partie: Il serra maunde al Gaole de Fleete, & illonsq̃ demur̃ tanq̃ il ad fait gree a la partie ou autre pur luy: Et si le viscunt retourne non est inventus: Adonques issera Lexigent en̄s luy ut dicitur.

¶ Et nota q̃ en bzieke de Dette pozt devers parsone de saint Esglise q̃ nad rien de la fee, & le vic retourne q̃ il nad riens par que il puit estr̃ sum̃, adonques suera le pleint̃ bzeve al ebesq̃ q̃ il face venir son clerke & lebesq̃ luy ferra venir p̃ sequestration del Esglise.

¶ Et nota q̃ si hõe pozt bzeve de Dette & rec̃, & face ses exec̃ & devie, ilz avont execution̄ non obstante q̃ il soit deins l'an p̃ un Scire facias.

¶ Et nota q̃ si home pozt bzief Daccompt, & puis face ses executours, & devie, ilz averont un novel action d'accompt come il fuit ajugge Anno xx. Edwardi tertii, En un Scire facias: pur quoy il ne doit pas accompter, ut dicitur.

¶ Et en cas q̃ home pozt bzeve de Trespals des biens empoztes & rec̃, & face ses execut̃ & devie, ilz averont action, non obstante que il soit deins l'an p̃ un Scire facias: ut dicitur.

THE
First Part
OF THE
INSTITUTES
OF THE
LAWS of *ENGLAND.*

Chap. I. Fee-simple. *Sect.* I.

¶ TEnant en fee simple est celuy que ad terres ou tenements a tener a luy & a ses heirs a touts jours. Et est appel en Latin, Feodum simplex, quia feodum idem est quod hæreditas, & simplex idem est quod legitimum vel purum, & sic feodum simplex idem est quod hæreditas legitima, vel hæreditas pura. Car si home voile purchaser Terres ou Tenements en Fee simple, il covient de aver ceux parolx en son purchase, A aver & tener a luy & a ses heires: Car ceux parolx (ses heires) font lestate denheritance. Car si home

TEnant in Fee-simple is he which hath Lands or Tenements to hold to him and his heirs for ever. And it is called in Latin, *Feodum simplex*, for *Feodum* is the same that Inheritance is, and *Simplex* is as much as to say, lawful or pure; and so *Feodum simplex* signifies a lawful or pure Inheritance. For if a man would purchase lands or Tenements in Fee-simple, it behoveth him to have these Words in his Purchase, To have and to hold to him and to his Heirs; for these Words (his Heirs) make the Estate of Inheritance. For if a Man

¶ TEnant (in Latin Tenens) is derived of the Verb Teneo, and hath in the Law five Significations. 1. It signifies the Estate of the Land, as when the Tenant in a Præcipe of Land pleads, Quod non Tenet, &c. this is as much as to say, That he hath not Seisin of the Freehold of the Land in Question. And in this Sense doth our Author take it in this Place: And therefore he saith, Tenant in Fee-simple is he which hath Lands to hold to him and his Heirs. 2. It signifieth the Tenure or the Service whereby the Lands and Tenements are holden, and in this Sense it is said in the Writ of right, quæ clam' tenere de te per liberum servic', &c. And in this Signification he is called a Tenant or Holder, because all the Lands and Tenements in England in the Hands of Subjects, are holden mediately or immediately of the

Vide Sect. 85.

48 E. 3. 9.
2 Inst. 501.
4 Inst. 192.

12 Co. Caſe of Stanneries.

Mir. des Juſtic. 1. ſect. 3. Cuſtoms de Normandy. cap. 28.

the King. For in the Law of England we have not properly, Allodium, that is, any Subjects Land that is not holden, unleſs you will take Allodium, for Ex ſolido, as it is often taken in the Book of Domeſday: And Tenants in Fee-ſimple are there called Alodarii or Aloarii. And he is called a Tenant, becauſe he holdeth of ſome ſuperior Lord by ſome Service. And therefore the King in this Senſe cannot be ſaid to be a Tenant, becauſe he hath no Superior but God Almighty; Prædium Dni. Regis eſt directum dominium, cujus nullus Author eſt niſi Deus. And as Bract. ſaith, Omnis quidem ſub eo, & ipſe ſub nullo niſi tantum ſub Deo. The Poſſeſſions of the King are called Sacra Patrimonia and Dominica Coronæ Regis. But though a Subject hath not properly Directum, yet hath he Utile Dominium. Of theſe Tenants our Author ſpeaketh in his ſecond Book. 3. Alſo Tenere ſignifieth Performance, as in the Writ of Covenant, Quod teneat conventionem, that is, That he hold or perform his Covenant. 4. And likewiſe it ſignifieth to be bound, as it is ſaid in every common Obligation, teneri & firmiter obligari. 5. Laſtly, It ſignifieth to deem or judge, as in 38 E. 3. c. 4. It ſhall be holden for none (that is) judged or deemed for none, and ſo we commonly ſay, It is holden in our Books. And theſe ſeveral Significations do properly belong to our Tenant in Fee-ſimple. For he hath the Eſtate of the Land, he holdeth the Land of ſome ſuperior Lord, and is to perform the Services due, and thereunto he is bounden by Doom and Judgment of Law. Of the ſeveral Eſtates of Land our Author treateth in his firſt Book, and beginneth with Fee-ſimple, becauſe all other Eſtates and Intereſts are derived out of the ſame.

Stat. de 16 R. 2. cap. 5. 14 El. Dy. 213. a. Lib. 1. 47. in Alton Wood's Caſe. 1 Cro. 82.

Bract. lib. 1. cap. 8.

purchaſe terres per ceux paroix, A aver & tener a luy a touts jours: ou per tiels parols, A aver & tener a luy & a ſes aſſignes a touts jours: en ceux deux caſes il ny ad eſtate forſque pur terme de vie, pur ceo que il fault ceux parols (ſes heires) les queux paroix tantſolement font leſtate denheritance en toutz Feoffments & Grants.

purchaſe Lands by theſe Words, To have and to hold to him for ever; or by theſe Words, To have and to hold to him and his Aſſigns for ever: in theſe two Caſes he hath but an Eſtate for Term of Life; for that there lack theſe Words (his Heirs) which Words only make an Eſtate of Inheritance in all Feoffments and Grants.

Poſt 189. a. Brit. f. 207, 208. Fleta lib. 5. c. 5. & lib. 3. c. 8. Bract. lib. 4. 263. 4 Inſt. 202. Domeſday. Mir. des Juſt. c. 2. ſect. 15, 17. Bract. l. 2. c. 5, 6, 7. Brit. c. 34. f. 89. Flet. lib. 3. c. 2. 8 & 9. & lib. 5. cap. 5.

[a] Bract. f. 263, & 207. 18 H. 8. 3. b. 18 Aſſ. 5. 18 E. 3. 46. 24 E. 3. 28. 9 E. 4. 18. 16 H. 7. 4. 22 R. 2. Diſc. 50. 12 E. 4. 3. 15 E. 4. 8. 12 H. 8. 8. The Caſe of a Perſon which hath a qualified Fee, ſee in the Title of Deſc.

2 Inſt. 296.

* Vide Sect. 4.

[b] Bract. l. 4. f. 263. Flet. l. 5. c. 5. 9 Co. 34. b.

[c] 2 Aſſ. 4. 12 Aſſ. 38. 12 E. 3. tit. Hors de ſon fee 28. Hob. 108. Rot. Par. 13 E. 1. Doc. plac. 132, 216. 7 Co. 33. Nevill's Caſe.

¶ *Fee-ſimple.* Fee cometh of the French Fief, (i. e. prædium beneficiarium) and legally ſignifieth Inheritance, as our Author himſelf hereafter expoundeth it. And ſimple is added, for that it is deſcendible to his Heirs generally, that is, ſimply, without Reſtraint to the Heirs of his Body, or the like. Feodum eſt quod quis tenet ex quacunque cauſa, ſive ſit tenementum, ſive redditus, &c. In Domeſday it is called Feudum. [a] Of Fee-ſimple, it is commonly holden that there be three Kinds, viz. Fee-ſimple abſolute, Fee-ſimple conditional, and Fee-ſimple qualified, or a baſe Fee. But the more genuine and apt Diviſion were to divide Fee, that is Inheritance, into three Parts, viz. ſimple or abſolute, conditional, and qualified or baſe. For this Word (ſimple) properly excludeth both Conditions and Limitations, that defeat or abridge the Fee. * Hereby it appeareth that Fee in our legal Underſtanding ſignifieth, that the Land belongs to us and our Heirs, in Reſpect whereof the Owner is ſaid to be ſeized in Fee; and in this Senſe the King is ſaid to be ſeiſed in Fee. [b] It is alſo taken, as it is holden of another by Service, and that belongeth only to the Subject; Item dicitur feodum alio modo ejus qui alium feoffat, & qd' quis tenet ab alio, ut ſi ſit qui dicat, talis tenet de me tot feoda per ſervitium militare. And Fleta ſaith, Poterit unus tenere in feodo quoad ſervitia, ſicut Dominus capitalis, & non in Dominico; alius in feodo & Dominico, & non in ſervitio, ſicut libere tenens alicujus. [c] And therefore if a Stranger claim a Seigniory, and diſtrein and avow for the Service, the Tenant may plead, That the Tenancy is extra feodum, &c. of him, (that is) out of the Seigniory, or not holden of him that claimeth it, but he cannot plead extra feodum, &c. unleſs he take the Tenancy, that is, the State of the Land upon him. [1] Of Fee in the firſt Senſe our Author treateth in this firſt Book; and as it is taken in the ſecond Senſe, in his ſecond Book: And of the Third you ſhall read in our Author, Sect. 13, 643, 644, 645. and plentifully in our Books quoted in the Margent.

¶ *Terres ou Tenements.* Here is to be obſerved, That a Man may have a Fee ſimple in three Kinds of Hereditaments, viz. Real, Perſonal, and Mixt: Real, † as Lands and Tenements, whereof our Author here ſpeaketh. Perſonal, as King Edward the Firſt, in the thirteenth Year of his Reign, Conceſſit Edmundo fratri ſuo chariſſimo, quod ipſe & hæredes ſui habeant ad requiſitionem ſuam in Cancellaria noſtra & hæredum noſtrorum Juſticiarios

† By the Word Tenement a Reverſion will paſs. Pl. Com. 155. a. And Offices, Rents, Commons, Profits apprender, &c. Poſt 6. ‖

Lib. 3. fo. 6. 3. in Lincoln College's Case.

Grant, Concessio, is properly of Things incorporeal, which (as hath been said) cannot pass without Deed. And here it is to be observed (that I may speak once for all) that every Period of our Author in all his three Books, contains Matter of excellent Learning, necessarily to be collected by Implication or Consequence; for Example, he saith here, that these Words [his Heirs] make an Estate of Inheritance in all Feoffments and Grants, he expressing Feoffments and Grants, necessarily implieth, that this Rule extendeth not, first, to Last Wills and Testaments, for thereby, [a] as he himself after saith, an Estate of Inheritance may pass without these Words [his Heirs.] [b] As if a Man devise twenty Acres to another, and that he shall pay to his Executors for the same ten Pounds; hereby the Devisee hath a Fee-simple by the Intent of the Devisor, albeit it be not to the Value of the Land. So it is if a Man devise Lands to a Man imperpetuum, or to give, and to sell, or in feodo simplici, or to him and to his Assigns for ever. In these Cases a Fee-simple doth pass by the Intent of the Devisor; but if the Devise be to a Man and his Assigns, without saying [for ever] the Devisee hath but an Estate for Life. [c] If a Man devise Land to one & sanguini suo, that is a Fee-simple; but if it be semini suo, it is an Estate-tail.

6 Co. 16.
[a] Litt. lib. 3. c. de Attor. Sect. 5, 8, 6.
4 E. 6. Estates Br. 78.
Temps H. 8. tit. Conscience, Br. 25.
3 Co. 19, 20, 21.
[b] In Boraston's Case, lib. 6. f. 16, 17. lib. 10. fo. 67. Post 273. b. a. 280.
[c] Mich. 40 & 41 Eliz. in Error int. Downhall and Catesby adjudged.
Brook, tit. Tail 21.

[d] Secondly, That it extendeth not to a Fine sur conusans de droit come ceo que il ad de son done, by which a Fee also may pass without this Word [Heirs] in Respect of the Height of that Fine, and that thereby is implied that there was a precedent Gift in Fee.

[d] Lib. 1. f. 100. Shelley's Case. Pl. Com. 248.

Thirdly, For to certain Releases, and that three Manner of Ways; [e] first, when an Estate of Inheritance passeth and continueth, as if there be three Coparceners or Jointenants, and one of them release to the other two, or to one of them generally, without this Word [Heirs] by Littleton's own Opinion they have a Fee-simple, as appeareth hereafter. 2. By Release [f] when an Estate of Inheritance passeth and continueth not, but is extinguished, as where the Lord releases to the Tenant, or the Grantee of a Rent, &c. releases to the Tenant of the Land generally, all his Right, &c. hereby the Seignory, Rent, &c. are extinguished for ever, without these Words [Heirs] 3. [g] When a bare Right is released, as when the Disseisee releases to the Disseisor all his Right, he need not (saith our Author in another Place) speak of his Heirs. But of all these, and the like Cases, more shall be treated in their proper Places. 4. For to a Recovery; A. seised of Land suffered B. to recover the Land against him by a common Recovery, where the Judgment is quod prædictus B. recuperet versus præd. A. tenementa prædicta cum pertin', yet B. recovereth a Fee-simple without this Word [Heirs] for regularly every Recoveror recovereth a Fee-simple. 5. For to a Creation of Nobility by Writ; for when a Man is called to the upper House of Parliament by Writ, he is a Baron, and hath Inheritance therein without the Word [Heirs] yet may the King limit the general State of Inheritance created by the Law and Custom of the Realm to the Heirs Males, or general of his Body, by the Writ, as he did to Bromflete, who in 27 H. 6. was called to Parliament by the Name of the Lord Vescye, &c. with the Limitation in the Writ to him and the Heirs Males of his Body; but if he be created by Patent, he must of Necessity have these Words [his Heirs] or the Heirs Males of his Body, or the Heirs of his Body, &c. otherwise he hath no Inheritance. The first Creation of a Baron by Patent that I find, was of John Beauchampe of Holt, created Baron by Patent in 11 R. 2. for Barons before that Time were called by Writ: And it is to be observed, that of ancient Times, Earls, &c. were created by girding them with a Sword, and nominating him Earl, &c. of such a County or Place, and this with a Calling of him to Parliament by Writ by that Name, was a sufficient Creation of Inheritance.

[e] Litt. lib. 2. c. Tenant in Common, sect. 304, 305. cap. Attorn. sect. 374.
Dyer 9 Eliz. 263.
[f] Litt. lib. 3. c. Releases, Sect. 479, 480.
[g] Lit. cap. Release, Sect. 467.
7 Co. 33.

But out of this Rule of our Author the Law doth make divers Exceptions (Et exceptio probat regulam) for sometimes by a Feoffment a Fee-simple shall pass without these Words [his Heirs]. For Example, first, [h] If the Father enfeoff the Son; to have and to hold to him and to his Heirs, and the Son infeoffeth the Father as fully as the Father infeoffed him, by this the Father hath a Fee-simple, quia verba relata hoc maxime operantur per referentiam ut in esse videntur. [i] Secondly, In Respect of the Consideration, a Fee-simple had passed at the Common Law without this Word [Heirs], and at this Day an Estate of Inheritance in Tail; as if a Man had given Land to a Man with his Daughter in Frankmarriage generally, a Fee-simple had passed without this Word [Heirs] for there is no Consideration so much respected in Law, as the Consideration of Marriage, in Respect of Alliance and Posterity. Thirdly, If a Feoffment or Grant be made by Deed to a Mayor and Commonalty, or any other Corporation aggregate of many Persons capable, they have a Fee-simple without the Word [Successors] because in Judgment of the Law they never die. [k] Fourthly, In Case of a sole Corporation a Fee-simple shall sometimes pass without this Word [Successors] as if a Feoffment in Fee be made of Land to a Bishop, To have and to hold to him in Libera eleemolyna, a Fee-simple doth pass without this Word [Successors]. [l] And so if a Man give Lands to the King by Deed enrolled; a Fee-simple doth pass without these Words [Successors or Heirs] because in Judgment of Law the King never dieth. Fifthly, In Grants sometimes an Inheritance shall pass without this Word [Heirs]

[h] 39 Ass. 22. 2 Leon. 27.

[i] Vide Sect. 17.

[k] Finch 124.

[l] Pl. Com. Lo. Berkleye's Case.

Quia poſſeſſio fratris de feodo ſimplici facit ſororem eſſe hæredem. Mes ſi ſont deux freres per diuers venters, & leigne eſt ſeiſie de terre en fee, & moy' ſans iſſue, & ſon uncle entra come procheine heire a luy, quel auxi moy' ſans iſſue, ore le puiſne frere puit aver la terre come heire al uncle, pur ceo que il eſt de lentier ſanke a luy, coment que il ſoit de demy ſanke a ſon eigne frere.

ſeſſion, there the Siſter ſhall have the Land, becauſe *Poſſeſſio fratris de feodo ſimplici facit ſororem eſſe hæredem.* But if there be two Brothers by divers Venters, and the Elder is ſeiſed of Land in Fee, and die without Iſſue, and his Uncle enter as next Heir to him, who alſo dies without Iſſue, now the younger Brother may have the Land as Heir to the Uncle, for that he is of the whole Blood to him, albeit he be but of the half Blood to his elder Brother.

Son ſhall be Heir; becauſe, as it hath been ſaid before, regularly he muſt make himſelf Heir to him that was laſt actually ſeiſed, or to the Purchaſor; and that was to the Father where the eldeſt Son did not enter. And therefore Littleton addeth, that the Son is Heir to the Father. [a] But when the eldeſt Son in this Caſe doth enter, then cannot the youngeſt Son, being of the half Blood, be Heir to the eldeſt; but the Land ſhall deſcend to the Siſter of the whole Blood. Yet in many Caſes, albeit the Son doth not enter into Lands deſcended in Fee-ſimple, the Siſter of the whole Blood ſhall inherit; and in ſome Caſes where the eldeſt Son doth enter, yet the younger Brother of the half Blood ſhall be Heir.

[a] Ratcliff's Caſe, lib. 3. fo. 41.

[b] If the Father maketh a Leaſe for Years, and the Leſſee entreth and dieth, the eldeſt Son dieth during the Term before Entry or Receipt of Rent; the younger Son of the half Blood ſhall not inherit, but the Siſter; becauſe the Poſſeſſion of the Leſſee for Years, is the Poſſeſſion of the eldeſt Son, ſo as he is actually ſeiſed of the Fee-ſimple, and conſequently the Siſter of the whole Blood is to be Heir. The ſame Law it is, if the Lands be holden by Knights-Service, and the eldeſt Son is within Age, and the Guardian entreth into the Lands. And ſo it is if the Guardian in Socage enter.

[b] Poſt 243. 8 Aſſ. p. 6. Mo. 125.

But in the Caſe aforeſaid, if the Father make a Leaſe for Life, or a Gift in Tail, and dieth, and the eldeſt Son dieth in the Life of Tenant for Life or Tenant in Tail, the younger Brother of the half Blood ſhall inherit, becauſe the Tenant for Life, or Tenant in Tail is ſeiſed of the Freehold, and the eldeſt Son had nothing but a Reverſion expectant upon that Freehold or Eſtate-Tail; and therefore the youngeſt Son ſhall inherit the Land as Heir to his Father, who was laſt ſeiſed of the actual Freehold. And albeit a Rent had been reſerved upon the Leaſe for Life, and the eldeſt Son had received the Rent and died; yet it is holden by ſome * that the younger Brother ſhall inherit, becauſe the Seiſin of the Rent is no actual Seiſin of the Freehold of the Land. But 35 Aſſ. pl. 2. ſeemeth to the contrary, becauſe the Rent iſſueth out of the Land, and is in Lieu thereof, wherein the only Queſtion is, if there be ſuch a Seiſin of the Rent, be ſuch an actual Seiſin of the Land in the eldeſt Son, as the Siſter may in a Writ of Right make her ſelf Heir of this Land to her Brother? But it is clear, that [c] if there be Baſtard eigne, and mulier puiſne, and the Father maketh a Leaſe for Life, or a Gift in Tail be reſerving a Rent, and die, and the Baſtard receive the Rent and die, this ſhall not bar the mulier; for the Reaſon of that ſtandeth upon another Maxim, as ſhall manifeſtly appear in its apt Place, Sect. 399.

3 Co. 40, 42. Poſt 191. b.

* 7 H. 5. 34. per Hals & Logdington. 35 Aſſ. p. 2.

[c] Vid. Sect. 399.

¶ *Seiſie de terres.* [d] But in this Caſe, if the eldeſt Son doth enter and get an actual Poſſeſſion of the Fee-ſimple; yet if the Wife of the Father be indowed of the third Part, and the eldeſt Son dieth, the younger Brother ſhall have the Reverſion of this third Part notwithſtanding the eldeſt Brother's Entry; becauſe that his actual Seiſin, which he got thereby, was by the Endowment defeated. But if the eldeſt Son had made a Leaſe for Life, and the Leſſee had endowed the Wife of the Father, and Tenant in Dower had died, the Daughter ſhould have had the Reverſion, becauſe the Reverſion was changed and altered by the Leaſe for Life, and the Reverſion is now expectant on a new Eſtate for Life.

[d] 7 H. 5. 2, 3, 4.

8 Co. 35. b. Poſt 191. b. 4 Co. 58. b.

¶ *Enter.* Hereupon the Queſtion groweth, Whether if the Father be ſeiſed of divers ſeveral Parcels of Lands in one County, and after the Death of the Father the Son entreth into one Parcel generally, and before any actual Entry into the other dieth; this general Entry into Part, ſhall veſt in him an actual Seiſin in the Whole, ſo as the Siſter ſhall inherit the Whole? And this is a Quære in 21 H. 7. 33. a.

And

thy of Observation. Here is the first (&c.) and there is no (&c.) in all his three Books (there being, as you shall perceive, very many) but it is for two Purposes: First it doth imply some other necessary Matter. Secondly, That the Student may, together with that which our Author hath said, inquire what Authorities there be in Law that treat of the Matter, which will work three notable Effects: First, It will make him understand our Author the better. Secondly, It will exceedingly add to the Reader's Invention. And lastly, It will fasten the Matter more surely in his Memory; for which purpose I have for his Ease in the Beginning set down in these Institutes, the Effect of some of the principal Authorities in Law, as I conceive them, concerning the same. In this Place the (&c.) implieth Possession or Receipt, and such other Matter as appeareth by my Notes in this Section. As for the Authorities of Law, you shall find the Effect of them in this Section, and the like of the Rest of the (&c.) which you shall find in the Sections hereafter mentioned, omitting those (for avoiding of Tediousness) that either are apparent, or which are explained in some other Places, viz. Sect. 20, 48, 102, 108, 120, 125, 136, 137, 146, 149, 154, 164, 166, 167, 168, 177, 179, 185, 184, 194, 200, 202, 210, 211, 217, 220, 226, 233, 240, 242, 244, 245, 248, 262, 264, 269, 270, 271, 279, 320, 322, 323, 325, 326, 327, 329, 330, 335, 336, 341, 347, 348, 349, 350, 352, 355, 356, 359, 364, 365, 374, 375, 377, 381, 384, 389, 393, 395, 397, 399, 401, 402, 410, 417, 428, 433, 447, 449, 464, 470, 471, 477, 483, 489, 500, 501, 522, 532, 552, 553, 556, 558, 562, 578, 591, 592, 593, 594, 603, 613, 624, 625, 630, 632, 634, 637, 638, 648, 659, 660, 661, 669, 687, 693, 700, 718, 745, 748, 749. All which I have observed and quoted here once for all, for the Ease of the studious Reader.

Post 127. b.

¶ *Ut de feodo.* Where (ut) is not by Way of Similitude, but to be understood positively that he is seised in Fee. And so it is where one pleads a Descent to one ut filio & hæredi, that is to Jo. S. that is Son and Heir, & sic de cæteris, where (ut) denotat ipsam veritatem.

Britton 205, 206. optime. Fleta, lib. 6. cap. 5. Idem, lib. 3. cap. 15. Dyer 14. b.

¶ *Sicome de Advowson.* Of an Advowson (a) wherein a Man hath as absolute Ownership and Property as he hath in Lands or Rents, yet he shall not plead, that he is seised in Dominico suo ut de feodo, because that Inheritance, savouring not de domo, cannot either serve for the Sustentation of him and his Houshold, nor any Thing can be received for the same for defraying of Charges. And therefore he cannot say, that he is seised thereof in dominico suo de feodo; whereby it appeareth how the Common Law doth detest Simony and all corrupt Bargains for Presentations to any Benefice, but that (b) idonea persona, for the Discharge of the Cure, should be presented freely without Expectation of any Thing; nay, so cautious is the Common Law in this Point, that the Plaintiff in a Quare impedit should recover no Damages for the Loss of his Presentation, until the Statute of W. 2. c. 5. And that is the Reason that Guardian in Socage shall not present to an Advowson, because he can take nothing for it, and by Consequence he cannot account for it. And by the Law he can meddle with nothing that he cannot account for. [c] And in a Writ of Right of Advowson, the Patron shall not alledge the Explees or taking of the Profits in himself, but in his Incumbent. And hereby the old Books shall be the better understood, viz. Bracton, lib. 4. tract. 3. cap. nu. 5. Est autem dominicum quod quis habet ad mensam, & proprie, sicut sunt Woordlands Anglice. And Fleta, lib. 5. cap. 5. Est autem dominicum proprie terra ad mensam assignata. Dominicum etiam dicitur ad differentiam ejus quod tenetur in servitio. But of an Advowson, and such like, he shall plead, that he is seised de advocatione ut de feodo & jure.

[a] Doc. Plac. 287.

[b] Lib. 6. fo. 51. Boswel's Case.

[c] Fleta, lib. 5. cap. 5.

¶ *Advowson.* Advocatio, signifying an Advowing or taking into Protection, is as much as jus patronatus. Sir William Herle in 7 E. 3. fol. 4. saith, that it is not long past, that a Man did know what an Advowson was; but when a Man would grant an Advowson he granted Ecclesiam, the Church, and thereby the Advowson passed. Vide 45 E. 3. 5. But surely the Word is of greater Antiquity, for in the Register there is an original Writ de recto Advocationis, and in the original Writ of Assise de darrein Presentment, the Patron is called Advocatus. Vide W. 2. c. 5. and so doth [d] Bracton call him. Advocatus autem dici poterit ille ad quem pertinet jus advocationis alicujus, ut ad Ecclesiam præsentet nomine proprio & non alieno. And [e] Fleta, lib. 5. cap. 14. agreeth herewith almost totidem verbis: Advocatus est ad quem pertinet jus advocationis alterius Ecclesiæ, ut ad Ecclesiam nomine proprio non alieno possit præsentare. And Britton, cap. 92. the Patron is called Avow, and the Patrons are called Advocati, for that they be either Founders or Maintainers, or Benefactors of the Church, either by Building, Dotation, or increasing of it, in which respect they were also called Patroni, and the Advowson jus Patronatus.

[d] Bract. lib. 4. fo. 240.

[e] Fleta, lib. 5. cap. 14.

[f] 33 H. 6. 11. b. per Prisot. 4 Co. 75. 5 Co. 102. 2 Inst. 35, 357.

And it is to be understood that there is a great [f] Diversity inter advocationem medietatis Ecclesiæ, &c. & medietatem advocationis Ecclesiæ, and of their several Remedies for the same. For the Advowson of the Moiety is when there be several Patrons, and two several Incumbents in one Church, the one of the one Moiety thereof, and the other of the other Moiety, and

In terris vel tenementis quæ viri & mulieres conjunctim acquisiverunt, &c. Bracton calleth it perquisitum; and by [a] Glanvil it is called quæstus or perquisitum.

Bracton, lib. 2. fol. 65.
[a] Glanvil, lib. 7. cap. 1.

A Purchase is always intended by Title, and most properly by some Kind of Conveyance, either for Money or some other Consideration, or freely of Gift: For that is in Law also a Purchase. But a Descent, because it cometh meerly by Act of Law, is not said to be a Purchase; and accordingly the Makers of the Act of Parliament in 1 H. 5. cap. 5. speak of them that have Lands or Tenements by Purchase or Descent of Inheritance. And so it is of an Escheat, or the like, because the Inheritance is cast upon, or a Title vested in the Lord by Act in Law, and not by his own Deed or Agreement, as our Author here saith. Like Law of the State of Tenant by the Courtesy, Tenant in Dower, or the like. But such as attain to Lands by meer Injury or Wrong, as by Disseisin, Intrusion, Abatement, Usurpation, &c. cannot be said to come in by Purchase, no more than Robbery, Burglary, Piracy, or the like, can justly be termed Purchase.

Pl. Com. Wimbisshe's Case 47. b.

If a Nobleman, Knight, Esquire, &c. be buried in a Church, and have his Coat-Armor and Pennons with his Arms, and such other Ensigns of Honour as belong to his Degree or Order set up in the Church, or if a Grave-stone or Tomb be laid or made, &c. for a Monument of him; [b] in this Case, albeit the Freehold of the Church be in the Parson, and that these be annexed to the Freehold, yet cannot the Parson, or any take them or deface them, but he is subject to an Action to the Heir, and his Heirs, in the Honour and Memory of whose Ancestor they were set up. And so it was holden, Mich. 10 El. and herewith agree the Laws [c] in other Countries. Note this Kind of Inheritance: And some hold that the Wife or Executors that first set them up, may have an Action in that Case against those that deface them in their Time. And Note, that in some Places Chattels, as Heir-looms, (as the best Bed, Table, Pot, Pan, Cart, and other dead Chattels moveable) may go to the Heir; and the Heir in that Case may have an Action for them at the Common Law, and shall not sue for them in the Ecclesiastical Court; but the Heir-loom is due by Custom, and not by the Common Law. And the [d] ancient Jewels of the Crown are Heir-looms, and shall descend to the next Successor, and are not devisable by Testament.

12 Co. 105. 3 Inst. 202. Cro. Jac. 366.
[b] 9 E. 4. 24. Mich. 10 Ja. Obiter in Com. Banco in Pym's Case.
[c] B. Cassanæus, fol. 13. Conc. 29.
30 E. 3. 2 and 3.
39 E. 3. 6, 9, 10.
tit. Descent. Br. 43.

[d] Vide 28 H. 8. 24. Int. adjudicata cor. Rege. Tr. 41 E. 3. lib. 2. fo. 104. in Thesaur.

An Heir-loom is called principalium or hæreditarium.

Consuetudo hundredi de Stretford in Com. Oxon. est quod hæredes tenementorum infra hundredum prædictum existen. post mortem antecessorum suorum habebunt, &c. principalium, Anglice an Heir-loom, viz. De quodam genere catallorum, utensilium, &c. optimum plaustrum, optimam carucam, optimum ciphum, &c.

Our Author hath not spoken of Parceners in this Chapter, for that he hath particular Chapters of the same.

Sect. 241, 242, &c.

Gradus Parentelæ, &c.

¶ *Tenant en Fee-taile.* Tallium, or Feodum talliatum, is derived of the French word tailler, scindere, for so Littleton himself in this Chapter, Sect. 81. saith.

2 Inst. 331. Mirror, cap. 2. sect. 15. and cap. 1. sect. 5. Post 22. a.

Tenant in Fee-taile est per force de le Statute de West. 2. c. 1. Car devant le dit Statut touts Enheritances furent Fee-simple; car touts les dones q̄ sont specifies deins mesme le Stat. fueront Fee

Tenant in Fee-tail is by Force of the Statute of *W.* 2. *cap.* 1. for before the said Statute, all Inheritances were Fee-simple; for all the Gifts which be specified in that Statute were Fee-simple condi-

¶ *Le Statute de W.* 2. This Statute was made in 31 E. 1. and is called West. 2. because the Parliament was holden at West-

simple

per possibilitie poit enheriter les tenements per force del done, pur ceo que chescun tiel issue est de son corps engendre.

Possibility may inherit the Tenements by Force of the Gift; because that every such Issue is of his Body ingendred.

¶ EN mesme le maner est lou terres ou tenements sont dones a un feme, & a les heirs de sa corps issuants, coment que el avoit divers barons, uncore l'issue que el poet aver per chescun baron, poet enheriter come issue en le taile per force de tiel done, & pur ceo tiels dones sont appelles general tailes.

IN the same Manner it is where Lands or Tenements are given to a Woman, and to the Heirs of her Body, albeit that she hath divers Husbands, yet the Issue, which she may have by every Husband, may inherit as Issue in Tail by Force of this Gift. And therefore such Gifts are called general Tails.

those Inheritances, or concerning or annexed to, or exercisible within the same, though they lie not in Tenure; therefore all these without Question may be intailed. As [a] Rents, Estovers, Commons or other Profits whatsoever granted out of Land; or Uses, Offices, Dignities, which concern Lands or certain Places, may be entailed within the said Statute, because all these savour of the Realty. But if the Grant be of an Inheritance meerly personal, or to be exercised about Chattels, and is not issuing out of Land, nor concerning any Land, or some certain Place, such Inheritances cannot be intailed, because they savour nothing of the Realty. But Examples will illustrate and make this Learning clear.

[a] 7 E. 3. 363. 18 E. 3. 27. 1 H. 7. 28. 4 H. 7. 9. Pl. Com. in Manxel's Case, fol. 2 & 3. 7 Co. 33. 11 Co. 1.

10 Co. 87.

The Writ of Assize [b] was de libero tenemento, and made his Pleint of the Office of the fourth Part of the Serjeant of the Common Place, and the Writ adjudged good; and seeing that a Man hath a Freehold, Liberum tenementum in it, by consequent it may be intailed.

[b] 7 Ass. p. 12. 7 E. 6. 1. F. N. B. 173.

The Office of the Keeping of the Church of our Lady of Lincoln was intailed, and a Formedon there brought upon that Gift of the Office by the Issue in Tail. The Office of the Marshal of England intailed. The [c] Office of one of the Chamberlains of the Exchequer intailed. 1 H. 7. 28. The Office of a Fostership intailed. 4 H. 7. 10. 9 E. 4. 56. b. Charters intailed. 19 H. 8. 3. Use intailed. Nomination to a Benefice intailed.

18 E. 3. 27. ‡ W. Jo. 135. [c] 1 H. 7. 28. 4 H. 7. 10. 9 E. 4. 326. 19 H. 8. 3. 1 H. 5. 1. 12 Co. 81.

Also a Name of Dignity may be intailed within the Statute, [d] as Dukes, Marquesses, Earls, Viscounts and Barons, because they be named of some County, Manor, Town or Place. If the Issue in Tail [e] in a Formedon in the Descender be barred by a false Verdict, his Release is no Bar to his Issue, albeit the Action is at the Common Law.

[d] Lib. 7. fol. 33, 34. Nevil's Case. 28 H. 6. Lord Vesey's Case. 6 Co. 7. b. Post 392. b. Sid. 261.

The like Law is of a Writ of Error. 3 Eliz. Dyer 188. If a Gift in Tail be made with Warranty, the Donee releases the Warranty, this shall not bind the Issue in Tail; for to all these Cases and the like, the said Statute doth extend. But if I grant to a Man and to the Heirs of his Body, to be Keeper of my Hounds, or Master of my Horse, or to be my Faulconer, or such like, with a Fee therefore, yet these cannot be intailed within the said Statute; for that they be not issuing out of Tenements, nor annexed to, or exercisible within, or concerning Lands or Tenements of Freehold or Inheritance, but concerning Chattels, and savour nothing of the Realty. And so it is if I by my Deed, for me and my Heirs, grant an Annuity to a Man, and the Heirs of his Body; for that this only chargeth my Person and concerneth no Land, nor savoureth of the Realty.

[e] 14 Ass. 2. 3 Eliz. Dyer 188. Pl. Com. in Manxel's Case. 10 Co. 58. 1 Roll. 837.

In all these Cases he hath a Fee conditional, as they were before the Statute, and the Grantee by his Grant or Release may bar his Heir, as he might have done at the Common Law, for that in these Cases he is not restrained by the said Statute.

¶ *Et a ses heires de son corps engendres.* In Gifts in Tail this Word [Heirs] is as necessary, as in Feoffments and Grants, for seeing every Estate-tail was a Fee-simple at the Common Law, and at the Common Law no Fee-simple could be in Feoffments and Grants without this Word [Heirs] and that an Estate in Fee-tail is but a cut or restrained Fee; it followeth, that in Gifts in a Man's Life-time, no Estate can be created without this Word [Heirs] unless it be in Case of Frank-marriage, as hereafter shall be shewed. And where Littleton saith [Heirs] yet [Heir] in the singular Number in a special

Case

Ante 17. b. 39 Ass. 20. 20 H. 3. 5. 5 H. 4. 7. b. 14 H. 4. 25. Post 385. b. 8 Co. 57. a. 1 Co. 103. Ante 9. b. 11 Co. 51. a. ‡ Ow. 64. S. C. Mo. 103. 2 Leon. 216.

Case may create an Estate-tail, as appeareth by 39 Ass. p. 20. hereafter mentioned. And yet if a Man give Lands to A. & hæredibus de corpore suo, the Remainder to B. in forma prædicta, this is a good Estate-tail to B. for that in forma prædicta do include the other. If a Man letteth Lands to A. for Life, the Remainder to B. in Tail, the Remainder to C. in forma prædicta, this Remainder is void for the Incertainty. But if the Remainder had been, the Remainder to C. in eadem forma, this had been a good Estate-tail; for Idem semper proximo antecedenti refertur. If a Man give Lands or Tenements to a Man & semini suo, or exitibus vel prolibus de corpore suo, to a Man and to his Seed, or to the Issues and Children of his Body, he hath but an Estate for Life; for albeit that the Statute provideth, that Voluntas donatoris secundum formam in charta doni sui manifeste expressam de cætero observetur, yet that Will and Intent must agree with the Rules of Law. And of this Opinion was our Author himself, as it appeared in his learned Reading aforementioned upon this Statute: Where he holdeth, If a Man gives Land to a Man Et exitibus de corpore suo legitime procreatis, or semini suo, he hath but an Estate for Life, for that there wanteth Words of Inheritance.

7 Co. 41.

¶ *De son corps.* These Words are not so strictly required, but that they may be expressed by Words that amount to as much: For the Example, that the Statute of W. 2. putteth, hath not these Words (de corpore) but these Words [hæredibus] viz. Cum aliquis dat terram suam alicui viro & ejus uxori & hæredibus de ipsis viro & muliere procreatis. If Lands be given to B. & hæredibus quos idem B. de prima uxore sua legitime procrearet: This is a good Estate in especial Tail (albeit he hath no Wife at that Time) without these Words (de corpore). So it is [a] if Lands be given to a Man and to his Heirs, which he shall beget of his Wife: [b] Or to a Man & hæredibus de carne sua, or to a Man & hæredibus de se. In all these Cases these be good Estates in Tail; and yet these Words de corpore are omitted.

[a] 12 H. 4. 3. [b] 37 H. 6. 15. [c] 5 H. 5. 6.

[d] 12 H. 4. per Horton. Post 27. b. 220. a.

It is holden [d] by some Opinions, That if there be Grandfather, Father and Son, and Lands are given to the Grandfather, and to his Heirs begotten by the Father, the Father dieth, the Grandfather dieth, the Son is in as Heir to the Grandfather begotten upon the Body of his Father, and the Wife of the Grandfather in that Case shall be endowed. But certain it is, that in some Cases one shall have the Land per formam doni that is not Issue of the Body of the Donee, which see Sect. 30.

18 E. 2. tit. Bre. 838. 24 E. 3. 28. ‡ Ow. 152.

Engendres. This Word may in many Cases be omitted, or expressed by the like, and yet the Estate in Tail is good; As, Hæredibus de carne, Hæredibus de se, hæred' quos sibi contigerit, &c. as is aforesaid; and where the Word of Littleton is, ingendred, or begotten, procreatis, yet if the Word be procreandis, or quos procreaverit, the Estate in Tail is good; and as procreatis shall extend to the Issues begotten afterwards, so procreandis shall extend to the Issues begotten before.

Sect. 16.

[e] Pl. Com. 35.

¶ A *Un home & sa feme.* [e] Then put the Case that Lands be given to a Man and a Woman unmarried, and the Heirs of their two Bodies; for the apparent Possibility to marry, they have an Estate-tail in them presently. [f] So it is where Lands be given to the Husband of A. and to the Wife of B. and to the Heirs of their Bodies, they have presently an Estate in Tail, in respect of the Possibility. If a Feme sole do enfeoff a married Man causa matrimonii prælocuti, it is good for the Possibility. But put the Case that the Premisses and the Habendum be in other Manner than Littleton hath put, and let us see

[f] Lib. 1. f. 120. Chudley's Case. 40 Ass. pl. 13. 34 Ass. pl. 1. Fleta, lib. 5. cap. 34.

Post 25. b. F. N. B. 205. b. Post 204. a.

TEnant en Taile especial ẽ lour trs ou Tenements sont dones a un home & a sa feme, & a les heires de lour deux corps engendres, en tiel case nul poet inheriter per force de le dit done, forsq; ceux que sont ingendres perentre eux deux. Et est appelle special Taile, pur ceo que si la feme devy, & il prent auẽ feme, & ad issue, l'issue del se-

TEnant in Tail especial is, where Lands or Tenements are given to a Man and to his Wife, and to the Heirs of their two Bodies begotten; in this Case none shall inherit by Force of this Gift, but those that be engendred between them two. And it is called especial Tail, because if the Wife die, and he taketh another Wife, and have Issue, the Is-

the Death of either Party without Iſſue, they are not Tenants in Tail after Poſſibility of Iſſue extinct. Lands are given to the Husband and Wife, and to the Heirs of the Body of the Husband, the Remainder to the Husband and Wife, and to the Heirs of their two Bodies begotten; the Husband dies without Iſſue, the Wife ſhall not be Tenant in Tail after Poſſibility, for the Remainder in ſpecial Tail was utterly void, for that it could never take Effect; for ſo long as the Husband ſhould have Iſſue, it ſhould inherit by force of the general Tail; and if the Husband die without Iſſue, then the ſpecial Eſtate-Tail cannot take Effect, inaſmuch as the Iſſue which ſhould inherit the Eſpecial, muſt be begotten by the Husband; and ſo the General, which is larger and greater, hath fruſtrated the Special, which is leſſer. And the Wife in that Caſe ſhall be puniſhed for Waſte.

2 Rolls 841. Hob. 332.

Sect. 34.

Ante 26. b.

¶ If Lands be given to a Man, with a Woman in Frankmarriage, albeit the Woman (which was the Cauſe of the Gift) dieth without Iſſue, yet the Huſband ſhall be Tenant in Tail apres poſſibility, &c. for that he and his Wife were Donees in eſpecial Tail, and ſo within the Words of Littleton. The Reſidue of this Section is evident.

¶ Et nota que nul poit eſtre teñt en le taile apres poſſibilitie diſſue extinct, forſq; un des donees, ou le donee en le ſpecial taile. Car le donee in general taile ne poet eſtre unqz dit tenant en taile apres poſſibilitie diſſue extinct, pur ceo q̃ touts temps durant ſa vie, il poit per poſſibilitie aver iſſue que poit inheriter per force de meſme le tail. Et iſſint en meſme le mañ, liſſue que eſt heire a les donees en un eſpecial tail, ne poit eſtre dit teñt in taile apres poſſibilitie diſſue extinct, cauſa qua ſupra.

AND *note*, that none can be Tenant in Tail after Poſſibility of Iſſue extinct, but one of the Donees, or Donee in eſpecial Tail. For the Donee in general Tail cannot be ſaid to be Tenant in Tail after Poſſibility of Iſſue extinct, becauſe always, during his Life, he may by Poſſibility have Iſſue, which may inherit by Force of the ſame Entail. And ſo in the ſame manner the Iſſue, which is Heir to the Donees in eſpecial Tail, cannot be Tenant in Tail after Poſſibility of Iſſue extinct, for the Reaſon aboveſaid.

* This and that which follows, is not in the firſt Edition (which I have.) And therefore (that I may ſpeak it once for all) it was Wrong to the Author to add any Thing, (eſpecially in one Context) to his Work.

* Et nota, que tenant en taile apres poſſibilitie diſſue extinct ne ſerra unqz puny de waſte, pur lenheritance que fuit un foits en luy, 10 Hen. 6. 1. Mes ceſtuy en le reverſion poit entrer ſil alien en fee. 45 E. 3. 22.

And *note*, That Tenant in Tail after Poſſibility of Iſſue extinct, ſhall not be puniſhed of Waſte, for the Inheritance that once was in him. 10 *H.* 6. 1. But he in the Reverſion may enter if he alien in Fee. 45 *E.* 3. 22.

brought a Writ of Dower, and was barred of her Dower, and the Reason yielded in the Record [a] is this, Quia vero contra justitiam est, quod ipsa dotem petat vel habeat de Tenemento quod fuit viri sui ex quo in conversione sua noluit cum eo adherere & cum eo convert'.

[a] Dorf. clauf. 18 H. 3. m. 17.

¶ *Del tierce part de tiels Terres & Tenements per severaltie per metes & bounds.* Albeit of many Inheritances that be entire, whereof no Division can be made by Metes and Bounds, a Woman cannot be endowed of the Thing it self, yet a Woman [b] shall be endowed thereof in a special and certain Manner. As of a Mill a Woman shall not be endowed by Metes and Bounds, nor in Common with the Heir; but either she may be endowed of the third Toll-dish, or de integro molendino per quemliber 3. mensem. And so of a Villain, [c] either the third Day's Work, or every third Week or Month. A Woman shall be endowed of the third Part of the Profit of Stallage, of the third Part of the Profits of a Fair, of the third Part of the Profits of the Office of the Marshalsea, of the [d] third Part of the Profits of the Keeping of a Park, of the third Part of the Profit of a Dovehouse; and likewise of the third Part of a Piscary, [e] viz. tertium piscem, vel jactum retis tertium. Of the third Presentation to an Advowson. A Writ of Dower lies de 3 parte exituum provenientium de custodia gaolæ Abbathiæ Westminst'. And therewith agreeth reverend Antiquity. De [f] nullo quod est sua natura indivisibile, & secationem sive division' non patitur, nullam partem habebit, sed satisfaciat ei ad valentiam. Of the third Part of Profits of Courts, [g] Fines, Heriots, &c. Also a Woman shall be endowed of Tithes. And the surest Endowment of Tithes, is of the third Sheaf, for what Land shall be sown is uncertain.

[b] Bract. l. 2. f. 97. b. 23 H. 3. tit. Aff. 435. F. N. B. 149. 44 E. 3. Dower 50. Post 165. a.

[c] Brit. 247. 11 E. 3. tit. Dower 85. 15 E. 3. Ibid. 81. 2 E. 3. 57. 2 Cro. 621.

[d] 4 E. 2. Tr. 233. 26 E. 3. 58. 45 E. 3. Dower 50.

[e] Bract. 98, 208. Brit. 247. Flet. lib. 5. c. 23. 17 E. 2. Dower 104, 163. 16 E. 3. Quar. Imp. 154. 7 E. 3. 7.

[f] Bract. 97. Brit. 146, 147.

[g] Lib. 11. fo. 25, 26. Harper's Case.

But in some Cases of Lands and Tenements which are divisible, and which the Heir of the Husband shall inherit, yet the Wife shall not be endowed. As if the Husband [h] maketh a Lease for Life of certain Lands, reserving a Rent to him and his Heirs, and he taketh a Wife and dieth, the Wife shall not be endowed, either of the Reversion (albeit it is within this Word, Tenements) because there was no Seisin in Deed or in Law, of the Freehold nor of the Rent; because the Husband had but a particular Estate therein, and no Fee-simple. But if the Husband maketh a Lease for Years, reserving a Rent, and taketh Wife, the Husband dies, the Wife shall be endowed of the third Part of the Reversion by Metes and Bounds, together with the third Part of the Rent, and Execution shall not cease during the Years. And herewith agrees the common Experience at this Day. But if the Husband maketh a Gift in Tail, reserving a Rent to him and to his Heirs, and after the Donor taketh Wife, and dies, the Wife shall be endowed of this Rent, because it is a Rent in Fee, and by Possibility may continue for ever.

[h] 26 Aff. 3. 8 R. 2. Dower 184.

Vide 1 E. 6. B. 89, Ante 30. a.

Of a Common certain a Woman shall be endowed, but of a Common sans nomber en grosse she shall not be endowed, as hath been said before. And so of a Rent-Service, Rent-charge, and Rent-seek, she shall be endowed: But of an Annuity that chargeth only the Person, and issueth not out of any Lands or Tenements, she shall not be endowed. But if the Freehold of the Rents, Common, &c. were suspended before the Coverture, and so continue during the Coverture; she shall not be endowed of them. If after the Coverture the Husband doth extinguish them by Release or otherwise, yet she shall be endowed of them; for as to her Dower they in the Eye of the Law have Continuance.

2 Rol. 675. Ante 29. b.

If the Wife be intitled to have Dower of three Acres of Marsh, every one of the Value of twelve Pence, the Heir by his Industry and Charge maketh it good Meadow, every Acre of the Value of ten Shillings, the Wife shall have her Dower according to the improved Value, and not according to the Value as it was in her Husband's Time: For her Title is the Quantity of the Land, viz. one just third Part.

And the like Law it is, if the Heir improve the Value of the Land by Building: And on the other Side, if the Value be impaired in the Time of the Heir, she shall be endowed according to the Value at the Time of the Assignment, and not according to the Value as it was in the Time of her Husband.

¶ *Ascuns temps durant le coverture.* For the better Understanding whereof it is to be known, that (as hath been said) to Dower three Things do belong, viz. Marriage, Seisin, and the Death of the Husband. Concerning the Seisin, it is not necessary that the same should continue during the Coverture; for albeit the Husband alieneth the Lands or Tenements, or extinguisheth the Rents or Commons, &c. yet the Woman shall be endowed. But it is necessary that the Marriage do continue, for if that be dissolved the Dower ceaseth, ubi nullum matrimonium, ibi nulla dos. But this is to be understood when the Husband and Wife are divorced à vinculo matrimonii, as in Case of Precontract, Consanguinity, Affinity, &c. and not à mensa & thoro only, as for Adultery. [8] And yet it is said, That if the Assignment of Dower ad ostium Ecclesiæ be specified, viz. That notwithstanding any Divorce shall happen, yet that she shall hold it for her Life, that this is good.

V. 30 E. 1. Vouch. 298.

Bract. 92. Brit. ca. 101. Ante 30. a. Post 33. b. 4 Co. 29. 5 Co. 98.

post 33 a. b.

If the Wife elope [i] from her Husband, that is, if the Wife leave her Husband, and goeth away and tarrieth with her Adulterer, [9] she shall lose her Dower until her Husband willingly with-

[i] W. 2. ca. 34. Lib. Intr. 224. Mirror, c. 5. sect. 5. Perk. 354. 1 Sid. 118.

And the Reason why tout temps prist is a good Plea in a Writ of Dower brought against the Heir to bar her of the mean Values and Damages is, because the Heir holdeth by Title, and doth no Wrong till a Demand be made. But in a Writ of Aiel, Cosinage, &c. where the Land and Damages are to be recovered, there such a Plea is not good; for there the Tenant of the Land hath no Title, but holdeth the Land by Wrong, and the Feoffee of the Heir cannot at the first Day plead tout temps prist, because he had not the Land all the Time, since the Death of the Ancestor. 5. It is to be observed that the mean Values and Damages are to be recovered against the Tenant in a Writ of Dower, as it appeareth in a notable Record [a] between Belfield and Rowse; the Tenant as to Parcel pleaded Non-tenure, and for the Residue Detainment of Charters, upon which Pleas they were at Issue, and both Issues found by the Jury against the Tenant, and found further that the Husband died seised such a Day and Year, and had Issue a Son, and that the Demandant and the Son by six Years together, after the Decease of the Husband, took the Profits of the Land, and after the Son such a Day and Year died without Issue, after whose Decease the Land descended to the Tenant as Uncle and Heir to him, by Force whereof he entred and took the Profits until the Purchasing of the original Writ, and found the Value of the Land by the Year, and assessed Damages for the detaining of the Dower, and Costs; and upon this Verdict, after often debating, the Demandant had Judgment to recover her Damages for all the Time from the Death of her Husband, without any Defalcation. In which Case many Things apparent therein are observable. Let the Tenant therefore take heed how he pleads false Pleas. 6. That this Statute of Merton doth extend to Copyholds [b] where the Custom is, that Women be dowable. 7. That if the Wife had Dower assigned to her in Chancery, she shall have no Damages, [c] for the Words of the Statute be Et viduæ per placitum recuperaverint, &c. So it is if the Heir or his Feoffee assign Dower, and the Wife accepteth it, she loseth her Damages.

Doc. Pla. 152.

‡ Mo. 80. ‡ S. C. Ben. 153. ‡ S. C. 4 Leon. 198.

[a] Mich. 8 & 9 Eliz. Rot. 904. in Com. Banc. 9 Co. Bedingfield's Case, fo. 16.

2 Inst. 433.

[b] Tr. 37 Eliz. lib. 4. fo. 30. b. Shawe's Case.

[c] 43 Ass. Pl. 32.

A Man seised of Lands in Fee taketh a Wife and granteth a Rent-charge, and after maketh a Feoffment in Fee, and taketh back an Estate-tail, and dieth, the Wife recovereth Dower against the Issue in Tail by Reddition, the Wife maketh a Surmise that her Husband died seised, and prayeth a Writ to enquire of the Damages, and that is granted to her. In this case she holds the Land charged with the Rent-charge; for by her Prayer she accepteth herself dowable of the second Estate; for of the first Estate, whereof she was dowable, her Husband died not seised, and so she hath concluded herself; wherefore if the Rent-charge be more to her Detriment than the Damages beneficial to her, it is good for her in that case to make no such Prayer.

¶ *De quel age que la feme soit, issint que el passe lage de neuf ans al temps del mort son baron.* Feme, Wife; here Littleton speaketh of a Wife generally, and generally it is to be understood as well of a Wife de facto, as de jure. Therefore if the Wife be past the Age of nine Years, [d] at the Time of the Death of her Husband, she shall be endowed, of what Age soever her Husband be, albeit he were but four Years old. Quia junior non potest dotem promereri neque virum sustinere; nec obstabit mulieri petenti minor ætas viri. Wherein it is to be observed, that albeit Consensus non concubitus facit matrimonium, and that a Woman cannot consent before twelve, nor a Man before fourteen; yet this inchoate and imperfect Marriage (from the which either of the Parties, at the Age of Consent, may disagree) after the Death of the Husband, shall give Dower to the Wife; and therefore it is accounted in Law after the Death of the Husband legitimum marrimonium, a lawful Marriage, quoad dotem. If a Man take a Wife of the Age of seven Years, and after alien his Land, and after the Alienation the Wife attaineth to the Age of nine Years, and after the Husband dieth, the Wife shall be endowed; for albeit she was not absolutely dowable at the Time of her Marriage, she was conditionally dowable, viz. if she attained to the Age of nine Years before the Death of the Husband; for by his Death the Possibility of Dower is consummate.

Doc. Pl. 148.

[d] 3 E. 1. Dower 172. 8 E. 1. Dower 122. 7 E. 2. Dower 147. 12 E. 2. ib. 159. 21 E. 3. 28. 15 E. 3. Dower 67. 1 R. 2. Dower 54. 12 H. 4. 3. 35 H. 6. 40. 7 H. 6. 11, 12. 22 Eliz. Dower 369. Bract. fol. 92. Lib. intrat. fo. 123. Post 37. a. Ante 31.

And so it is, if the Husband alien his Land, and then the Wife is attainted of Felony, now is she disabled; but if she be pardoned before the Death of the Husband, she shall be endowed. If the Son endow his Wife at the Age of seven Years ex assensu patris, if she before the Death of her Husband attain to the Age of nine Years, the Dower is good. But otherwise it is of an original absolute Disability; as if a Man take an Alien to Wife, and after the Husband alien the Land, and after she is made Denizen, the Husband dieth, she shall not be endowed, because her Capacity and Possibility to be endowed came by the Denization; otherwise it is if she were naturalized by Act of Parliament; whereof see more in the Chapter of Villenage.

‡ See Salk. 120. ‡ S. C. 3 Lev. 410. 5 Co. 98. Bourie's Case.

And the Bishop, upon an Issue joined in a Writ of Dower, Quod nunquam fuerunt copulati legitimo matrimonio, ought to certify that they were coupled in lawful Marriage, albeit the Man were under fourteen, or the Wife about nine, and under twelve. So it is if a Marriage de facto be voidable by Divorce, in respect of Consanguinity, Affinity, Precontract, or such like, whereby the Marriage might have been dissolved, and the Parties freed à vinculo matrimonii; yet if the Husband die before any Divorce, then for that it cannot now be avoided, this Wife de facto shall be endowed; for this is legitimum matrimonium

ante 32. a.

que el claime daver de les tenements tenus en chivalrie per sa Briefe de Dower. Et si la feme ceo ne puit dedire, donque le Judgemẽt serra fait, que le gardeine en chivalrie tiendra les terres tenus de luy durant le nonage lenfant, quite de la feme, &c.

cage, after the Value of the third Part which she claims by her Writ of Dower, to have the Tenements holden by Knight's Service. And if the Wife cannot gainsay this, then the Judgment shall be given, that the Guardian in Chivalry shall hold the Lands holdem of him dûring the Nonage of the Infant, quit from the Woman, *&c.* [10]

if the Land holden by Service of Chivalry be thirty Acres, and the Lands holden in Socage but five Acres, whether she shall be endowed by Parcels, viz. to recover five Acres against the Guardian in Chivalry, and to retain five Acres? And as to the first, the Guardian shall as well plead it, when he comes in as Vouchee, as when he is Tenant. And as to the second, some say that the Demandant in the Writ of Dower must have Assets in her Hands to the Value of her Dower; so as she shall not be partly indowed against the Guardian, and partly retain in her own Hands. And they say, that

Lib. intrat. Dower fol. 22. a.
18 E. 3. 4. b.

☞ the Judgment should be in part, that is, as to the Land in Socage in Severalty, and as to the Land in Chivalry to recover the third Part; and compare it to the Case in 8 E. 4. 3. that Damages shall not be recovered, partly against the Defendant in an Appeal, and partly against the Abettors, but entirely either against the one or the other. And Littleton here putteth this Case, that the Guardian in Socage hath Assets in Value, and seeing it is a Dower against common Right, they hold that she must be entirely endowed either by her self against Common Right, or against the Guardian, according to common Right. But [a] yet by the Book in 25 E. 3. 52. b. and others it appeareth, that she may in this very Case retain for Part, and recover against the Guardian for Part.

14 H. 7. 26. Keble.
12 Co. 125, 126.
[a] 25 E. 3. 52. b. 4 E. 2. tit. Disseisin. 10. Regist. Judic. 26.

Guardian in Chivalry shall plead in Bar of her Dower, Detainment or Eloigning of the Body of the Ward, because his Marriage doth appertain unto him: And if the Heir come in [b] as Vouchee, he shall plead the same Plea. But he shall not plead Detainment of the Charters, [c] because the Charters concerning the Inheritance of the Heir belong not to the Guardian. The Guardian in Chivalry [d] may assign Dower of the Lands and Tenements he hath in Ward; or if he assign a Rent out of those Lands in Allowance of her Dower, it is good. If the Guardian in Chivalry assign too much for her Dower, the Heir shall have a Writ of Admesurement by the Common Law. And so [e] if the Heir within Age assign, before the Guardian enter, to the Wife too much in the Dower, the Guardian shall have a Writ of Admesurement, by the Statute of West. 2. cap. 7. And if the Heir within Age, before the Guardian enter into the Land, assign too much in Dower, he himself shall have a Writ of Admesurement at full Age: And some have said, That in that Case he may have it within Age. [f] But if the Heir (before the Guardian enter) endow the Wife of more than she ought, and the Guardian assign over his Estate, his Assignee shall have no Writ of Admesurement; because it was a Thing in Action. Also the Heir shall have an [g] Admesurement, for the Assignment in the Life of his Ancestor, by the Common Law, [h] and a Writ of Admesurement lieth upon an Assignment in Chancery.

Doc. Pla. 149.
Lib. Intrat. 22. 16 E. 3. breve 657.
20 E. 3. Judgment 175.
[b] 17 E. 3. 58.
[c] 10 E. 3. 50. 6 El. Dy. 230.
[d] 3 E. 3. Dower 75. 8 Ed. 2. Dower 155. W. 2. cap. 7.
[e] Bract. l. 4. 314. Reg. origin. 171. 7 E. 2. tit. Admes. 13.
[f] 7 R. 2. Admes. 4. F. N. B. 148. i.
[g] 7 R. 2. ub. sup. F. N. B. 149. a.
[h] 7 R. 2. ub. sup. 12 H. 6. Admes. 9. F. N. B. 194. 25 E. 3. 51. Post 168. a.

¶ *Donques le judgement serra fait que le Gardein en Chivalrie tiendra les Terres tenus de luy durant le nonage lenfant, quite de la feme, &c.*

¶ *Judgment.* Judicium quasi juris dictum, the very Voice of Law and Right, and therefore Judicium semper pro veritate accipitur. The ancient Words of Judgment are very significant; Consideratum est, &c. because that Judgment is ever given by the Court upon due Consideration had of the Record before them: And in every Judgment there ought to be three Persons, Actor, Reus and Judex. Of Judgments some be final, and some not final, where you shall read more hereafter. And now to return to our Author, it is material that these Words (& cætera) be explained at large, viz. Et quod prædicta A. (the Demandant) capiat de terris hæred' prædicti in custodia sua existen' ad valentiam præd' 3. Partis cum pertinen' tenend' nomine dotis suæ pro prædict' 3. parte superius per eam petit'. Now some are of Opinion, That upon this Judgment the Demandant may not in any Sort endow her self of the Land, because she cannot do an Act to her self; but she shall recoupe the third Part of the Profits upon her Account, and be endowed against the Heir at his full Age. But observe what Littleton saith in the next Section: But before you come to that, observe what Privilege the Common Law giveth

22 E. 4. Dow. 16. 16 E. 3. Waste. 100. 45 E. 3. 6.

Chap. VI. Sect. 56.

Tenant à Terme de Vie.

¶ *OU per terme de vie dun auter home.* Now it is to be understood, that if the Lessee in that Case dieth, leaving Cestuy que vie, (that is, he for whose Life the Lease was made) he that first entreth shall hold the Land during that other Man's Life; and he that so entreth is within Littleton's Words, viz. Tenant pur auter vie, and shall be [a] punished for Waste as Tenant pur auter vie, and subject to the Payment of the Rent reserved, and is in Law called an Occupant (occupans) because his Title is by the first Occupation. And so if Tenant for his own Life grant over his Estate to another, if the Grantee dieth there shall be an Occupant. In like Manner it is of an Estate created by Law; for if Tenant by the Curtesy or Tenant in Dower grant over his or their Estate, and the Grantee dieth, there shall be an Occupant. But against the King there shall be no Occupant, because nullum tempus occurrit Regi. And therefore no Man shall gain the King's Land by Priority of Entry. There can be no Occupant of any Thing that lieth in Grant, and that cannot pass without Deed, because every Occupant must claim by a Que estate, and aver the Life of Cestuy que vie. It were [c] good to prevent the Incertainty of the Estate of the Occupant to add these Words, [To have and to hold to him and his Heirs, during the Life of Cestuy que vie] and this shall prevent the Occupant, [11] and yet the Lessee may assign it to whom he will; or if he hath already an Estate for another Man's Life without these Words, then it were good for him to assign his Estate to divers Men and their Heirs during the Life of Cestuy que vie.

Cro. Jac. 200. Bract. lib. 2. c. 5. & c. 9. fo. 26. Fleta, lib. 3. c. 12. Britton, fo. 83. Bracton, lib. 4. fo. 170. Vide Sect. 381.

[a] Vide le Dean de Worcester's Case, lib. 6. fo. 37. 27 Ass. p. 31. 39 E. 3. 1. 27 H. 6. Recognizance. Statham pl. ultimo. Post 249. b. 38 H. 6. 26. Bract. lib. 2. fo. 9. Brit. fo. 84, 85. ‡ Ow. 39. ‡ Cro. El. 407. ‡ Vaugh. 189.

[c] Littleton 167. 17 E. 3. 48. 39 E. 3. 25. 7 H. 4. 46. 8 H. 4. 15. 2 Rol. 150, 151.

¶ TEnant pur terme de vie est, lou hõe lessa terres ou tenements a un auter pur terme de vie le lessee, ou pur terme de vie dun auter home, en tiel case le Lessee est Tenant a terme de vie. Mes per common parlance celuy que tient pur terme de sa vie demesne, est appel Tenant pur terme de sa vie, & cestuy que tient pur terme dauter vie, est appel Tenant pur terme dauter vie.

TEnant for Term of Life is, where a Man letteth Lands or Tenements to another for Term of the Life of the Lessee, or for Term of the Life of another Man. In this Case the Lessee is Tenant for Term of Life. But by common Speech, he which holdeth for Term of his own Life is called Tenant for Term of his Life, and he which holdeth for Term of another's Life is called Tenant for Term of another Man's Life.

Pl. Com. fo. 28. b. in Colthorst's Case. 2 Rol. 50. 2 Cro. 201. 3 Cro. 57. Mo. 664. 2 Cro. 282.

[d] Bract. lib. 4. fo. 222, 231, 232. and vide fol. 136, 137. Fleta, lib. 4. cap. 19, 25, 26, 27. 21 E. 3. 41. 48 E. 3. 31. 21 H. 6. 46. 10 E. 4. 3. F. N. B. 180. lib. 4. 86, 87. in Luttrel's Case. 4 Co. fo. 85. Vide Sect. 381.

Note, That [d] to every Tenant for Life the Law, as incident to his Estate, without Provision of the Party, giveth him three Kind of Estovers, (that is) Housbote, which is twofold, viz. estoverium ædificandi & ardendi; Ploughbote, that is, estoverium arandi; and lastly, Haybote, and that is estoverium claudendi; and these Estovers must be reasonable, estoveria rationabilia. And these the Lessee may take upon the Land demised without any Assignment, unless he be restrained by special Covenant; for modus & conventio vincunt legem. Bote in the Saxon Tongue, and Estovers in the French, in this Case are all of one Signification, that is, to have Compensation or Satisfaction for these Purposes. Estovers cometh of the French Word Estouer. And the same Estovers that Tenant for Life may have, Tenant for Years shall have.

You have perceived that our Author divides Tenant for Life into two Branches, viz. into Tenant for Term of his own Life, and into Tenant for Term of another Man's Life: To this may be added a Third, viz. into an Estate both for Term of his own Life, and for the Term of another Man's Life.

Rosse's Cases, lib. 5. fo. 13. 5 Co. 9. b.

As if a Lease be made to A. to have to him for Term of his own Life, and the Lives of B. and C. for the Lessee in this Case hath but one Freehold, which hath this Limitation; during his own Life, and during the Lives of two others. And herein is a Diversity to be observed between several Estates in several Degrees, and one Estate with several Limitations. For in the first, an Estate for a Man's own Life is higher than for another Man's Life, but in the second it is not. As if A. be Tenant for Life, the Remainder or Reversion to B. for Life, A. may

8 Co. 56, 59. a. 4 E. 2. Waſt 11. 17 E. 3. 7. Poſt 314. a. Moor 358, 363. 1 Co. 128. Poſt 276. a.

the Words of a Deed, or of the Parties without Deed, may have a double Intendment, and the one ſtandeth with Law and Right, and the other is wrongful and againſt Law, the Intendment that ſtandeth with Law ſhall be taken.

Secondly, The Law more reſpecteth a leſſer Eſtate by Right, than a larger Eſtate by Wrong; as if a Tenant for Life in Remainder diſſeiſe Tenant for Life, now he hath a Fee-ſimple; but if Tenant for Life die, now is his wrongful Eſtate in Fee by Judgment in Law changed to a rightful Eſtate for Life.

Poſt 47. a. F. N. B. 169. h. 19 H. 6. 7 H. 4. 32. 6 E. 3. 17. 7 E. 3. 66. 18 E. 3. 60. 23 E. 3. c. 1, &c. 21 H. 4. 46. 38 E. 3. 23, 24.

If a Man retain a Servant generally without expreſſing any Time, the Law ſhall conſtrue it to be of one Year, for that Retainer is according to Law. Vide 23 E. 3. cap. 21, &c. To ſhut up this Point it hath been adjudged, That where Tenant in Tail made a Leaſe to another for Term of Life generally, and after releaſed to the Leſſee and his Heirs; albeit between the Tenant in Tail and him a Fee-ſimple paſſed, yet after the Death of the Leſſee, the Entry of the Iſſue in Tail was lawful; which could not be, if it had been a Leaſe for the Life of the Leſſee; for then by the Releaſe it had been a Diſcontinuance executed. But let us now return to Littleton.

Sect. 57.

¶ This and the Reſt that follow in this Chapter concerning the Deſcription of the Feoffor and Feoffee, Donor and Donee, and Leſſor and Leſſee are evident.

¶ *Et eſt aſcavoir que il y ad le Feoffor & le Feoffee, &c.* Vi. Sect. 2. where a light Touch is given who may purchaſe; now ſomewhat is to be ſaid, who have Ability to infeoff, &c. and may be a Feoffor, Donor, Leſſor, &c. Whoſoever is diſabled by the Common Law to take, is diſabled to infeoff, &c. But many that have Capacity to take, have no Ability to infeoff, &c. As Men attainted of Treaſon, Felony, or of a Præmunire, Aliens born, the King's Villains, Traitors, Felons, &c. he that hath offended againſt the Statutes of Præmunire, after the Offences committed, if Attainders enſue, Ideots, Madmen, a Man deaf, dumb, and blind from his Nativity, a Feme Covert, an Infant, a Man by Dures; for the Feoffments, &c. of theſe may be avoided. But an Heretick, though he be convicted of Hereſy, a Leper removed by the King's Writ from the Society of Men, Baſtards, a Man deaf, dumb, or blind, ſo that he hath Underſtanding and ſound Memory, albeit he expreſs his Intention by Signs, Villain of a common

Britton, fo. 88. Fleta, lib. 3. cap. 3.

Ante 3. b. 8. b.

2 H. 5. cap. 7. which is repealed. Doct. and Stud. lib. 2. cap. 29.

¶ ET eſt aſcavoir que il y ad le Feoffor & le Feoffee, Donor & le Donee, le Leſſor & le Leſſee. Le Feoffor eſt proprement lou home enfeoffa un auter en aſcuns terres ou tenements en Fee-ſimple, celuy que fiſt le feoffment eſt appel feoffor, & celuy a que le Feoffment eſt fait, eſt appel feoffee. Et le Donor eſt proprement lou un home done certaine terres ou tenements a un auter en le taile, celuy que fiſt le done eſt appel le Donor, & celuy a que le done eſt fait eſt appel le Donee. Et le Leſſor eſt proprement lou un home leſſa a un auter certain terres ou tenements pur terme de vie, ou pur terme des ans, ou a tener a volunt: celuy que fiſt le leas eſt appel leſ-

AND it is to be underſtood, that there is Feoffor and Feoffee, Donor and Donee, Leſſor and Leſſee. Feoffor is properly where a Man enfeoffs another in any Lands or Tenements in Fee-ſimple, he which maketh the Feoffment is called the Feoffor, and he, to whom the Feoffment is made, is called the Feoffee. And the Donor is properly where a Man giveth certain Lands or Tenements to another in Tail, he which maketh the Gift, is called the Donor, and he to whom the Gift is made, is called the Donee. And the Leſſor is properly where a Man letteth to another Lands or Tenements for Term of Life or for Term of Years, or to hold at Will: He which maketh the Leaſe is called Leſſor, for

Chap. VIII. Sect. 68.

Of Tenant at Will.

¶ TEnant a volũt eſt ou terres ou tenements ſont leſſes per un home a un auter, a aver & tener a luy a la volunt le Leſſor, per force de quel Leaſe le Leſſee eſt en poſſeſſion, en tiel cas le leſſee eſt appel tenant a volunt, pur ceo que il nad aſcun certaine ne ſure eſtate, car le Leſſor luy poit ouſter a quel temps que il luy pleroit: uncore ſi l' leſſee emblea l'terre & le leſſor apres lembleer, & devant q̃ les blees ſont matures luy ouſta, uncore le leſſee avera les blees, & avera frãk entre, egres & regres a ſcier & de carier les blees, pur c̃ q̃ il ne ſcavoit a quel temps le leſſor voloit entrer ſur luy. Auterment eſt ſi tenant pur terme dans que conuſt le fine de ſon terme emblea ſa terre, & le terme eſt finy devant que les blees ſont matures, en ceo cas le Leſſor, ou celuy en la reverſion

TEnant at Will is, where Lands or Tenements are let by one Man to another, to have and to hold to him at the Will of the Leſſor, by Force of which Leaſe the Leſſee is in Poſſeſſion: In this Caſe the Leſſee is called Tenant at Will, becauſe he hath no certain nor ſure Eſtate, for the Leſſor may put him out at what Time it pleaſeth him. Yet if the Leſſee ſoweth the Land, and the Leſſor, after it is ſown, and before the Corn is ripe, put him out, yet the Leſſee ſhall have the Corn, and ſhall have free Entry, Egreſs and Regreſs to cut and carry away the Corn, becauſe he knew not at what Time the Leſſor would enter upon him. Otherwiſe it is if Tenant for Years, which knoweth the End of his Term, doth ſow the Land, and his Term endeth before the Corn is ripe; In this Caſe the Leſſor, or he in

¶ *Tenant a volunt eſt, ou terres ou tenements ſont leſſes per un home a un auter, a aver & tener a luy a la volunt le leſſor, &c.* It is regularly true, that every Leaſe at Will muſt in Law be at the Will of both Parties; and therefore when the Leaſe is made to have and to hold at the Will of the Leſſor, the Law implieth it to be at the Will of the Leſſee alſo; for it cannot be only at the Will of the Leſſor, but it muſt be at the Will of the Leſſee alſo. And ſo it is when the Leaſe is made, To have and to hold at the Will of the Leſſee, this muſt be alſo at the Will of the Leſſor; and ſo are all the Books, that ſeem prima facie to differ, clearly reconciled. Sid. 339. 18 H. 6. 1. 38 H. 6. 21. 9 E. 4. 1. b. 10 E. 4. 18. b. 21 H. 7. 38. 13 H. 8. 16. 14 H. 8. 11, 14.

¶ *Pur ceo que il nad aſcun certaine ou ſure eſtate, &c.* Alia poſſeſſio eſt precaria & alia pro prece conceſſa, ut ſi quis ſine ſcripto conceſſerit alicui habitationem vel uſumfructum in re ſua tenenda ad voluntatem ſuam, hæc quidem poſſeſſio precaria eſt & nuda, eo quod tempeſtive & intempeſtive pro voluntate Domini poterit revocari.

¶ *Uncore ſi le leſſee emblea la terre, & le leſſor apres le embleer, &c.* The Reaſon of this is, for that the Eſtate of the Leſſee is uncertain, and therefore leſt the Ground ſhould be unmanured, which ſhould be hurtful to the Common-wealth, he 5 Co. 85. a.

ſhall

shall reap the Crop which he sowed in Peace, albeit the Lessor doth determine his Will before it be ripe. And so it is if he set Roots, or sow Hemp or Flax, or any other annual Profit, if after the same be planted, the Lessor oust the Lessee, or if the Lessee dieth, yet he or his Executors shall have that Year's Crop. But if he plant young Fruit-Trees, or young Oaks, Ashes, Elms, &c. or sow the Ground with Acorns, &c. there the Lessor may put him out notwithstanding, because they will yield no present annual Profit. And this is not only proper to a Lessee at Will, that when the Lessor determines his Will, that the Lessee shall have the Corn sown, &c. but to every particular Tenant that hath an Estate incertain, for that is the Reason which Littleton expresseth in these Words, (pur ceo que il nad ascun certain ou sure estate.) And therefore if Tenant for Life soweth the Ground, and dieth, his Executors shall have the Corn, for that his Estate was incertain, and determined by the Act of God. And the same Law is of the Lessee for Years of Tenant for Life. So if a Man be seised of Land in the Right of his Wife, and soweth the Ground, and he dieth, his Executors shall have the Corn; and if his Wife die before him, he shall have the Corn. But if Husband and Wife be Joint-tenants of the Land, and the Husband soweth the Ground, and the Land surviveth to the Wife, it is said [a] that she shall have the Corn. If Tenant pur terme d'auter vie soweth the Ground, and Cestuy que vie dieth, the Lessee shall have the Corn. If a Man be seised of Lands in Fee, and hath Issue a Daughter and dieth, his Wife being ensient with a Son, the Daughter soweth the Ground, the Son is born, yet the Daughter shall [b] have the Corn, because her Estate was lawful, and defeated by the Act of God, and it is good for the Common-wealth that the Ground be sown. But if the Lessee at Will sow the Ground with Corn, &c. and after he himself determines his Will and refuseth to occupy the Ground, in that Case the Lessor shall have the Corn, because he loseth his Rent. And if a Woman that holdeth Land Durante viduitate sua soweth the Ground and taketh Husband the Lessor shall have the Emblements, because that the Determination of her own Estate grew by her own Act. But where the Estate of the Lessee being incertain, is defeasible by a Right Paramount, or if the Lease determine by the Act of the Lessee as by Forfeiture, Condition, &c. [c] there he that hath the Right Paramount, or that entreth for any Forfeiture, &c. shall have the Corn.

avera les blees, pur ceo que le termor conust le certaintie de s terme quant & time serroit finy.

the Reversion, shall have the Corn, because the Lessee knew the Certainty of his Term and when it would end.

18 E. 4. 18.
1 Cro. 515.
Temps E. 1. br. 25.
10 E. 3. 29.
46 E. 3. 1.
7 H. 4. 17.
Lib. 5. fo. 116. Oland's Case.
2 Inst. 81. 126.
5 Co. 85.

1 Cro. 515.
[a] 8 Ass. 21.
Dyer 316.

[b] 16 H. 6. 6.

[c] 33 E. 3. Tresp. F. 254.
42 E. 3. 25.
Dyer 31. 11 Co. 46. 51.

If a Disseisor sow the Ground and sever the Corn, and the Disseisee re-enter, [d] he shall have the Corn, because he entreth by a former Title, and Severance or removing of the Corn altereth not the Case, for the Regress is a Continuation of the Freehold in him in Judgment of Law from the Beginning.

[d] 27 H. 6. 1. 37 H. 6. 6. 12 E. 4. 45. 14 E. 4. 6. 15 E. 4. 31. 2 H. 7. 1. 5 H. 7. 17. 12 H. 7. 25. 10 H. 4. 1. 28 H. 8. 32. Dyer.

[e] If Tenant by Statute Merchant soweth the Ground, and then a sudden and casual Profit falleth, by which he is satisfied, he shall have the Emblements.

[e] 44 E. 3. 15.
Fleta, lib. 3. cap. 15.

¶ *Le lessor luy puit ouster.* There is an express ouster, and implied ouster; an express, as when the Lessor cometh upon the Land, and expressly forewarneth the Lessee to occupy the Ground no longer; an implied, as if the Lessor without the Consent of the Lessee enter into the Land, and cut down a Tree, this is a Determination of the Will, for that it should otherwise be a Wrong in him, unless the Trees were excepted, and then it is no Determination of the Will, for then the Act is lawful, albeit the Will doth continue. If a Man leaseth a Manor at Will whereunto a Common is appendant, if the Lessor put in his Beasts to use the Common, this is a Determination of the Will. The Lessor may by actual Entry into the Ground determine his Will in the Absence of the Lessee, but by Words spoken from the Ground the Will is not determined until the Lessee hath Notice. No more than the Discharge of a Factor, Attorney, or such like, in their Absence, is sufficient in Law until they have Notice thereof.

[f] 35 H. 6. 24. 21 H. 6. 9. 1 E. 4, 5. 21 E. 4. 5. P. Com. Parson de Honyland's Case. 14 E. 4. 6. 8 E. 4. 11, &c.

[g] Lib. 5. a. fo. 10. Henstead's Case. 10 Eliz. Dyer 262. b.

[g] If a Woman make a Lease at Will reserving a Rent, and she taketh Husband, this is no Countermand of the Lease at Will, but the Husband and Wife shall have an Action of Debt for the Rent; and so it is if a Lease be made to a Woman at Will reserving a Rent, and the Lessee taketh Husband; this is no Countermand of the Lease, but the Lessor may have an Action of Debt or distrain them for the Rent; so if the Husband and Wife make a Lease at Will of the Wife's Land, reserving a Rent, and the Husband die, yet the Lease continueth. In like Manner, if a Lease be made by two to two others at Will, and the one of the Lessors or of the Lessees die, the Lease at Will is not determined in neither of these Cases; which are necessary Points to be known. [18].

¶ *Apres lembleer, & devant que les blees sont matures.* Then put the Case that the Corn is ripe and ready to cut down, and the Lessor before the Lessee reapeth it, enter and put out the Lessee, Whether shall the Lessee have the Corn? And it is without all Question that the Lessee shall have it, for by the same Reason that he shall have it when he is put out before it

donques le Seignior poit entrer come en chose forfeit a luy, mes sil voit aliener sa terre a un auter, il covient solonque ascun custome de surrender les tenements en ascun Court, &c. en le maine le Seignior, al use celuy que avera le state, en tiel forme, ou a tiel effect.

the Lord may enter as into a Thing forfeited unto him. But if he will alien his Land to another, it behoveth him after the Custom to surrender the Tenements in Court, *&c.* into the Hands of the Lord, to the Use of him that shall have the Estate, in this Form or to this Effect.

Ad hanc Curiam venit *A.* de *B.* & sursum reddidit in eadem Curia, unum mesuagium, &c. in manus Domini, ad usum *C.* de *D.* & hæred' suorum, vel hæredum de corpore suo exeuntium, vel pro termino vitæ suæ, &c. Et super hoc venit prædictus *C.* de *D.* & cepit de Domino in eadem Curia, mesuagium prædict', &c. Habendum & tenendum sibi & hæredibus suis, vel sibi & hæredibus de corpore suo exeuntibus, vel sibi ad terminum vitæ, &c. ad voluntatem Domini, secundum consuetudinem Manerii, faciendo & reddendo inde redditus, servitia, & consuetudines inde prius debita & consueta, &c. Et dat Domino pro fine, &c. Et fecit Domino fidelitatem, &c.

A. of *B.* cometh unto this Court, and surrendreth in the same Court a Mease, *&c.* into the Hands of the Lord, to the Use of *C.* of *D.* and his Heirs, or the Heirs issuing of his Body, or for Term of Life, *&c.* And upon that cometh the aforesaid *C.* of *D.* and taketh of the Lord in the same Court the foresaid Mease, *&c.* To have and to hold to him and to his Heirs, or to him and to his Heirs issuing of his Body, or to him for Term of Life, at the Lord's Will, after the Custom of the Manor, to do and yield therefore the Rents, Services and Customs thereof before due and accustomed, *&c.* and giveth the Lord for a Fine, *&c.* and maketh unto the Lord his Fealty, *&c.*

true in Case of Alienation, but when a Man hath but a Right to a Copyhold, he may release it by Deed or by Copy, to one that is admitted Tenant de facto. Lib. intrat. 131. Lib. 4. fo. 25. b. inter Kite & Queinton.

¶ *'Aliener per fait.* Here it appeareth by Littleton that there must be an Alienation: For the making of the Deed alone, unless somewhat pass thereby, is no Forfeiture: As if he make a Charter of Feoffment, or a Deed of Demise for Life, and make no Livery, this is no Forfeiture, because nothing passeth, and therefore no Alienation; but otherwise it is of a Lease for Years. [20] Post 218. b.

¶ *Forfeit a luy.* This Adjective in Latin is forisfactus, the Verb is forisfacere, and the Noun forisfactura; they are all derived of foris (that is) extra, and facere, quasi diceret, extra legem seu consuetudinem facere, to do a Thing against or without Law or Custom, and that legally is called a Forfeiture. Littleton useth this Word but once in all his Book. What shall be said [a] Forfeitures of Copyholds, you may read at large in my Reports. 2 Co. 17. 4 Co. 23. [a] Lib. 4. inter les Copyhold Cases 21, 23, 25, 27, 28. Lib. 8. 92, 99, 100. Lib. 9. 97. Lib. 10. 131.

¶ *En ascun Court.* [b] This is the general Custom of the Realm, that every Copyholder may surrender in Court, and need not to alledge any Custom therefore. So if out of Court he surrender to the Lord himself, he need not alledge in pleading any Custom; but if he surrender out of Court into the Hands of the Lord by the Hands of two or three, &c. Copyholders; or by the Hands of the Bailiff or Reeve, &c. or out of Court by the Hand of any other, these Customs are particular, and therefore he must plead them. [b] Bract. li. 2. cap. 8. 15 H. 4. 34. 1 H. 5. 11. 4 Co. 23. 9 Co. 76. Post 81. b. 62. a.

[c] Bracton, lib. 4. fol. 209. speaking of these Kind of Customary Tenants, saith, Dare autem non possunt tenementa sua, nec ex causa donationis ad alios transferre, non magis quam villani puri, & unde si transferre debeant, restituunt ea [c] Bract. li. 4. fo. 309. & lib. 2. c. 8. ac. 14 H. 4. 34 Post 79. Cro. Jac. 308.

Vide Sect. 92 and 379. Fleta, lib. 2. cap. 66. Vide Statut. de Extent. Maner. 14 E. 1.

of many Significations. In this Place it ſignifieth an Officer of Juſtice, viz. a Keeper of Courts, &c. Fleta deſcribeth the Office and Duty of this Officer at large moſt excellently: Provideat ſibi dominus de ſeneſchallo circumſpecto & fideli, viro provido & diſcreto & gratioſo, humili, pudico, pacifico, & modeſto, qui in legibus conſuetudinibuſque provinciæ & officio ſeneſchalciæ ſe cognoſcat & jura domini ſui in omnibus teneri affectet, quique ſubballivos domini in ſuis erroribus & ambiguis ſciat inſtruere & docere, quique egenis parcere, & qui nec prece vel pretio velit à tramite juſtitiæ deviare, & perverſe judicare, cujus officium eſt curias tenere maneriorum & de ſubſtractionibus conſuetudinum, ſervitiorum, reddituum, ſectarum ad curiam, mercata, molendina domini & ad viſus frankpledg. aliarumque libertatum domino pertinentium inquirat, &c. The Reſidue pertaining to his Office is worth your Reading at large. Every Steward of Courts is either by Deed or without Deed; for a Man may be retained a Steward to keep his Court-Baron and Leet alſo belonging to the Manor without Deed, and that Retainer ſhall continue until he be diſcharged. The Lord of a Manor may make Admittances out of Court and out of the Manor alſo, as at large appeareth in my Reports.

Vide lib. 4. Caſes de Copyholds, fo. 26, 27, 39.

ſiuy que prist la terre, meſme l'verge, ou un auter verge en noſme del ſeiſin, & pur cel cauſe ils ſont appelles tenants per le verge, mes ils nont auter evidence, ſinon per copy de Court roll.

ſhall deliver to him that taketh the Land the ſame Rod, or another Rod in the Name of Seiſin, and for this Cauſe they are called Tenants by the Verge, but they have no other Evidence but by Copy of Court-Roll.

Sect. 79.

¶ *LE bailie.* This Word bailie, as ſome ſay, cometh of the French Word Bailife, in Latin Balivus, but in Truth Baily is an old Saxon Word, and ſignifieth a ſafe Keeper, or Protector, and baile or ballium is ſafe Keeping or Protection: And thereupon we ſay when a Man upon Surety is delivered out of Priſon, traditur in ballium, he is delivered into Bail, that is, into their ſafe Keeping or Protection from Priſon: And the Sheriff that hath Cuſtodiam Comitatus, is called ballivus, and the County balliva ſua.

Cro. Jac. 178. Vide Lambard's Expoſition of Saxon Words.

¶ *Reeve* is derived of the Saxon Word gerefa or gereve; and by Contraction or rather Corruption greve, or Reve, and is in Latin præfectus or præpoſitus. It ſignifies as much as appruator, a Diſpoſer or Director, as Woodreeve, Sheep-reeve, Shire-reeve, &c. whereof more ſhall be ſaid hereafter. Vide Fleta lib. 2. cap. 67. where he treateth of the Office of the Bailiff, and cap. 69. de officio præpoſiti, of

4 Co. 28. Fleta, l. 2. cap. 69. Ante 59. a.

¶ Et auxi en diuers Seigniories & Manors, il y ad tiel cuſtome, ſi tiel tenant que tient per cuſtome voloit aliener ſes terres ou tenements, il poit ſurrender ſes tenements a le Baily, ou a le Reeve, ou a deux proues homes des Seignior, al uſe ceſtuy que avera le terre, daver en Fee ſimple, Fee taile, ou pur terme de vie, &c. Et tout ceo ils preſenteront al procheine Court, & donqs celuy que avera la terre per Copy de Court Roll, avera meſme la terre ſolonqs lentent del ſurrender.

AND alſo in divers Lordſhips and Manors there is this Cuſtom, *viz.* if ſuch a Tenant which holdeth by Cuſtom will alien his Lands or Tenements, he may ſurrender his Tenements to the Bailiff, or to the Reeve, or to two honeſt Men of the ſame Lordſhip, to the Uſe of him which ſhall have the Land, to have in Fee-ſimple, Fee-tail, or for Term of Life, *&c.* and they ſhall preſent all this at the next Court, and then he, which ſhall have the Land by Copy of Court Roll, ſhall have the ſame according to the Intent of the Surrender.

common ley, ils ſont appelles Tenants per baſe tenure.

of the Common Law, they are called Tenants by baſe Tenure.

¶ *Ils ſont appelles tenants per baſe tenure.* Of this ſufficiently hath been ſpoken before.

Sect. 82.

4 Co. 31.

¶ *TEnant a volunt ſolonque le cuſtome puit aver eſtate denheritance, &c.* Here note, that Littleton alloweth that by the Cuſtom of the Manor, the Copyholder hath an Inheritance, and conſequently the Lord cannot put him out without Cauſe.

9 Co. 75.

¶ *Mes ſi home, &c. voile leſſer terres ou tenements a un auter a aver & tener a luy & ſes heires a volunt le leſſor ceux parols (a les heires de le leſſee) ſont voides, car en ceſt caſe ſi le leſſee devie, & ſon heire enter le leſſor avera action de treſpaſſe envers luy, &c.* By which it is proved that by the Death of the Leſſee, the Leaſe is abſolutely determined, which is proved by this, that if the Heir enter the Leſſor ſhall have an Action of Treſpaſs, quare vi & armis, before any Entry made by the Leſſor.

8 Co. 99.
Sid. 347.
10 E. 4. 18. 22 E. 4. 13.
2 R. 2. Barre 237.
11 H. 7. 22.
21 H. 7. 12.

‡ Supra 55. a.

¶ ET divers diverſities y ſont perenter tenant a volunt, que eſt eins per leaſe ſon leſſor per le courſe del common ley, & tenant ſolonqz le cuſtome del manor en le forme avantdit, Car ſ a volũt ſolonqz le cuſtom puit aver eſtate dẽheritance (come eſt avantdit) al volunt le ſeignior ſolõq̃ le cuſtome & uſage del manor. Mes ſi home ad terres ou Tenements, queux ne ſont deins tiel manor ou Seignioríe, ou tiel cuſtom ad eſſé uſe en le forme avantdit, & voile leſſer tiels terres ou tenements a un auter, a aver & tener a luy & a ſes heires a le volunt le leſſor, ceux parolz (a les heires de le leſſee) ſont voids. Car en ceſt Caſe ſi le leſſee devie & ſon heire enter, le leſſor avera bon action de treſpaſs ẽvers luy, mes nemy iſſint envers l'heire le tenant per le cuſtome en aſcun cas, &c. pur ceo que le cuſtom de le manor en aſcun cas luy puit aider de barrer ſon ſeignior en action de treſpaſs, &c.

AND there are divers Diverſities between Tenant at Will, which is in by Leaſe of his Leſſor by the Courſe of the Common Law, and Tenant according to the Cuſtom of the Manor in Form aforeſaid. For Tenant at Will, according to the Cuſtom may have an Eſtate of Inheritance (as is aforeſaid) at the Will of the Lord, according to the Cuſtom and Uſage of the Manor. But if a Man hath Lands or Tenements which be not within ſuch a Manor or Lordſhip where ſuch a Cuſtom hath been uſed in Form aforeſaid, and will let ſuch Lands or Tenements to another, to have and to hold to him and to his Heirs, at the Will of the Leſſor, theſe Words (to the Heirs of the Leſſee) are void. For in this Caſe if the Leſſee dieth, and his Heir enter, the Leſſor ſhall have a good Action of Treſpaſs againſt him, but not ſo againſt the Heir of Tenant by the Cuſtom in any Caſe, *&c.* for that the Cuſtom of the Manor in ſome Caſe may aid him to bar his Lord in an Action of Treſpaſs, *&c.*

¶ *Pur*

navera my le garde del terre ne de corps, pur ceo que feme ď tiel age poit aver baron able de faire ſervice de Chivaler. Mes ſi tiel heire female ſoit deins lage de 14 ans, & nient marie al temps de la mort ſon aunceſter, donque le Seignior avera le garde de la terre, tenus de luy, tanque al age de tiel heire female de 16. ans, pur ceo que il eſt done per le Statute de Weſtm 1. cap. 22. Que per 2 ans procheine enſuant les dits 14 ans, le Seignior poit tender convenable mariage ſans diſparagement a tiel heire female. Et ſi le Seignior deins les dits 2 ans ne luy tender tiel mariage, &c. donque el al fine des dits 2 ans, poit enter & ouſte ſon Seignior. Mes ſi tiel heir female ſoyt marie deins lage de 14 ans en la vie ſon anceſter, & ſon anceſter devy el eſteant deins lage de 14 ans, le Seignior navera forſque la garde de la terre, ſeſques a fine de 14 ans dage de tiel heire female, & donqz

ſhall not have the Wardſhip of the Land, nor of the Body, becauſe that a Woman of ſuch Age may have a Husband able to do Knight's Service; but if ſuch Heir Female be within the Age of 14 Years, and unmarried at the Time of the Death of her Anceſtor, the Lord ſhall have the Wardſhip of the Land holden of him until the Age of ſuch Heir Female of 16 Years. For it is given by the Statute of *W.* 1. *c.* 22. that by the Space of two Years next enſuing the ſaid fourteen Years, the Lord may tender convenable Marriage without Diſparagement to ſuch Heir Female. And if the Lord within the ſaid two Years do not tender ſuch Marriage, *&c.* then ſhe at the End of the ſaid two Years may enter, and put out her Lord; but if ſuch Heir Female be married within the Age of 14 Years in the Life of her Anceſtor, and her Anceſtor dieth, ſhe being within the Age of 14 Years, the Lord ſhall have only the Wardſhip of the Land until the End of the fourteen Years of Age of ſuch

Domino capitali. And it is called Scutagium, as it appeareth by Littleton and many Authorities before recited. Sometimes Droit de eſpee. Alſo it is called [a] Regale ſervitium, quia ſpecialiter pertinet ad Dominum Regem. Ut ſi dicatur in Charta faciendo inde forinſecum ſervitium, vel Regale ſervitium, vel ſervitium Domini Regis, quod idem eſt, &c. And another ſaith: Et ſunt quædam ſervitia forinſeca quæ dici poterunt Regalia quæ ad ſcutum præſtantur, & inde habemus ſcutagium, & ratione ſcuti pro feodo militari reputantur, &c. So as in Reſpect of him that doth it, it is called ſervitium militis, but in Reſpect of him for and to whom it is done, viz. to the King and for the Realm, it is called ſervitium Regale, or ſervitium Domini Regis, &c. [b] In ancient Time they which held by Knight's Service were called Milites, qui per loricas, &c. defendunt, & deſerviunt, &c. and ſometimes this Service is called ſervitium hauberticum. And in ancient Time ſuch as held by Knight's Service for the Defence of the Realm had many Privileges granted to them by Law: As for Example, They might have a Writ De eſſend' quiet' de tallagio, the Effect whereof was [c] Si Th. filius Ranulphi terram ſuam teneat per ſervitium militare ſicut Domino Regi monſtravit, tunc nullum ab eodem Tho. capient tallagium nec pro eo dando ipſum diſtringant, vel homines ſuos qui per conſimile ſervitium teneant. And this agrees with the ancient Charter of King Henry the Firſt before mentioned, which he made on the Day of his Coronation for the Reſtitution of the ancient Laws. [d] Militibus qui per loricas terras ſuas defendunt & deſerviunt, terras Dominicarum carucat' ſuarum quietas ab omnibus gildis, & omni opere, &c. concedo: And the Reaſon thereof is there yielded, Sicut tam magno gravamine allevati ſint

[a] Poſt 108. 9 Co. 130.

[b] Charta Hen. prim. Mat. Paris. Mirror, cap. 2. Sect. 17.

[c] Rot. clauſ. 19 H. 3. m. 22.

[d] Charta H. 1. in libro. rub. fo. 41. in Scaccario.

sint, ita equis & armis se bene instruant, ut apti & parati sint ad servitium meum & defensionem Regni mei. But these Privileges and Quittances are discontinued, and the Charge remaineth.

4 Inst. 192.
[a] Glanvil, li. 7. c. 9, 10. Fleta, lib. 1. c. 8 & 9. & lib. 3. c. 16, 17, &c. Bracton, lib. 2. cap. 16. Mirror, cap. 5. Sect. 2. Britton 162.

It is called commonly in [a] our Books servitium militare, &c. or servitium militis. And this Service was created and provided for the Defence of the Realm, to perform which Service the Heirs are not accounted in Law able till the Age of one and twenty Years. Therefore during their Minority the Lord shall have the Custody of them, not for Benefit only, but that the Lord might see, that they be in their young Years taught the Deeds of Chivalry, and other virtuous and worthy Sciences.

9 Co. 131.
[b] Fortescue, cap. 44.

[b] Si hæreditas teneatur per servitium militare, tunc per leges infans ipse, & hæreditas ejus, &c. per Dominum feodi illius custodientur, &c. Quis, putas, infantem talem in artibus bellicis quas facere, ratione tenuræ suæ, ipse astringitur Domino feodi sui, melius instruere poterit, aut velit, quam Dominus ille, cui ab eo servitium tale debetur, & qui majoris potentiæ & honoris estimatur, quam sunt alii amici propinqui tenentis sui? Ipse namque ut sibi ab eodem tenente melius serviatur diligentem curam adhibebit, & melius in hiis cum erudire expertus esse censetur quam reliqui amici juvenis, &c. & revera non minimum erit Regno accommodum, ut incolæ ejus in armis sint experti, nam audacter quilibet facit, quod se scire ipse non diffidit.

[c] Lamb. 135. a. 4 Inst. 193.

[c] Amongst the Laws of Saint Edward the Confessor it is thus provided, Debent enim universi liberi homines, &c. secundum feodum suum, & secundum tenementa sua, arma habere, & illa semper prompta conservare ad tuitionem Regni, & servitium Dominorum suorum juxta præceptum Domini Regis explendum & peragendum. And William the Conqueror confirmed that Law in these Words: Statuimus & firmiter præcipimus ut omnes Comites, & Barones & Milites, & servientes, & universi liberi homines totius Regni

son baron & luy poient enter ẽ la terre & ouste le Seignior, car ceo est hors de cas de le dit estatute, entant que le Seignior ne poit tender marriage a luy que est marie, &c. Car devant le dit estatute Westm 1. tiel issue female que fuit deins age de 14 ans, al temps de mort son ancester, & puis que el avoit accomplish lage de 14 ans sans ascun tender de marriage per le Seignior a luy, tiel heire female donque puissoit enter en le terre, & ouste le Seignior sicome appiert per le rehersal & parolr de le dit Statute, issint que le dit Statute fuit fait en tiel cas, tout pur ladvantage de Seigniors come il semble. Mes uncore ceo touts foits est entendue per les parolr de ñ le Statute que le Seignior navera les deux ans aprés les 14 ans, come est avantdit, mes lou tiel heire female soit deins lage de 14 ans, nient marie al temps de mort son ancester.

Heir Female, and then her Husband and she mayenter into the Land, and oust the Lord: For this is out of the Case of the said Statute, inasmuch as the Lord cannot tender Marriage to her which is married, &c. For before the said Statute of *W.* 1. such Issue Female, which was within the Age of 14 Years at the Time of the Death of her Ancestor, and after she had accomplished the Age of 14 Years, without any Tender of Marriage by the Lord unto her, such Heir female might have entred into the Land, and ousted the Lord, as appeareth by the Rehearsal and Words of the said Statute; so as the said Statute was made (as it seemeth) in such Case altogether for the Advantage of Lords. But yet this is always intended by the Words of the same Statute, that the Lord shall not have these two Years after the 14 Years, as is aforesaid, but where such Heir female is within the Age of 14 Years, and unmarried at the Time of the Death of her Ancestor.

but his Executors or Administrators may have an Action of Debt, and cannot distrain.

[a] Stat. de 1 E. 2. de Militibus.
Vide lib. 9. fol. 124. Lowe's Case.
2 Inst. 596. b.
Ante 69. b.

And it [a] is to be understood that feodum militis, a Knight's Fee, consisteth of twenty Pound Land, and he payeth for his Relief for a whole Knight's Fee, the fourth Part of his Fee, viz. five Pound, and so according to the Rate.

donque le Seignior avera C s. pur reliefe, & del heire celuy que tient per le moitie dun fee de Chivaler L s. & de celuy que tient per le quart part de fee dun Chivaler 25 s. & sic q̃ pluis, pluis, & que meins, meins.

the Lord shall have C s. for a Relief, and of the Heir of him which holds by the Moiety of a Knight's Fee 50 s. and of him which holds by the fourth Part of a Knight's Fee 25 s. and so he which holds more, more, and which less, less.

Baronia, a Barony, or a Baron's Fee consisteth of thirteen Knight's Fees, and the third Part of a Knight's Fee, which amounts to four hundred Marks per Annum, and the Baron for an entire Barony payeth for his Relief an hundred Marks, which is the fourth Part of the Value of his Barony.

2 Rol. 516.

Comitatus, an Earldom, or an Earl's Fee, consisteth of a Barony, and the third Part of a Barony, which includeth twenty Knight's Fees, amounting to four hundred Pound Land per Annum; and he payeth for his Relief for an entire Earldom the fourth Part of his Revenue, and that is an hundred Pound. All which appeareth by the Statute of Magna Charta, cap. 2. made in the ninth of Henry the Third, at which Time there was neither Duke, Marquess nor Viscount in England, as before is said. But there be Precedents in the Exchequer, that a Dukedom consisting of two Earldoms, viz. eight hundred Pound Land by the Year, payeth two hundred Pound, and a Marquess consisting of two Baronies, viz. eight hundred Marks Land per Annum, and of an Earldom and a half, payeth two hundred Marks for his Relief. What the Viscount shall pay in certain I have not heard. Before the making of the Statute of Magna Charta, the King had rationabile relevium of Noblemen, and it was not reduced to any Certainty, yet ought it to have been reasonable and not excessive.

Glanvil, lib. 9. cap. 4. 6.
Bracton, lib. 2. fol. 83.
Britton, fol. 178.
Ockam 42. F. N. B. 83, 256.
Fleta, lib. 3. cap. 17.
Magna Charta, cap. 2.
14 H. 4. in recordo longo. 10 H. 7. 19.
28 E. 3. Ass. 122. tit. Avowry 126.
18 Ass. pl. ultimo.
22 E. 3. 8.

I have seen the Record of a Charter made in 20 H. 6. to Henry Beauchampe, Earl of Warwick, whereby he was created King of the Isle of Wight, to him and the Heirs Males of his Body; his Relief was incertain, and not limited by the Statute of Magna Charta.

It is to be observed, that the Words of the Statute of Magna Charta be Hæres Comitis de Comitatu integro, & hæres Baronis de Baronia integra, &c. Now what an entire Earldom, and an entire Barony is, hath been declared before.

It is also to be observed, that at and before the Statute of Magna Charta, all Earldoms and Baronies were derived from the Crown, and were holden of the King in Capite, and the King would not suffer them to be divided or severed. And such entire Earldoms and entire Baronies are within the Statute; but at this Day Earls and Barons are without such Earldoms and Baronies of the King's Gift in Chief. For at the Creation of an Earl, he hath sometimes an Annuity granted unto him, and sometimes nothing; so as such Earls and Barons so created, are clearly out of the Statute of Magna Charta, and are to pay such Reliefs as other Men that hold of the King in Capite. For as the Heir of a Knight shall not pay Relief unless he hath a Knight's Fee, &c. so neither the Earl nor Baron shall pay any Relief by this Statute, unless he hath an Earldom, &c. or Barony, &c.

16 E. 3. Eschange 2.
46 E. 3. Forfeiture 18.

¶ *Son heire de pleine age, s. de 21 ans.* And yet in some Case the Heir shall pay Relief when he was within Age at the Time of the Death of his Ancestor. As if a Man holdeth Lands of the King by Knight's Service in Capite, and of a Common Person other Lands by Knight's Service, and dieth, his Heir being within Age, the King hath all in Ward by his Prerogative until the full Age of the Heir. In this Case the Heir shall pay Relief to the other Lord, for that the King had the Wardship of Body and Lands. And the Lord upon every Descent ought to have either Wardship or Relief.

24 E. 3. 24. 26 H. 8.
32 H. 8. cap. 2. in fine.

But if there be Lord and Tenant by Knight's Service, and the Tenant dieth, his Heir being within Age, the Lord waiveth his Wardship, as he may, and taketh himself to his Seigniory; in this Case the Lord shall not have Relief at his full Age, because he might have had the Wardship of the Body and Land. Lord and Tenant of two Manors by divers Tenures, by Knight's Service, the Tenant is disseised of the one, and the Disseisor dieth seised, and the Tenant dieth seised of the other, his Heir within Age, the Lord seised the Body and Lands of that Manor, and after the Heir at his full Age recovereth the other Manor against the Heir of the Disseisor, he shall pay Relief for that Manor, and so one Lord of the Heir of one Tenant, shall have both Wardship during his Minority, and Relief at his full Age.

* E. 3. 6. Pl. Com. 229.
33 E. 3. tit. Gar. Statham.
2 Co. 68. a.

nitio rerum, et, Nomina si perdas certe distinctio rerum perditur. Therefore the Names of Things (as Littleton here teacheth) are, for avoiding of Confusion, diligently to be observed.

Sect. 120.

¶ ITem si home tient de son Seignior per escuage certaine, s. ẽ tiel forme quant lescuage curge, & est assesse per Parliament a greinder summe ou meinder summe, que le tenant paiera a son Seignior forsque demy marke pur escuage, & nient pluis ne meins, a quel graund summe, ou a quel petite summe que l'escuage curge &c. tiel tenure est tenure en Socage, & nemy service de chivalrie. Mes lou le summe que le tenant paiera pur lescuage est non certain, s. lou il poit estre q̃ l' summe q̃ le tenant paiera pur lescuage a son Seignior poit estre a un foits le greinder & a auter foits le meinder, solonque ceo que est assesse, &c. donques tiel tenure est tenure per service de Chivaler.

ALso if a Man holdeth of his Lord by Escuage certain, *i. e.* in this Manner, when the Escuage runneth, and is assessed by Parliament to a greater or lesser Sum, that the Tenant shall pay to his Lord but Half a Mark for Escuage, and no more nor less, to how great a Sum, or to how little the Escuage runneth, *&c.* Such Tenure is Tenure in Socage, and not Knight's Service; but where the Sum which the Tenant shall pay for Escuage is uncertain, *i. e.* where it may be that the Sum that the Tenant shall pay for Escuage to his Lord, may be at one Time more, and at another Time less, according as it is assessed, *&c.* such Tenure is Tenure by Knight's Service.

¶ E *Scuage certeine*, Is not in rei veritate servitium Scuti, which is to be done by the Body of a Man; but it is servitium Crumenæ, of Money, which is to be drawn out of the Purse, and that is in Effect a Tenure in Socage; wherein it is to be observed, that the Service of Payment of Money is the more base, and less profitable for the Commonwealth in this Case, and hereof somewhat hath been said before in the Chapter of Escuage, Sect. 98, 99. 6 Co. 6.

If a Man hold by Homage, Fealty and Escuage, i. e. by an Half-penny, when Escuage runs at forty Shillings, this is a Tenure in Socage, and no Knight's Service, for two Causes. 15 E. 2. tit. Avow. 215.

First, It is Socage Tenure, because of the Certainty, for to the Tenure in Socage certa servitia do ever belong, so as the Husbandman may the rather live in Quiet. 5 E. 4. 128. Vid. Rot. Par. 4 E. 3. nu. 19. Clavering's Case excellently resolved in Parliament. Hill. 3 E. 2. coram Rege, Rot. 34. Agnes Frowick's Case.

Secondly, Escuage is to be paid at every Time when it is assessed, and here it is not to be paid, but when it amounteth to forty Shillings.

Sect. 121.

¶ ITem si home tient sa teñ pur paier certaine rent a son Seignior pur Castle-garde, tiel tenure est tenure ẽ socage:

ALso if a Man holdeth his Land to pay a certain Rent to his Lord for Castle-guard, this Tenure is Tenure in Socage; but

¶ HErein the Difference standeth thus: If a Rent be paid for Castle-guard, it is clear a Socage Tenure, as it is Vid. Sect. 88, 89.

occupier la terre luy meſm̃ ſil voit. Et tiel Gardeine en ſocage ne prendra aſcuns iſſues ou profits de tielx terres ou tenements a ſon uſe demeſne, mes tantſolement al uſe & profit del heire, & del ceo il rendra accompt al heire quant pleaſt al heire apres ceo que l'heire accompliſh lage de xiiii. ans. Mes tiel Gardein ſur ſon accompt avera allowance de touts ſes reaſonable coſts & expences en touts choſes, &c. Et ſi tiel gardein maria l'heire deins xiiii. ans, il accomptera al heire, ou a ſes executors de value del mariage, coment que il ne prift riens pur le value del mariage, pur ceo que il ſerra rette ſa folly demeſne, que il luy voiloit marier ſans prender la value del mariage, ſinon que il luy maria a tiel mariage que eſt tant en value come le mariage del heire, &c.

And when the Heir cometh to the Age of 14 Years compleat, he may enter and ouſt the Guardian in Socage, and occupy the Land himſelf if he will. And ſuch Guardian in Socage ſhall not take any Iſſues or Profits of ſuch Lands or Tenements to his own Uſe, but only to the Uſe and Profit of the Heir, and of this he ſhall render an Account to the Heir when it pleaſeth the Heir, after he accompliſheth the Age of 14 Years. But ſuch Guardian upon his Accompt ſhall have Allowance of all his reaſonable Coſts and Expences in all Things, *&c.* And if ſuch Guardian marry the Heir within the Age of 14 Years, he ſhall account to the Heir or his Executors of the Value of the Marriage, although that he took nothing for the Value of the Marriage; for it ſhall be accounted his own folly, that he would marry him without taking the Value of the Marriage, unleſs that he marrieth him to ſuch a Marriage, that is as much worth in Value as the Marriage of the Heir.

Guardian in Socage ſhall take into his Cuſtody, as well the Rent-charges, &c. as the Land holden in Socage, becauſe he hath the Cuſtody of the Heir.

¶ *Si le tenant ad iſſue & devie.* The ſame Law it is, if the Tenant hath no Iſſue; but a Brother or Couſin within Age of 14 Years at the Time of his Death. [a] Alſo this doth extend as well to Iſſue Female as to Iſſue Male. [a] 10 R. 2. Account, 132.

¶ *Deins lage de* 14 *ans.* Of this ſufficient hath been ſpoken in the next precedent Chapter.

¶ *Donques le procheine Amy del heire a que le inheritance ne poit diſcender.* The next Friend of the Heir, &c. Here Amy or Friend is taken for the next of Blood, ſo the Effect of it is, that the next of his Blood, to whom the Inheritance cannot deſcend, whereby Affinity without Blood is excluded. Glanvil, lib. 7. cap. 11. Britton 163. Fleta, lib. 1. cap. 9. Stat. de Hibernia, tit. Partition. 3 Co. 37.

¶ *Le procheine.* The next.

[b] If there be three Brethren, and the youngeſt holdeth Land in Socage, and hath Iſſue and dieth, his Iſſue within Age of 14 Years, both the Uncles are in equal Degree, and yet the eldeſt ſhall be Guardian, becauſe in equal Degree the Law preferreth him. [c] And yet if Lands holden in Socage be given to a Man and to the Heirs of his Body, and he dieth, his Heir within Age, the next Couſin of the Part of the Father, albeit he be worthier, ſhall not be preferred before the next Couſin of the Part of the Mother; but ſuch of them as firſt ſeiſeth the Heir ſhall have his Cuſtody: But if Lands be given in Frankmarriage, and the Donees have Iſſue and die, their Iſſue within Age of 14 Years, the next of Kin of the Part of the Mother ſhall have the Cuſtody of the Body, and not the next of Kin of the Part of the Father, albeit he firſt ſeiſed it, becauſe the Mother was the Cauſe of the Gift. If a Man be ſeiſed of Lands holden in Socage of the Part of his Father, and of other Lands holden in Socage of the Part of his Mother, and dieth, his Iſſue being within the Age of 14 Years; [b] Plow. 446. b. Poſt 118. b. Vid. 30 Aſſ. 47. [c] Pl. Com. Carrel's Caſe. 2 Rol. 40. Ante 22. a. 47 H. 3. Gard. 146.

in

the Surety of the Lord, that his Tenant shall be faithful and loyal to him, doth create such a Service as the Tenant shall be bound thereunto by Oath.

10 E. 3. 34. 9 H. 6. 41. 40 H. 6. 13. 9 E. 4. 1. 21 E. 4. 29. 5 H. 5. 12. 5 H. 7. 11.

¶ *Auxi si lease soit fait pur ans, &c. le lessee serra fealty.* For there also is a Tenure between them. And Littleton's Opinion in this Case is holden for good Law at this Day.

Vide Sect. 84. Ante 63. a.

¶ *Et ceo est prove bien per les parols del briefe, &c.* Nota; the original Writs are (as it were) the Foundations and Grounds of the Law; and, as it appears here by Littleton, are of great Authority for the Proof of the Law in particular Cases.

5 Co. 10.

¶ *Pur ceo que il nad sure estate.* Therefore Tenant at Will shall not do Fealty, (as hath been said before) because the Matter of an Oath must be certain. The rest of this Section needs no Explication.

Jsint le briefe prova un tenure enter eux. Mes celuy que est tenant a volũt solonq; le course del common ley ne serra fealtie, p ceo q̃ il nad ascun sure estat: Mes autrement est de tenant a volunt solonque le custome del manor, pur ceo que il est oblige pur faire fealtie a son Sñr pur deux causes; lun est p cause del custome, & lauter est pur ceo que il prist son estate en tiel forme p faire a son Sñr fealtie.

Writ proves a Tenure between them. But he which is Tenant at Will according to the Course of the Common Law shall not do Fealty, because he hath not any sure Estate: But otherwise it is of Tenant at Will according to the Custom of the Manor, for that he is bound to do Fealty to his Lord for two Causes; the one is by reason of the Custom, and the other is, for that he taketh his Estate in such Form to do his Lord Fealty.

Chap. VI. Sect. 133.

Frankalmoigne.

Bract. l. 2. ca. 5. Brit. fol. 164, 165. Mirror, cap. 2. sect. 18. Glanvil, lib. 7. cap. 1, & lib. 12. cap. 3. & 25.

¶ *UN Abbe, Prior, ou auter home de religion, ou de saint Esglise.* It is to be observed, that of Ecclesiastical Persons some be regular, and some be secular. They be called Regular, because they live under certain Rules, and have vowed three Things, true Obedience, perpetual Chastity, and wilful Poverty. And when a Man is professed in any of the Orders of Religion, he is said to be home de Religion, a Man of Religion, or religious: Of this sort are all Abbots, Priors, and others of any of the said Orders regular. Secular are Persons Ecclesiastical; but because they live not under certain Rules of some of the said Orders, nor are Notaries,

21 H. 7. 39. 36 E. 3. 14.

40 E. 3. 29. 8 H. 6. 23. 7 E. 4. 12. 12 H. 8. 8.

¶ TEnant en Frankalmoigne est, lou un Abbe ou Prior, ou un auter home de religion, ou de saint Esglise, tient de son Sñr en Frankalmoigne, que est adiũ en Latin, in liberam Eleemosynam. Et tiel tenure commenc̃ adeprimes en auncient temps en tiel forme: Quant un home en auncient temps fuit seisie de certain terres ou tenements en son demesne come de fee,

TEnant in Frankalmoign is, where an Abbot or Prior, or another Man of Religion, or of Holy Church, holdeth of his Lord in Frankalmoign, that is to say in Latin, *in liberam Eleemosynam*, that is, in free Alms. And such Tenure began first in old Time: When a Man in old Time was seised of certain Lands or Tenements in his Demesne as of Fee, and of the same Land in

moigne, ſi ſoit expreſſe aſcun mañ ð cētain ſervice q̄ il doit faire, &c. of certain Service that he ought to do, *&c.*

excellent Things; as when, where, and what may be diſtrained: Of all which there is a Taſte given in their proper Places.

¶ *En tiel caſe le Seignior avera fealtie, &c. come ſemble.* For as it hath been ſaid, Fealty is incident to every Tenure, ſaving the Tenure in Frankalmoign, and where the Lord may diſtrain, there is Fealty due. And Britton calleth this Tenure (by Divine Service) Aumone, and not libera Eleemoſyna. And ſaith he, Tenure en aumone eſt terre ou tenement que eſt done a aumone, dount aſcun ſervice eſt retenue al feoffor.

¶ *Et cætera.* And here [&c.] implieth Diſtreſs, Eſcheat, and the like.

¶ *Et tiel tenure neſt paſſe dit Tenure en Frankalmoigne, eins eſt dit Tenure per Divine ſervice, &c.* And therefore our old Books divided ſpiritual Service into free Alms, (which was free from any Limitation of Certainty) and Alms, becauſe the Tenants were bound to certain Divine Services. 33 H. 6. fo. 6.

¶ *Sil ſoit expreſſe aſcun maner de certeine ſervice.* This holdeth where the Certainty is reſerved upon the original Grant. If Lands were given to hold in libera Eleemoſyna, reddendo a Rent, it ſeemeth the Reſervation of the Rent to be void, * becauſe it is repugnant, and contrary to the former Grant in libera Eleemoſyna. 2 Inſt. 460. 13 E. 2. Count de Vouch. 118. * 13 H. 4. tit. Meſne 74. 30 E. 3. 30. 19 E. 2. Avowry 224. 32 E. 1. Tail 31. 26 Aſſ. 66. 4 H. 6. 17. Trin. 4 E. 3. F. N. B. 252. f. 15 E. 3. Corody 4.

Vide Trin. 4 E. 3. and F. N. B. 231. f. That an Abbot or Prior that holdeth in Frankalmoign ſhall not be charged with a Corody. Alſo Lands holden in Frankalmoign cannot [a] be ancient Demeſne, in Reſpect of Charges incident thereunto. [a] 32 E. 1. ant. Dem. 39.

¶ *Que il doit faire, &c.* Here by [&c.] is underſtood temporal or ſpiritual Service alſo, which he ought to do corporally, or render, or pay.

There were within this Realm of England one hundred and eighteen Monaſteries, founded by the Kings of England, whereof ſuch Abbots and Priors as were founded to hold of the King per Baroniam, and were called to the Parliament by Writ, were Lords of Parliament, and had Places and Voices there: † And of them there were twenty-ſeven Abbots, and two Priors, as by the Rolls of Parliament appears. But ſince our Author wrote, all theſe (as hath been ſaid) are diſſolved. King Stephen did found the Abbey of Feverſham in Kent; Et dedit Abbati, & Monachis, & ſucceſſoribus ſuis, Manerium de Feverſham in Com. Kanciæ, ſimul cum Hundredo, &c. tenendum per Baroniam, &c. Who albeit he held by a Barony, yet becauſe he was never (that I [b] find) called by Writ, he never ſate in Parliament. F. N. B. 232. a. † For Example Rot. Parl. 5 H. 8. 21 H. 8. &c. [b] Canc. Paſch. 30 E. 1. Cor. Rege, this Foundation is ſo pleaded. Poſt 134. a. 344.

All the Archbiſhops and Biſhops of England have been founded by the Kings of England, and do hold of the King by Barony, (as before hath been ſaid) and have been all called by Writ to the Court of Parliament, and are Lords of Parliament: As (amongſt many) take one notable Record, [c] Mandatum eſt omnibus Epiſcopis, qui conventuri ſunt apud Gloucestriam, die Sabbati in craſtino Sanctæ Katharinæ, firmiter inhibendo, quod ſicut Baronias ſuas quas de Rege tenent diligunt, nullo modo præſumant conſilium tenere de aliquibus quæ ad Coronam Regis pertinent, vel quæ perſonam Regis, vel ſtatum ſuum, vel ſtatum conſilii ſui contingunt; ſcituri pro certo, quod ſi fecerint, Rex inde ſe capiet ad Baronias ſuas. Teſte Rege apud Hereford 23 Novemb. &c. And the Biſhoprics in Wales were founded by the Princes of Wales, and the Principality of Wales was holden of the King of England as of his Crown: And when the Prince of Wales committed Treaſon, Rebellion, &c. the Principality was forfeited, and the Patronages of the Biſhops annexed to the Crown of England, ſo as the King is to have Penſions for his Chaplains, and Corodies for his Vadelets, of them, as of Biſhops founded by himſelf. And vide Mich. 10 H. 4. Ror. 60. Wallia coram Rege, that the Judgment was given accordingly againſt the Biſhop of St. Davids in Wales, per Juſticiarios de utroq; Banco & alios de perito concilio Domini Regis. And the Biſhops of Wales are alſo called by Writ to Parliament, and are Lords of Parliament, as Biſhops of England be. [c] Ex Rot. pat. de anno 18 E. 3. M. 17. 9 Co. 73. 10 H. 4. fo. 6. b.

Sect. 138.

¶ ITem, ſi ſoit demand, ſi teñ en frankmarriage ferra fealtie a le doñ ou a

ALſo, if it be demanded, if Tenant in Frankmarriage ſhall do Fealty to the Do-

¶ *E quel ſerra inconvenient, &c.* An Argument drawn from an Inconvenience is forcible in Law, as hath been obſerved Vide Sect. 87, 139, 201, 269, 440, 478, 669, 742.

Sect. 139.

¶ ET ſi un Abbe tient de ſon Seignior en frankalmoigne, & labbe & le covent ſouth lour common ſeale alien meſmes les tenements a un ſeculer home en fee ſimple; en ceo cas le ſeculer home ſerra fealtie a le Seignior, pur ceo que il ne poit tener de ſon Sñr en frankalmoigne. Car ſi le Seignior ne doit aver de luy fealtie, donque il avera nul manner de ſervice, que ſerroit inconvenient ou il eſt Sñr, & le tenement eſt tenus de luy.

AND if an Abbot holdeth of his Lord in Frankalmoign, and the Abbot and Convent under their common Seal alien the ſame Tenements to a ſecular Man in Fee-ſimple; in this Caſe the ſecular Man ſhall do Fealty to the Lord, becauſe he cannot hold of his Lord in Frankalmoign. For if the Lord ſhould not have Fealty of him, he ſhould have no Manner of Service, [32] which ſhould be inconvenient where he is Lord, and the Tenements be holden of him.

¶ This Caſe is worthy of great Obſervation, for hereby it appeareth, that albeit the Alienors held not by Fealty, nor any other terrene Service, but only by ſpiritual Services, and thoſe incertain; yet the Alienee ſhall hold by the certain Service of Fealty: (And of this Opinion is Littleton, agreeable with our Books in former Authorities:) For the Law createth a new temporal Service out of the Land to be done by the Alienee, wherewith the Abbot was not formerly charged, for the Avoiding of an Inconvenience, viz. that the Feoffee ſhould do no Manner of Service, and conſequently that the Land ſhould be holden of no Man. Wherein it is to be remembred, that (as hath been ſaid before) all the Lands and Tenements in England, in the Hands of any Subject, are holden of ſome Lord or other, and that every Tenant muſt do ſome Kind of Service; and that all Lands and Tenements are holden either mediately or immediately of the King; for originally all Lands and Tenements were derived from the Crown. And it is to be obſerved, that when the Law createth any new Tenure, it is the loweſt, (viz. Tenure in Socage) and with the leaſt Service that can be done, and neareſt to the Freedom of the former Service: As in this Caſe, a Tenure in Socage by Fealty only is created by the Law, which is the loweſt and leaſt Service the Law can create, becauſe Fealty is incident to every Tenure, except Tenure in Frankalmoign; for if it ſhould create any other Service, it muſt create Fealty alſo. And the Law, according to Equity and Juſtice, giveth this Fealty to the Lord, of whom the Land was before holden in Frankalmoign. And laſtly, the Law ſo abhorreth an Inconvenience, as that it createth out of the Land a new Service for avoiding thereof. It appeareth by our Books, that a Seigniory in Frankalmoign may be granted over, and conſequently the Tenant ſhall hold of the Grantee by Fealty only: And therefore Britton ſaid well, that no Service could be demanded of a Tenant in Frankalmoign, tant come les terres remaine en les maines les feoffees.

4 Co. 8. 31 E. 3. Ceſſant 22. 33 H. 6. 67. 21 E. 4. 11. Lib. 9. fo. 123. Anth. Lowe's Caſe. 2 Inſt. 502. 3 Co. 3. b.

F. N. B. 10. a.

42 Aſſ. Pl. 6. Britton, 164. b.

Sect. 140.

¶ ITem ſi home graunta a cel jour a un Abbe ou a un Prior terres ou tenements en frankalmoigne, ceux parolx (Frankalmoigne) ſont

ALſo if a Man grant at this Day to an Abbot or to a Prior Lands or Tenements in Frankalmoign, this Word (Frankalmoign) is void; for it is or-

¶ *Ordeine per le-ſtatute.* Here it appeareth by the Authority of Littleton, that this is a Statute, and yet the King alone ſpeaketh, viz. Dominus Rex in Parliamento ſuo, &c. ad inſtantiam magnatum Regni ſui conceſſit, providit, & ſtatuit.

But

15 E. 3. Confirm. 8.

Contra formam collationis, or any other incident to their inheritable Blood. But it is no incident inseparable; for the Lord may release to the Tenant in Frankalmoign; and then the Tenure is extinct, and he shall hold of the Lord Paramount by Fealty, as in the Case of Littleton, Sect. 139.

Vide 15 E. 4. 2 Rol. 447. cont.

¶ *Ou de ses heires.* Here [or] hath the Sense of [and]: For a Man cannot at this Day grant Lands in Tail, and reserve a Rent to his Heirs, and exclude the Grantor himself; for the Heir cannot take any Thing in the Life of the Ancestor; neither can the Heir take any Thing by Descent, when the Ancestor himself is secluded. But if a Man had granted Lands at the Common Law, to hold of his Heirs, these Words [To hold of his Heirs] are void, and he shall hold of the Grantor, as he held over, which he should have done, if he had made no Reservation at all.

33 E. 3. tit. Annuity 52. 2 Rol. 447, 501. 9 Co. 122.

And albeit Littleton saith, That no Man can hold Lands in Frankalmoign, but of the Grantor or his Heirs; yet might an Abbot by Assent of his Convent, or a Bishop with Assent of his Chapter, and such like, by Licence, as is aforesaid, have given Lands in Frankalmoign, to hold of them and their Successors, and as Littleton himself agreeth, the King may give Land in Frankalmoign. In which Case the Land shall be holden of him, his Heirs and Successors.

¶ *Et pur ceo est dit, si soit Seignior, mesne, & tenant, & le tenant est un Abbe, &c.* By this it appeareth, that if the Seigniory be transferred by Act in Law to a Stranger, and thereby the Privity is altered, that the Tenure in Frankalmoign is changed to a Tenure in Socage by Fealty, as well as it appeareth before, when the Seigniory or Tenancy is granted to another; and the Law in this Case also createth a new Fealty, wherewith the Land was not charged before.

2 E. 4. 46. 513. 7 E. 4. 12. a.

¶ *Donques les mesnaltie deviendra per escheat al dit Seignior Paramount.* This new Tenure created by Law shall upon the Escheat drown the Seigniory; for always the Seigniory nearer to the Land, drowns the Seigniory that is more remote off; and yet the Lord in this Case, to whom the Mesnalty is escheated, shall hold by the same Services that held before the Escheat.

de son mesne en frankalmoigne, si le mesne devy sans heire, donque le mesnaltie devienda per escheate al dit Seignior Paramount, & labbe adonque tient de luy immediate per fealtie tantum, & ferra a luy Fealty pur ceo que il ne puit tener de luy en Frankalmoigne, &c.

holdeth of his Mesne in Frankalmoign, if the Mesne die without Heir, the Mesnalty shall come by Escheat to the said Lord Paramount, and the Abbot shall then hold immediately of him by Fealty only, and shall do to him Fealty, because he cannot hold of him in Frankalmoign, *&c.*

Sect. 142.

11 Co. 67.

¶ H*Ome de Religion.* And yet this Case extendeth to all Ecclesiastical Persons that hold in Frankalmoign, be they secular or regular, for the Mesne ought to acquit all of them, for they be bound [a] to make Prayers for their Founder, and his Heirs, and in Consideration of those Prayers, the Founder, &c. is bound to pay to the Chief Lord all Rents and Services issuing out of that Land, as it appeareth by that which followeth.

[a] Pl. Com. 306. b. in Sharington's Case. 33 H. 6. 6. 39 H. 6. 29. 14 E. 3. Mesne 7.

¶ *De luy acquiter.*

¶ ET nota, que lou tiel home de religion tient ses Tenements de son Sñr en frankalmoigne, son Sñr est tenus per la ley de luy acquiter de chescun manner de service que ascun Seignior paramount de luy voet aver ou demander de mesmes les tenements: & sil ne

AND *note*; that where such Man of Religion holds his Tenements of his Lord in Frankalmoign, his Lord is bound by the Law to acquit him of every Manner of Service, which any Lord Paramount will have or demand of him for the same Tenements. And if he doth not ac-

luy

rie en le sãke le Seignior. Et tiel Service de Homage Auncestrel trait a luy garrantie, cestascavoir, que le Seignior que est en vie, & ad receive le Homage de tiel Tenant, doit garranter son Tenant quant il est implede de la terre tenus de luy per Homage Auncestrel.

the Blood of the Lord. And such Service of Homage Auncestrel draweth to it Warranty, that is to say, that the Lord which is living, and hath received the Homage of such Tenant, ought to warrant his Tenant when he is impleaded of the Land holden of him by Homage Auncestrel.

Hereby appeareth what a reverend Respect the Law hath to ancient Inheritances continued in the Blood of the Lord and of the Tenant: For in this Example put, if the Continuance hath not been in the Blood of both Sides, no Warranty belongeth to Homage Auncestrel; but if ancient Continuance hath been on both Sides, [a] then such Homage Auncestrel draweth to it Warranty: So as ancient continued Inheritance on both Parties hath more Privilege and Account in Law, than Inheritances lately or within Memory acquired.

14 H. 6. 25. 18 H. 6. 2. b. 9 H. 3. Voucher 277. 47 H. 3. Voucher 270, 271. 43 E. 3. 3. a.

F. N. B. 134. f.

[a] See the second Part of the Institutes upon the 6th Chapter of the Statute of Bigamie.

If the Lord grant the Services of his Tenant by Homage Auncestrel, the Tenant shall not be compelled in a Per quæ servitia to attorn, unless the Conusee will grant in Court to warrant the Land unto him.

Post 384. a. 18 H. 6. 2. b. per Newton.

If the Tenant vouch by Force of this Warranty in Law, it is a good Counterplea, that the Tenant (or any one of his Ancestors) recessit de servitio suo, & fecit servitium suum A. B. sine aliqua coactione de sua propria voluntate.

¶ *Et ad receive homage de tiel tenant.* [b] So as before Homage received the Tenant could not absolutely bind the Lord to Warranty; and therefore of ancient Time there lay [c] a Writ De homagio capiendo, for the Tenant against the Lord, to compel him to receive his Homage for the Benefit of his Warranty. Which Writ you shall read in Bracton and [d] Britton, and the Process and Manner of Trial thereupon; and the same you shall find in 47 H. 3.

[b] 45 E. 3. 23. F. N. B. 269. a.

[c] Bracton, lib. 2. fol. 83.

[d] Britton, fol. 172, 173. 47 H. 3. Garrantie 99.

Sect. 144.

¶ Et auxi tiel service per Homage Auncestrel trait a luy acquittall, s. que le Sñr doit acquiter le Tenant envers touts auters Sñrs paramont luy de chescun manner de service.

AND also such Service by Homage Auncestrel draweth to it Acquittal, *viz.* that the Lord ought to acquit the Tenant against all other Lords paramount him of every Manner of Service.

¶ *Trait a luy acquital.* Of Acquittal somewhat hath been said in the Chapter of Frankalmoign.

Ante 100. 4 Co. 8. Sect. 142 & 540.

Sect. 145.

¶ Et il est dit, q̃ si tiel tenant soit empled p un Præcipe quod reddat, &c. & il vouche a garrantie son Seignior, que vient eins p proces, & demanda del tenant que il ad de luy lier a

AND it is said, that if such Tenant be impleaded by a *Præcipe qd. reddat, &c.* and vouch to Warranty his Lord, who cometh in by Process, and demands of the Tenant what he hath to bind

¶ *UN Præcipe quod reddat.* This is understood of the King's Writ directed to the Sheriff of the County where the Land lieth, whereby the Sheriff is authorized to command the Tenant of the Land to yield the same to the Demandant; and of these Words of the Writ (Præcipe quod reddat) the Writ is so called. Writs of

F. N. B. 2. e. F. N. B. 191. e.

4 Co. 36.

tempore ſubſtantiam capiens ab authoritate Legis. In the Common Law a Preſcription which is perſonal is for the moſt part applied to Perſons, being made in the Name of a certain Perſon, and of his Anceſtors, or thoſe whoſe Eſtate he hath; or in Bodies politick or corporate, and their Predeceſſors; for as a natural Body is ſaid to have Anceſtors, ſo a Body politick or corporate is ſaid to have Predeceſſors. And a Cuſtom which is local is alledged in no Perſon, but laid within ſome Manor or other Place, as taking one Example for many, J. S. ſeiſed of the Manor of D. in Fee preſcribeth thus: That J. S. his Anceſtors, and all thoſe whoſe Eſtate he hath in the ſaid Manor, have Time out of Mind of Man, had and uſed to have Common of Paſture, &c. in ſuch a Place, &c. being the Land of ſome other, &c. as pertaining to the ſaid Manor. This properly we call a Preſcription. A Cuſtom is in this Manner: A Copyholder of the Manor of D. doth plead, that within the ſame Manor there is and hath been ſuch a Cuſtom Time out of Mind of Man uſed, that all the Copyholders of the ſaid Manor have had and uſed to have Common of Paſture, &c. in ſuch a Waſte of the Lord, Parcel of the ſaid Manor, &c. where the Perſon neither doth or can preſcribe, but alledgeth the Cuſtom within the Manor. But both to Cuſtoms and Preſcriptions theſe two Things are Incidents inſeparable, viz. Poſſeſſion or Uſage, and Time. Poſſeſſion muſt have three Qualities; it muſt be long, continual, and peaceable, Longa, continua, & pacifica: For it is ſaid, Transferuntur dominia ſine titulo & traditione per uſucaptionem, i. e. per longam, continuam, & pacificam poſſeſſionem. Longa, i. e. per ſpatium temporis per legem definitum, of which hereafter ſhall be ſpoken. Continuam dico, ita quod non ſit legitime interrupta

6 Co. 60. a. 66.
12 E. 4. 1. 2. Mariæ, Br. Preſcr. 100.
Dyer 71. 14 E. 3. Bar. 277. 43 E. 3. 32. 7 H. 6. 26. 22 H. 6. 14. 16 E. 2. tit. Preſcr. 53.
40 Aſſ. 27, 41. 21 E. 4. 53, 54. 5 Co. 78. b.

9 Co. 57. b.

per title de Preſcription, s. de temps dont memorie ne curt. Mes divers Opinions ont eſte de temps dont memorie, &c. & de title per Preſcription, q̃ eſt tout un en Ley. Car aſcuns ont dit, que temps de memorie ſerra dit de temps de limitation en un briefe de Droit, ſcilicet de temps le Roy R. le 1. puis le conqueſt, come eſt done per leſtatute de Weſtminſter 1. pur ceo que le briefe de Droit eſt le pluis haut briefe en ſa nature que poit eſtre. Et per tiel briefe home poit recover ſon droit de la poſſeſſion ſon Anceſtors de pluis auncient temps que home purroit p aſcun briefe per la ley, &c. Et entant que il eſt done per le dit eſtatute, que en briefe de Droit nul ſoit oye a demander de le ſeiſin ſon Anceſtors de pluis longe temps que de temps le Roy R. avantdit; iſſint ceo eſt prove q̃ continuance de poſſeſſion, ou auters cuſtomes & uſages uſes puis le dit temps, eſt le title de Preſcription, &c. & hoc certum eſt: Et auters

by Title of Preſcription, that is to ſay, from Time out of Mind. But divers Opinions have been of Time out of Mind, &c. and of Title of Preſcription, which is all one in the Law. For ſome have ſaid, that Time out of Mind ſhould be ſaid from Time of Limitation in a Writ of Right, that is to ſay, from the Time of King *Richard* the Firſt, after the Conqueſt, as is given by the Statute of *Weſtminſter* the firſt, for that a Writ of Right is the moſt high Writ in its Nature that may be. And by ſuch a Writ a Man may recover his Right of the Poſſeſſion of his Anceſtors of the moſt ancient Time that any Man may by any Writ by the Law, *&c.* And inſomuch that it is given by the ſaid Eſtatute, that in a Writ of Right none ſhall be heard to demand of the Seiſin of his Anceſtors of longer Time than of the Time of King *Richard* aforeſaid; therefore this is proved, that Continuance of Poſſeſſion, or other Cuſtoms and Uſages uſed after the ſame Time, is the Title of

ont

Original is, Hors del ſeite del Mannor, and ſo would it be amended in the Impreſſions of the Book hereafter.

¶ *Et aſcuns frank homes teignont, &c.* This is apparent enough, eſpecially upon that which hath been ſaid.

¶ *Ou un villeine purchaſe terre en Fee ſimple.* Yet the Villein may purchaſe ſome Kind of Inheritances in Fee-ſimple, which the Lord of the Villein cannot have. As if a Villein purchaſe a Common ſans nomber, the Lord ſhall not have it, for the Lord may ſurcharge the ſame, which ſhould be a Prejudice to the Tertenant: And the ſame Law of a Corody in certain granted to a Villein, and ſuch like Inheritances. And therefore Littleton materially ſaid, Purchaſe terre: When the Villein hath an Eſtate of any Thing certain, the Lord ſhall have it, as a Rent granted to the Villein, Common certain, Estovers certain, and ſuch like. [a] But that which lieth in Action, as a Warranty made to the Villein, his Heirs and Aſſigns, the Lord ſhall not take Advantage of by Voucher, becauſe it is in Lieu of an Action: Neither ſhall the Lord take Advantage of any Obligation or Covenant, or other Thing in Action made to the Villein, becauſe they lie in Privity, and cannot be transferred to others.

F. N. B. 77. a. 22 Aſſ. p. 37. [a] Doct. & Stud. cap 43. 3 Co. 62, 63. Poſt 120. a.

[b] If a Man be Leſſee of a Villein for Life, for Years, or at Will, and the Villein purchaſeth Lands in Fee; if the Leſſee entreth into the Lands, he ſhall hold the Lands as a Perquiſite to him and his Heirs for ever. But if a Biſhop have a Villein in the Right of his Biſhoprick, and he purchaſeth Lands, and the Biſhop entreth, the Biſhop ſhall have this Perquiſite to him and his Succeſſors, and not to him and his Heirs; for the Law reſpecteth the Quality, and not the Quantity of his Eſtate. So if Executors have a Villein for Years, and the Villein purchaſeth Lands in Fee, and the Executors enter, they ſhall have a Fee-ſimple, but it ſhall be Aſſets.

[b] L 5 E 4. 61. 18 E 3. 29. 21 H. 6. 37. Bro. tit. Vill. 70.

¶ *Fee-tail.* By this it is apparent, that if Lands be given to a Villein and to the Heirs of his Body, the Lord may enter, and put out the Villein and the Heirs of his Body; for Quicquid acquiritur ſervo, acquiritur Domino. And in this Caſe the Lord gains a Fee-ſimple determinable upon the Dying of the Villein without Heir of his Body, and the abſolute Fee-ſimple remaineth ſtill in the Donor. And if the Lord enter and after infranchiſe the Donee, and after the Donee hath Iſſue; yet that Iſſue ſhall never have Remedy, either by Formedon or Entry, to recover this Land, by Force of the Statute of Donis Conditionalibus, for that Statute giveth Remedy to the Iſſues of the Donee that have Capacity and Power to take and retain ſuch a Gift. And the Title of the Lord remains as it did at the Common Law, for the Statute reſtraineth Acts done only by the Tenant in Tail. And ſo it is if Lands be given to an Alien, and to the Heirs of his Body, upon Office found the Land is ſeiſed for the King, afterwards the King makes the Alien a Denizen, who hath Iſſue, and dieth; the King ſhall detain the Land againſt the Iſſue.

Plowd. 235. b. Ante 90. a. 24. a. F. N. B. 12. c. 15 E. 4. 9. b. Pl. Com. 555. in Walſingham's Caſe.

Sect. 173.

¶ ET nota, ſi feoffment ſoit fait a certain perſon ou perſons en fee al uſe dun villeine, ou ſi un villeine ove auters perſons ſoient enfeoffees al uſe le villeine, quel eſtate que le villeine ad en le uſe, en fee tail, pur terme de vie ou dans, l'Seignior del villeine poit entrer en touts ceux terres & tenements, ſicome l'villeine uſt eſte ſole ſeiſie del demeſne. Et ceſt per Leſtatute de anno 19 H. 7. cap. 15.

AND *note*; if a Feoffment be made to a certain Perſon or Perſons in Fee to the Uſe of a Villein, or if a Villein with other Perſons be infeoffed to the Uſe of the Villein, what Eſtate ſoever that the Villein hath in the Uſe, in Fee-tail, for Term of Life or Years, the Lord of the Villein may enter into all thoſe Lands and Tenements, as if the Villein had been ſole ſeiſed of the Demeſne. And this is given by the Statute of *Anno* 19 *H.* 7. *cap.* 15.

¶ THis is an Addition to Littleton, and the Statute of 19 H. 7. cap. 15. therein mentioned, for the Cauſe that hath been afore ſaid, hath loſt its Force.

but a Writ of falſe Judgment, for that they are no Courts of Record, becauſe they cannot hold Plea of Debt or Treſpaſs, if the Debt or Damages do amount to forty Shillings, or of any Treſpaſs Vi & Armis. 14 H. 8. 15. 4 Co. 24. Mo. 66.

Monumenta, quæ nos recorda vocamus, ſunt veritatis & veruſtatis veſtigia.

Sect. 176.

¶ MES ſi frank home ad diſvers iſſues, & puis il confeſſe luy ñ deſtre villein a un auter en Court de Record, uncore les iſſues que il avera devant le confeſ. ſont franks; mes les iſſues que il avera apres le confeſſion ſeront villeins.

BUT if a Freeman hath divers Iſſues, and afterwards he confeſſeth himſelf to be a Villein to another in a Court of Record, yet thoſe Iſſues, which he hath before the Confeſſion, are free; but the Iſſues, which he ſhall have after the Confeſſion, ſhall be Villeins.

This is ſo evident as it needeth no Explication.

Sect. 177.

¶ ITem ſi le villein purchaſe fre, & alien la terre a un auter devant que le Seignior enter, donques le Seignior ne poit enter, car il ſerra adjudge ſon follie, q̃ il nentra pas quant la terre fuit en le maine le villeine. Et iſſint eſt des biens: ſi le villein achate biens, & eux vend ou done a un auter devant que le Seignior ſeiſiſt les biens, adonques le Seignior ne poit eux ſeiſer: Mes ſi le ſeignior devant aſcun tiel vender ou done vient deins la ville la ou tielx biens ſont, & la overtment enter les vicines claima les biens, & ſeiſiſt parcel

ALſo if a Villein purchaſe Land, and alien the Land to another before that the Lord enter, then the Lord cannot enter, for it ſhall be adjudged his Folly, that he did not enter when the Land was in the Hands of the Villein. And ſo it is of Goods: If the Villein buy Goods, and ſell or give them to another before the Lord ſeiſeth them, then the Lord may not ſeiſe the ſame: But if the Lord before any ſuch Sale or Gift cometh into the Town where ſuch Goods be, and there openly amongſt the Neighbours claims the Goods, and ſeiſes Part of the Goods in the Name of Seiſin

¶ IN this Caſe, before the Lord doth enter, he hath neither jus in re, nec jus ad rem, but only a Poſſibility of an Eſtate, which Eſtate he muſt gain by his Entry: And therefore, if the Villein doth by Way of Prevention alien before the Lord doth enter, the Lord is barred of the Poſſibility which he had to the Land for ever. [a] Si autem ſervus vendiderit feodum quod ſibi & hæredibus perquiſiverit antequam Dominus ſeiſinam inde ceperit, valet donatio, & Dominus ſibi ipſi imputet, quod tantum expectavit. But [b] if the Villein of the King purchaſeth Land, and alieneth before the King (upon an Office found for him) doth enter, yet the King after Office found ſhall have the Land, Quia nullum tempus occurrit Regi, as Littleton himſelf ſaith in the next Section. And yet, after Office found, the King ſhall not have the mean Profits, becauſe the Title is by the Seiſure.

[a] Fleta, lib. 3. cap. 13. Britton, fol. 98. a. 19 E. 2. Dower 171.

[b] 35 E. 3. tit. Villein 22. 9 H. 6. 21. per Babbington, 12 H. 7. 12. 8 Co. 170. 2 Roll. 734.

¶ *Purchaſe terre.* The like Law is of Seignories, Advowſons, Reverſions, Remainders, Rents, Commons certain, and ſuch like certain Inheritances, wherein the Villein

the Lord may lawfully come to the Land to make his Claim to the Seigniory, Rent, or other Profit out of the Land. But if the Villein purchase a Seigniory, or a Rent, Common, or other Inheritance, issuing out of the Land of the Lord himself, it is said that the Seigniory, Rent, Common or such other Inheritance, is extinguished in the Lord's Possession without any Claim.

Vide 41 E. 3. tit. Audita querela 18.
12 H. 4. tit. Execution 28.
1 H. 7. 15. b.

ð vie, donques per cas il viendra trope tarde. Car peradventure le villeine voile granter ou alien le reversion a un autr̃ en la vie le tenant a term̃ de vie, &c.

Life, then perchance he should come too late. For peradventure the Villein will grant or alien the Reversion to another in the Life of the Tenant for Life, &c.

¶ *Grant.* Here must be intended an Attornment: For after the Grant and before Attornment, the Lord may not claim the Reversion.

¶ *En la vie del tenant pur vie, &c.* Here by (&c.) is included Tenant in Tail, Tenant pur auter vie, Tenant by Statute-Merchant, Staple, Elegit, and for Years; for during all these Estates the Lord may claim the Reversion, as well as in Case of the Tenant for Life.

Sect. 180.

¶ *Advowson.* Advocatio, so called, because the Right of Presenting to the Church was first gained by such as were Founders, Benefactors, or Maintainers of the Church: viz. ratione fundationis, as where the Ancestor was Founder of the Church; or ratione donationis, where he endowed the Church; or ratione fundi, as where he gave the Soil whereupon the Church was built: And therefore they were called Advocati. They were also called Patroni, and thereupon the Advowson is called Jus Patronatus. And in one Word, Advowson of a Church is the Right of Presentation or Collation to the Church. Advocatus est ad quem pertinet Jus advocationis alicujus Ecclesiæ, ut ad Ecclesiam nomine proprio, non alieno, possit præsentare. Every Church is either Presentative, Collative, Donative, or Elective. Vide Sect. 645, 648.

Fleta, lib. 5. cap. 14.

¶ En meisme le maner est, lou un villein p̃chase un Advowson dun Esgl' plein dun incumbent, le Sr̃ del Villeine poit vener al dit Esglise, & claime le dit advowson, & per cel claime ladvowson est en luy. Car sil doit attendre tanque apres le mort lincumbent, & adonque a presenter son clerke a le dit Esglise, donque en le meane temps le villeine poit alliener le advowson, & issint ouste le Seignior de son presentment.

IN the same Manner it is, where a Villein purchases an Advowson of a Church full of an Incumbent, the Lord of the Villein may come to the said Church, and claim the said Advowson, and by this Claim the Advowson is in him. For if he will attend till after the Death of the Incumbent, and then to present his Clerk to the said Church, then in the mean Time the Villein may alien the Advowson, and so oust the Lord of his Presentment.

¶ *Plein dun Incumbent.* If the Church be Presentative, the Church is full by Admission and Institution against any common Person, but against the King it is not full until Induction.

Post 344. a.
24 E. 3. 30. 25 E. 3. 47.
38 E. 3. 9. 44 E. 3. 3.
9 H. 6. 31. 22 H. 6. 27.
21 E. 4. 34. b. Vide Sect. 648.
6 Co. 14.

¶ *Incumbent* cometh of the Verb Incumbo, that is, to be diligently resident, id est, obnixe operam dare: And when it is written Encumbent, it is falsly written, for it ought to be Incumbent, as Littleton doth here. And therefore the Law doth intend him to be resident on his Benefice.

prescription ne poet autrement prescriber forsque en luy & en ses Auncestors que heir il est, & nemy per ceux parols, En luy & en ceux que estate il ad; pur ceo que il ne poet aver lour estate sans fait ou auter escripture, le quel covient destre monstre a le court, si il voile aver ascun advantage de ceo. Et pur ceo que le grant & alienation dun villein en gros ne gist sans fait ou auter escripture, home ne poit prescriber en un villein en gros sans monstrans descriptur̄, si non en soy mesme que claim le villeine, & en ses Ancestors que heire il est. Mes de tiels choses que sont regardants ou appendants a un Mannor, ou a auters Terres & Tenements, home poet prescriber, que il & ceux que estate il ad, queux fueront seisies de le Mannor ou de tiels Terres & Tenements, &c. ont este seisies de tielx choses, come regardants ou appendants a la Mannor, ou a tiels terres & tenements de temps dont memorie, &c. Et la cause est, pur ceo que tiel Mannor

such Things by Prescription cannot otherwise prescribe but in him and in his Ancestors, whose Heir he is, and not by these Words, In him and them whose Estate he hath; for that he cannot have their Estate without Deed or other Writing, the which ought to be shewed to the Court, if he will take any Advantage of it. And because the Grant and Alienation of a Villein in Gross lieth not without Deed or other Writing, a Man cannot prescribe in a Villein in Gross without shewing forth a Writing, but in himself which claims the Villein; and in his Ancestors whose Heir he is. But of such Things which are regardant or appending to a Manor, or to other Lands and Tenements, a Man may prescribe, that he and they whose Estate he hath, who were seised of the Manor, or of such Lands and Tenements, *&c.* have been seised of those Things, as regardant or appendant to the Manor, or to such Lands and Tenements, time out of Mind of Man. And the

Domini Regis, vel ejus Justiciariorum. [a] Talis concordia finalis dicitur, eo quod finem imponit negotio, adeo ut neutra pars litigant' ab eo de cætero poterit recedere. Of the several Parts of a Fine, and many Incidents to the same, you shall read in my Reports.

[a] Pl. Com. 357.

3 Co. 84. 8 Co. 51. Lib. 5. f. 38. Teyes's Case.

¶ *Que Estate, &c.* Quorum statum, as much as to say, Whose Estate he hath. Here Littleton declareth one excellent Rule; [b] That a Man cannot prescribe in any Thing by a Que Estate, that lieth in Grant, and cannot pass without Deed or Fine; but in him and his Ancestors he may, because he comes in by Descent without any Conveyance. Neither can a Man plead a Que Estate in himself of any Thing that cannot pass without Deed; [c] but in another he may: As in Bar of an Avowry, the Plaintiff may plead a Que Estate in the Seigniory in the Avowant. But Littleton's Words are to be observed, [Home que voile aver tiels choses per Prescription.] Therefore [d] when a Thing that lieth in Grant is but a Conveyance to the Thing claimed by Prescription, there a Que Estate may be alledged of a Thing that lieth in Grant; as a Man may prescribe that he and his Ancestors, and all those whose Estate he hath in an Hundred, have Time out of Mind, &c. had a Leet, &c. This is good, &c. [40].

[b] 22 Ass. 53. 23 Ass. 6. 12 H. 7. 16, 18. Sid. 298. Doc. Pla. 103, 255, 302, 303.

2 Cro. 673.

[c] 39 H. 6. 8. 18 E. 4. 23.

[d] 11 H. 4. 89. 19 R. 2. Action sur le Case 51. 13 E. 3. Br. 674. 10 Co. 59. b.

[e] Regularly the Plaintiff shall not entitle him by a Que Estate, but he must shew how he came by it; but after Avowry made, the Plaintiff shall plead a Que Estate, because he is now become as a Defendant.

[e] 9 E. 4. 3. b. 29 Ass. 19. 2 H. 6. 10. 48 E. 3. tit. 33.

‡ Brook que Estate 3.

[f] A Man may plead a Que Estate of a Tenure in Tail, or of an Estate for Life, so as he averreth the Life of them: But he cannot plead a Que Estate of a Lease for Years, or at Will.

[g] A Disseisor, Abator, Intruder, Recoveror, or any other that cometh in the Post, shall plead a Que Estate.

1 Co. 46. a. Sid. 298. [f] 40 Ass. 28. 2 H. 4. 20. 15 E. 4. 1. 5 H. 7. 39. 18 E. 4. 10. 7 E. 6. tit. Que Estate, Br. 31. 27 H. 6. 3. 7 Eliz. Doc. Pla. 304.

[g] 22 H. 6. 34. 6 E. 4. 12. 3 H. 8. Que Estate, Br. 48. 39 H. 6. 14. 9 H. 6. Estop. 25.

come des auters gentes, tiñ eſpiri-tuals come tempo-rals, ſenſeuent deins cities, villes, & lieux enfranchiſe, come en la citie de Londres, & auters ſemblables, & feignont divers ſuits envers lour Sei-gnioꝛs, a cauſe de eux faire franks per le reſpons de lour Seignioꝛs: Accoꝛde eſt & aſſentus, que les Seignioꝛs ne au-ters ne ſoyent my foꝛ-barres de lour Vil-leines per cauſe de lour reſpons en ley. Per foꝛce de quel e-ſtatute, ſi aſcun vil-leine voilloit ſuer aſcun maner de acti-on a ſon uſe demeſn en aſcun Countie, ou il eſt foꝛt a trier en-vers ſon Seignioꝛ, le Seignioꝛ poyt eſſyer de pleader que le Plaintife eſt ſon vil-lein, ou de faire pꝛo-teſtation que il eſt ſon villein, & de pleader ſon auter matter en barre. Et ſi ils ſont a iſſue, & liſſue ſoit trove pur le Seignioꝛ, donque le villein eſt villeine come il fuit devant, per foꝛce de meſme leſtatute. Mes ſi le iſſue ſoit trove pur le villeine, don-que le villeine eſt franke, pur ceo que le

as well of great Lords as of other Men, as well of ſpiritual as Temporal, fly and go into Cities, Towns, and Places franchiſed, as into the City of *London*, and other like Places, and feign divers Suits againſt their Lords, becauſe they would make themſelves free by the Anſwer of their Lords: It is accord-ed and aſſented, that Lords nor others ſhall not be fore-barred of their Villeins by rea-ſon of their Anſwer in Law. By Force of which Statute if any Villein will ſue any manner of Action to his own Uſe in any County, where it is hard to try againſt his Lord, the Lord may chuſe whether he will plead that the Plain-tiff is his Villein, or make Proteſtation that he is his Villein, and plead his other Mat-ter in Bar. And if they be at Iſſue, and the Iſſue be found for the Lord, then the Villein is a Vil-lein as he was before, by Force of the ſame Statute. But if the Iſ-ſue be found for the Villein, then the Vil-lein is free, becauſe that the Lord took

upon Judgment may be given. And as the Queſtion between the Parties is twofold, ſo is the Trial thereof: For either it is quæſtio juris, (and that ſhall be tried by the Judges, either upon a Demurrer, Special Verdict, or Exception, for Cuilibet in ſua arte perito eſt credendum: Et quod quiſque norit, in hoc ſe exer-ceat: And it is commonly and truly ſaid, Ad quæſtio-nem juris non reſpondent ju-ratores) or it is quæſtio facti. And the Trial of the Fact is in divers Sorts, whereof a light Touch is given before, Sect. 102. Of theſe a Trial by twelve Men (here intend-ed by Littleton) is the moſt frequent and common. And ſome few Rules of Law are neceſſary here to be remem-bred (for the better under-ſtanding of the Books of Law hereafter) where and from what Place, viz. de quo vicinero, out of what Neigh-bourhood the Jury ſhall come, a neceſſary Point to be known: For if there be a Miſ-trial, (that is) if the Jury com-eth out of a wrong Place, or returned by a wrong Officer, and give a Verdict, Judg-ment ought not to be given upon ſuch a Verdict. [42]

6 Co. 47.

[a] Wherein the moſt general Rule is, That every Trial ſhall be out of that Town, Pariſh, or Hamlet, or Place known out of the Town, &c. within the Record, within which the Matter of Fact iſ-ſuable is alledged, which is moſt certain, and neareſt there-unto, the Inhabitants where-of may have the better and more certain Knowledge of the Fact: As if the Fact be alledged in quadam platea vo-cat. King-ſtreet in Civitate Weſtmonaſt. in Comit. Midd. in this caſe the Miſue can-not come out of the Platea, becauſe it is neither Town, Pariſh, Hamlet, nor Place out of the Neighbourhood whereof a Jury may come by Law; but in this caſe it ſhall not come out of Weſt-minſter, but out of the Pariſh of St. Margaret, becauſe that is

5 Co. 36. b.
[a] 20 H. 6. 30.
7 H. 4. 27.
8 H. 6. 34. 7 H. 6. 27.
17 E. 3. 56. 43 H. 3. 5.
47 E. 3. 6. 34 H. 6. 1.
2 Cro. 150, 513, 675.
Hob. 76.

noſtre Seignior le Roy; ſi tiel alien voile ſuer un Action reall ou perſonal, le Tenant ou Defendant poit dire, que il fuit nee en tiel pais que eſt hors de la ligeance le Roy, & demaund judgment ſi il ſerra reſpondue.

our Sovereign Lord the King; if ſuch Alien will ſue an Action real or perſonal, the Tenant or Defendant may ſay, that he was born in ſuch a Country which is out of the King's Allegiance, and ask Judgment if he ſhall be anſwered.

11 H. 4. 26. 14 H. 4. 19, 20. 3 H. 6. 55. 22 H. 6. 38. Staundf. Pl. Cor. 197. a. Lib. 7. fo. 1. Calvin's Caſe. Pl. Com. 268. per Saunders. Vide Sect. 1. 439, 440, 441.

☞ in the Ligeance. [46] And he that is born within the King's Ligeance is called ſometime a Denizen, quaſi deins nee, born within, and thereupon in Latin called Indigena, the King's Liegeman, for Ligeus is ever taken for a natural-born Subject. But many Times in Acts of Parliament Denizen is taken for an Alien born, that is, infranchiſed or denizated by Letters Patents, whereby the King doth grant unto him, [a] Quod ille in omnibus tractetur, reputetur, habeatur, teneatur, & gubernetur, tanquam ligeus noſter infra dictum Regnum noſtrum Angliæ oriundus, & non aliter, nec alio modo. But the King may make a particular Denization: [b] As he may grant to an Alien, Quod in quibuſdam Curiis ſuis Angliæ audiatur ut Anglus, & quod non repellatur per illam exceptionem, quod ſit alienigena & natus in partibus tranſmarinis, to enable him to ſue only. The ſeveral Senſes of which Word muſt be gathered ex antecedentibus, adjunctis, & conſequentibus; and they that take him in that Senſe derive the Word from Donaiſon, i. Donatio, becauſe his Freedom is given unto him by the King.

5 Co. 52. Cro. Car. 8. [a] 9 E. 4. fo. 8. Pl. Com. 130. b. [b] Rot. Parl. 22 E. 1. Elias de Daubenie. Cro. Ja. 539.

There is another Kind, and that is an Alien naturalized, and that muſt be by Act of Parliament. And this Alien naturalized to all Intents and Purpoſes is as a natural-born Subject, and differeth much from Denization by Letters Patents: For if he had Iſſue in England before his Denization, that Iſſue is not inheritable to his Father; but if his Father be naturalized by Parliament, ſuch Iſſue ſhall inherit. So if an Iſſue of an Engliſhman be born beyond Sea, if the Iſſue be naturalized by Act of Parliament, he ſhall inherit his Father's Lands; but if he be made Denizen by Letters Patent, he ſhall not. And many other Differences there be between them.

¶ *Ligeance.* A Ligando, being the higheſt and greateſt Obligation of Duty and Obedience that can be. Ligeance is the true and faithful Obedience of a Liegeman or Subject to his Liege Lord or Sovereign. Ligeantia eſt vinculum fidei: Ligeantia eſt legis eſſentia.

Ligeantia Domino Regi debita eſt duplex
- Perpetua,
  1. Originaria, ſive naturalis, ſive nata: And this is always abſolute and incident inſeparable. Nemo patriam in qua natus eſt exuere, nec ligeantiæ debitum ejurare poſſit.
  2. Data, aut per denizationem, aut per naturalizationem, (ut ſupra dictum eſt) Iſta ligeantia per denizationem poteſt eſſe ſub conditione.
- Temporanea aut
  - Localis, quia quilibet alienigena qui in hoc Regno ſub protectione Regis degit Domino Regi ligeantiam debet. And if he be indicted of High Treaſon the Indictment ſhall ſay, Contra Ligeantiæ ſuæ debitum: Et ideo dicitur temporanea & localis, quia non durat niſi quouſque infra Regnum moratur. Hob. 271.
  - Limitata, as when one is made Denizen for Life, or in Tail: But one cannot be naturalized either with Limitation for Life, or in Tail, or upon Condition: For that is againſt the Abſoluteneſs, Purity, and Indelibility of natural Allegiance.

* An Abbot, Prior, or Prioreſs Alien, ſhall have Actions real, perſonal, or mixt, for any Thing concerning the Poſſeſſions or Goods of his Monaſtery here in England, though he be an Alien born out of the King's Ligeance, becauſe he bringeth it not in his own Right, but

* 13 E. 3. Br. 254. 20 E. 3. Annuity 24. 17 E. 3. 21. 40 E. 3. 10. 27 Aſſ. 48. 14 H. 4. 37. 22 E. 4. 44. 21 H. 7. 7. Staundf. Prær. 54. Lestat. de Carliſle 35 E. 1.

[a] 34 E. 3. Protect. 119. 28 H. 6. 3. 34 H. 6. 22. 30 H. 6. 3. 32 H. 6. 4. 2 Rol. 327.

[a] There is a Clause in the Protection to his Effect, Præsentibus minime valituris, si contingat ipsum, &c. a custodia castri prædicti recedere. Or, si contingat iter illud non arripere, vel infra illum terminum a partibus transmarinis redire. Whereupon there be two Conclusions to be observed.

First, That though the Protection be allowed by the Court for a Year, yet if it be repealed by an Innotescimus, that the Re-summons or Re-attachment shall be granted upon the Repeal within the Year, for the Protection that was allowed had the said Clause in it. And of that Opinion be our later Books, and the Repeal by Innotescimus should serve for little Purpose, if the Law should not be taken so.

Secondly, That albeit he that had the Protection either Moraturæ or Profecturæ return into England, and haply be arrested and in Prison, yet if he came over to provide Munition, Habiliments of War, Victuals or other Necessaries, it is no Breach of the said conditional Clause, nor against the Act of 13 R. 2. cap. 16. for that in Judgment of Law, coming for such Things as are of Necessity for the Maintenance of the War, moratur according to the Intention of the Protection and Statute aforesaid. And thus much of the Two first Protections Cum clausula Volumus, Profecturæ and Moraturæ.

F. N. B. 28. b. [b] Registrum 281. b. F. N. B. 28. b. 33 H. 8. c. 29. in the Preamble. 41 E. 3. tit. Execution 38. 18 E. 3. ibid. 56. Rot. pat. 27 E. 3. part 1. m. 2.

[c] 15 E. 3. cap. 19. 2 Rol. 203. Cro. Car. 389, 390. Hob. 115.

[c] As to the third Protection Cum clausula Volumus, The King by his Prerogative regularly is to be preferred in Payment of his Duty or Debt by his Debtor before any Subject, although the King's Debt or Duty be the latter: And the Reason hereof is, for that Thesaurus Regis est fundamentum belli, & firmamentum pacis. And thereupon the Law gave the King Remedy by Writ of Protection, to protect his Debtor, that he should not be sued or attached until he paid the King's Debt: But hereof grew some Inconvenience, for to delay other Men of their Suits, the King's Debts were the more slowly paid. And for Remedy thereof [c] it is enacted by the Statute of 25 E. 3. that the other Creditors may have their Actions against the King's Debtor, and proceed to Judgment, but not to Execution, unless he will take upon him to pay the King's Debt, and then he shall have Execution against the King's Debtor for both the two Debts.

[d] 41 E. 3. 15. 17 E. 3. 73. 29 E. 3. 13. 4 E. 4. 16.

This Kind of Protection hath (as it appeareth) no certain Time limited in it. But in some Cases the Subject shall be satisfied before the King: [d] For regularly whensoever the King is intitled to any Fine or Duty by the Suit of the Party, the Party shall be first satisfied, as in a Decies tantum. And so if in an Action of Debt the Defendant deny his Deed, and it is found against him, he shall pay a Fine to the King, but the Plaintiff shall be first satisfied: And so in all other like Cases. And so it is in Bills preferred by Subjects in the Star-Chamber, their Costs and Damages (if any be) shall be answered before the King's Fine, as it is daily in Experience.

The fourth Protection Cum clausula Volumus, is, when a Man sent into the King's Service beyond Sea is imprisoned there, so as neither Protection Profecturæ or Moraturæ will serve him; and this hath no certain Time limited in it, whereof you shall read at large in the Register, and F. N. B.

[e] Vide li. 7. fo. 8, 9. Calvin's Case.

[e] Now we are at length come to Protections Cum clausula Nolumus; all which, saving one, are of Grace, and, as hath been said, are implied under the general Protection: For as Fitzherbert saith, every Loyal Subject is in the King's Protection. Of these Protections of Grace you shall not read much in our Year-Books, because they stayed no Actions or Suits.

[f] Register 280, &c. F. N. B. 29. A. B. C. D. F. G. H.

[f] Of the divers Forms of these you shall read at large in the Register, and F. N. B. which were too long and needless to be here recited.

The Protection Cum clausula Nolumus, that is of Right, is, that every Spiritual Person may sue a Protection for him and his Goods, and for the Fermors of their Lands and their Goods, that they shall not be taken by the King's Purveyor, nor their Carriages or Chattels taken by other Ministers of the King: Which Writ doth recite the Statute of 14 E. 3.

Of these Protections I cannot say any Thing of mine own Experience; for albeit Queen Elizabeth maintained many Wars, yet she granted few or no Protections: And her Reason was, That he was no fit Subject to be employed in her Service, that was subject to other Mens Actions, lest she might be thought to delay Justice.

Sect. 200.

¶ *Enter & professe en Religion.*

¶ Le v. est, un home que est enter & professe en Religion: Si tiel

THE Fifth is, where a Man is entred and professed in Religion: If suist

¶ *Auxibien come il fuit mort en fa t.* But yet to three Purposes Profession, that is, the Civil Death, hath not the Effect of a Natural Death.

First, This Civil Death shall never derogate from his own Grant, nor be any Mean to avoid it. And therefore if Tenant in Tail maketh a Feoffment in Fee, and entreth into Religion, his Issue shall have no Formedon during his Life, because that should be in Derogation of his own Grant, and be a Mean to avoid the same.

[a] 32 E. 1. Dower 176. 31 E. 3. Collusion 29. 33 E. 3. Entre conge. 52. 21 E. 4. 14.

[a] Secondly, It shall never give her Avail, without whose Consent he could not have entred into Religion; and therefore his Wife after his Civil Death shall not be endowed until his Natural Death. But if the Wife, after her Husband hath entred into Religion, alien the Land, which is her own Right, and after her Husband is deraigned, the Husband may enter and avoid the Alienation.

Thirdly, It shall not work any Wrong or Prejudice to a Stranger that hath a former Right; and therefore if the Disseisor entreth into Religion, and is professed, so as the Land descends to his Heir, yet this Descent shall not toll the Entry of the Disseisee.

[b] 5 E. 4. 3. a.

[b] A Woman cannot be professed a Nun during the Life of her Husband: But some do

[c] 18 H. 6. 33. per Fortesc.

hold a Diversity [c] that ante carnalem copulam the Husband or Wife may enter into Religion without any Consent, but post carnalem copulam neither of them can without Consent of the other.

[d] 31 E. 3. Collusion 29.

[d] But if a Man holdeth Lands by Knight's Service, and is professed in Religion, his Heir within Age, he shall be in Ward. If I be disseised, and my Brother releaseth with Warranty, and is professed in Religion, and the Warranty descendeth upon me, this Warranty shall bind me, because I am his Heir, and such Inheritance as my Brother had shall descend upon me.

[e] 21 R. 2. Judgm. 263.

[e] And if one Jointenant be professed in Religion, the Land shall survive to the other. If a Man or a Woman be professed in Religion in Normandy, or in any other Foreign Part, such a Profession shall not disable them to bring any Action in England, because it wanteth Trial, but they must be professed in some House of Religion within this Realm, for that may be tried by the Certificate of the Ordinary: So as of Foreign Professions the Common Law taketh no Knowledge.

[f] 14 E. 3. Executors 87. 5 H. 7. 25. 21 H. 6. 30. 3 H. 6. 24.

[f] And yet in some Case one that is professed in Religion within the Realm shall have an Action; as if he be made an Executor, or if he be an Administrator, he shall maintain an Action, not in his own Right, but in Right of the Dead.

[g] 44 E. 3. 9. Nonabilit. 3. 14 H. 8. 16.

[g] If a Monk be made a Bishop, or a Parson, or a Vicar, he shall have an Action concerning his Bishoprick, Parsonage or Vicarage; & sic de similibus.

[h] 2 H. 4. 7. 8 H. 5. 6. 7 E. 4. 30. 44 E. 3. 4. 20 E. 3. Vill. 10 & Nonability 9. * Mir. c. 2. sect. 14. 14 H. 4. 37. b. 5 H. 7. 26. Vide sect. 296. 14 E. 4. 36.

[h] And if a Monk be Farmer of the King, yielding a Rent, he shall have an Action concerning that Farm. And albeit Littleton speaketh generally of one that is professed in Religion, yet must it not be understood of the Sovereign or Head of the Religious House, as of the Abbot, Prior, or the like; * for albeit they be professed in Religion, yet by the Policy of the Law they are Persons able to purchase, and to implead, and to be impleaded, to sue and to be sued, for any Thing that concerns the House of Religion; for otherwise the House might be prejudiced, and other Men also, of their lawful Actions. And this is the ancient Law of England, as it appeareth in these Words, Des biens de gents de Religion appent laction al Chiefe en son nosme pur luy & son Covent. But what if a Monk, &c. were beaten,

[i] 22 E. 3. 2. 37 H. 6. 8. 36. 13 E. 3. B. 261. 22 E. 3. 2. 38 H. 6. 7. b. 24 E. 3. 34. b. 45. 7 R. 2. Nonabilit. 3. 9. Doc. Pla. 9.

wounded or imprisoned, &c. doth the Law give no Remedy therefore? Yes verily; [i] for in that Case the Abbot and the Monk shall join in an Action against the Wrong-doer: And if the Writ be, Ad damnum ipsius Prioris, the Writ is good; and if it be, Ad damnum ipsorum, it is good also. Also if a Monk be by Conspiracy, falsly and maliciously indicted of Felony and Robbery, and afterwards is lawfully acquitted, his Sovereign and he shall join in a Writ of Conspiracy, and the like. And where Littleton speaketh of a Man that is professed in Religion, the same Law is of a Nun, sanctimonialis, mutatis mutandis.

[k] 4 H. 3. Br. 766.

[k] A Wife is disabled to sue without her Husband, as much as a Monk is without his Sovereign; and yet we read in Books, that in some Cases a Wife hath had Ability to sue and be sued without her Husband.

[l] 2 H. 4. fo. 7. a. 1 Bul. 140.

[l] For the Wife of Sir Robert Belknap, one of the Justices of the Court of Common Pleas, who was exiled or banished beyond Sea, did sue a Writ in her own Name, without her Husband, he being alive; whereof one said, Ecce modo mirum, Quod fœmina fert Breve Regis, Non nominando virum conjunctum robore Legis.

King Edw. III. brought a Quare Impedit against the Lady of Maltravers, and she pleaded, That she was Covert of Baron; whereunto it was replied for the King, that her Husband, the Lord Maltravers, was put in Exile for a certain Cause: And she was ruled to answer.

[m] 1 H. 4. 1. b.

[m] King Hen. IV. brought a Writ of Ward against Sibel B. who pleaded, that she was Covert Baron, &c. whereunto it was replied for the King, that her Husband for a Crime that he had committed against the King and the Peers, was relegate or exiled into Gascoign, there to remain until he obtained the King's Grace. And Gascoigne Chief Justice, ex assensu sociorum, awarded that she should answer.

Sir T. Egerton, Lord Chancellor, in his Argument which he published apart by himself in Cal-

Imberbis Juvenis, tandem Cuſtode remoto,
Gaudet Equis, Canibuſque, & aprici gramine Campi,
Cereus in vitium flecti, Monitoribus aſper,
Utilium tardus proviſor, prodigus æris,
Sublimis, cupiduſque, & amata relinquere pernix. Horace.

And again, no living Creature more infirm than Man.

Nil homine infirmum tellus animalia nutrit
Inter cuncta magis. Ho.

Sect. 212.

¶ MES ſi home voile preſcriber, que ſi aſcun aũs fueront ſur les demeſnes de ſon mannor, la dammage feaſant, que le Seignior del mannor pur le temps eſteant ad uſe eux de diſtreiner, & le diſtreſſe retaine tanque fine fuit fait a luy pur le dammage a ſa volunt, ceſt preſcription eſt void; pur ceo que il eſt encounter reaſon, que ſi tort ſoit fait a un home, que il de ceo ſerra ſon Judge demeſne: Car per tiel voy, ſil avoit dammages forſque al value dun mail, il puiſſoit aſſeſſer & aver pur ceo C. l. que ſerroit encounter reaſon. Et iſſint tiel preſcription, ou aſcun auter preſcription uſe, (ſi ceo ſoit encounter reaſon) ceo ne doit eſtre allow devant judges: Quia malus uſus abolendus eſt.

BUT if a Man will preſcribe, That if any Cattel were upon the Demeans of the Manor, there doing Damage, that the Lord of the Manor for the Time being hath uſed to diſtrain them, and the Diſtreſs to retain till Fine were made to him for the Damages at his Will, this Preſcription is void; becauſe it is againſt reaſon, that if Wrong be done any Man, that he thereof ſhould be his own Judge: For by ſuch Way, if he had Damages but to the Value of an Halfpenny, he might aſſeſs and have therefore an C. Pound, which ſhould be againſt Reaſon. And ſo ſuch Preſcription, or any other Preſcription uſed, if it be againſt Reaſon, this ought not, nor will not be allowed before Judges: *Quia malus uſus abolendus eſt.*

¶ *EST encounter reaſon, que ſi tort ſoit fait a un home, que il de ceo ſerra judge demeſne.* **For it is a Maxim in Law,** Aliquis non debet eſſe judex in propria cauſa. * **And therefore a Fine levied before the Bailiffs of Salop was reverſed, becauſe one of the Bailiffs was Party to the Fine,** quia non poteſt eſſe judex & pars.

5 Co. 84, 85. 7 E. 2. 24. 38 E. 3. 18. 2 H. 3. 4. 8 H. 6. 19. 5 H. 7. 9. b. * Hill. 4 H. 4. Coram Rege Salop.

¶ Malus uſus abolendus eſt. **And every Uſe is evil, that is** (as our Author ſaith) **againſt Reaſon;** Quia in conſuetudinibus non diuturnitas temporis, ſed ſoliditas rationis, eſt conſideranda.

5 Co. 82, 6 Co. 59. An. 40 E. 3. at Kilkenny. 2 Roll. 265.

And by this Rule cited by our Author, at the Parliament holden at Kilkenny **in** Ireland, Lionel, **Duke of** Clarence, **being then Lieutenant of that Realm, the Iriſh Cuſtoms, called there the** Brehon **Law,** (for that the Iriſh call their Judges Brehons) **was wholly aboliſhed, for that** (as the Parliament ſaid) **it was no Law, but a lewd Cuſtom,** & malus uſus abolendus eſt.

4 Inſt. 349. 1 Roll. 565. Vide Sect. 265.

But our Student muſt know, that **King** John **in the twelfth Year of his Reign went into** Ireland, **and there by the Advice of grave and learned Men in the Laws, whom he carried with him, by Parliament,** de communi omnium de Hibernia conſenſu, **ordained and eſtabliſhed,** that Ireland **ſhould be governed by the Laws of** England: Which

Vaugh. 293.

scended. Also of such a Rent, as may be granted without a Deed, a Writ of Annuity doth not lie, though it be granted by Deed. Cro. El. 549.

[a] And here is to be noted, That here is no Election given of two several Things: As if the Grant were of an Annuity, or a Robe yearly, &c. for there the Grantor hath Election at the Day to deliver which he would. But here are two Remedies given for one yearly Sum, and consequently the Grantee shall at any Time have Election to take which of the Remedies he will; for in all Cases where several Remedies be given, the Party to whom the Law giveth the Remedies, it giveth him, withal, Election, to take which of the Remedies he will.

[a] Sir Rowland Heyward's Case, lib. 2. fo. 36. 28 E. 3. 98. 41 E. 3. 10. a. 2 H. 4. 12. 36 H. 6. 10. 9 E. 4. 46. 21 E. 4. 55. b. 1 E. 5. 1.

¶ *Mes il ne poet faire ou aver ambideux ensemble.* For then he should recover one Thing twice, which should be a double Charge to the Grantor.

Note; As to Elections these Diversities following:

First, When nothing passeth to the Feoffee or Grantee before Election to have the one Thing or the other, there the Election ought to be made in the Life of the Parties, and the Heir or Executor cannot make Election. But when an Estate or Interest passes immediately to the Feoffee, Donee, or Grantee, there Election may be made by them, or by their Heirs or Executors.

Secondly, When one and the same Thing passeth to the Donee or Grantee, and the Donee or Grantee hath Election in what Manner or Degree he will take this, there the Interest passeth immediately, and the Party, his Heirs, or Executors, may make Election when they will.

Thirdly, When Election is given to several Persons, there the first Election made by any of the Persons, shall stand.

Fourthly, In Case an Election be given of two several Things, always he which is the first Agent, and which ought to do the first Act, shall have the Election. As if a Man granteth a Rent of twenty Shillings, or a Robe to one and to his Heirs, the Grantor shall have the Election; for he is the first Agent by Payment of the one, or Delivery of the other. So if a Man maketh a Lease, rendring a Rent, or a Robe, the Lessee shall have the Election, causa qua supra; and with this agree the Books in the * Margent. [b] But if I give unto you one of my Horses in my Stable, there you shall have the Election, for you shall be the first Agent by Taking or Seisure of one of them. And if one grant to another 20 Loads of Hasle or 20 Loads of Maple to be taken in his Wood of D. there the Grantee shall have Election, for he ought to do the first Act, viz. to fell and take the same.

Hob. 174.
* 9 E. 4. 36. b. 13 E. 4. 4. b. 5 E. 4. 6. b. 11 E. 3. Annuity 27. 11 Ass. p. 8. 3 E. 3. tit. Ass. 175. 43 E. 3. tit. Barre 194.
[b] 2 H. 7. 23. a.

Fifthly, When the Thing granted is of Things annual, and are to have Continuance, there the Election remaineth to the Grantor, (in Case where the Law giveth to him Election,) as well after the Day, as before; otherwise it is when the Things are to be performed unica vice: And therefore if I grant to another for Life, an Annuity or a Robe at the Feast of Easter, and both are behind, the Grantee ought to bring his Writ of Annuity in the Disjunctive; for if he bring his Writ of Annuity for the one only, and recover, this Judgment shall determine his Election for ever; for he shall never have a Writ of Annuity afterwards, but a Scire facias upon the said Judgment. Which Reason Fitzherbert in his Natura Brevium not observing, held an Opinion to the contrary. But if I contract with you to pay unto you twenty Shillings, or a Robe, at the Feast of Easter, after the Feast you may bring an Action of Debt for the one, or for the other.

Sixthly, The Feoffee by his Act and Wrong may lose his Election, and give the same to the Feoffor: As if one infeoff another of two Acres, to have and to hold the one for Life, and the other in Tail, and he before Election maketh a Feoffment of both, in this Case the Feoffor shall enter into which of them he will, for the Act and Wrong of the Feoffee. Plow. 60.

¶ *Sil recover en brief de Annuitie donques est la terre discharge de distress.* Here is to be observed, that this Determination of the Election of the Grantee must be by Action or Suit in Court of Record; [c] for albeit the Grantee distrain for the Rent, yet he may bring a Writ of Annuity and discharge the Land: And Littleton putteth his Case here surely upon a Recovery in a Writ of Annuity. [d] But if the Grantee doth bring a Writ of Annuity, and at the Return thereof appear and count, this is a Determination of his Election in Court of Record, albeit he never proceedeth any farther. [e] As if a Wife be endowed ex assensu patris, and the Husband dieth, the Wife hath Election either to have her Dower at the Common Law, and count, albeit she recover not, yet shall she never after claim her Dower ex assensu patris.

[c] 17 El. Dyer 344. b.
[d] F. N. B. 152. b. 5 H. 7. 33. b.
[e] 12 E. 2. Dower 158.

[f] So if the Grantee bring an Assise for the Rent, and make his Plaint, he shall never after bring a Writ of Annuity. But the Purchasing of a Writ of Annuity, and Entry of it in Court of Record, or of an Assise, is no Determination of the Election, because an Estranger may purchase a Writ in the Name of the Grantee, and enter it of Record; but if the Grantee appear thereunto, &c. then this doth amount to a Determination of his Election, as hath been said.

[f] 10 E. 4. 17.

2 Inſt. 139.
Glanvil, lib. 12. c. 12.
Marlbr. cap. 21.
W. 1. c. 16, 17. W. 2. c. 39.

¶ *Son Replegiare.* Littleton ſpake immediately before of un brief dannuity, but here he ſaith, Son Replegiare, becauſe Goods may be replevied two Manner of Ways, viz. by Writ, and that is by the Common Law, or by the Plaint, and that is by the Statutes, for the more ſpeedy having again of their Cattle and Goods. A Replegiare lieth, as Littleton here teacheth us, where Goods are diſtrained and impounded, the Owner of the Goods may have a Writ De replegiari facias, whereby the Sheriff is commanded, taking Sureties in that Behalf, to redeliver the Goods diſtrained to the Owner; or upon Complaint made to the Sheriff, he ought to make a Replevy in the County. Replegiare is compounded of Re and plegiare, as much as to ſay, as to redeliver upon Pledges or Sureties; and in the Statute of Marlebridge, Deliberare is uſed for Replegiare. [a] And the Sheriff ought to take two kind of Pledges, one by the Common Law, and they be plegii de proſequendo, and another by the Statute, viz. Plegii de retorno habendo. Vide Sect. 58. what Things may lawfully be diſtrained, whereupon a Replegiare may be ſued. The Forms of the Writ you ſhall read in the Regiſter and F. N. B.

Doc. Pla. 314.
21 H. 6.
Return de Vic. 17.
Poſt 161. a.
[a] W. 2. cap. 2.

F. N. B. 68.

It is a general Rule, That the Plaintiff muſt have the Property of the Goods in him at the Time of the Taking. [b] But yet if the Goods of a Villein be diſtrained, the Lord of the Villein ſhall have a Replevy, becauſe the Bringing of the Replevy amounts to a Claim in Law, and veſts the Property in the Plaintiff. But in that Caſe, if the Goods of the Villein be taken by a Treſpaſs, the Lord ſhall have no Replevy, becauſe the Villein had but a Right. [48]

[b] 33 E. 3. Replev. 43.
42 E. 3. 18. 9 H. 6. 25.
F. N. B. 69. F. 6 H. 7. 9.
19 E. 3. Replev. 32.

[c] But there be two Kind of Properties: A general Property, which every abſolute Owner hath; and a ſpecial Property, as Goods pledged or taken to manure his Lands, or the like: And of both theſe a Replegiare doth lie.

[c] 42 E. 3. 18. 11 H. 4. 17, 23. 47 E. 3. 12. 48 E. 3. 20.
7 H. 4. 17.
Ante 118. b.
2 Rol. 430. Plow. 524.
Marlbr. cap. 22.

And albeit it be provided by the Statute of Marlebridge, cap. 22. quod vicecomes poſt querimoniam inde ſibi factam, ea ſine impedimento vel contradictione ejus qui dicta averia ceperit deliberare poſſit, &c. [d] yet where the Defendant claims Property, the Sheriff cannot proceed: For it is a Rule in Law, that Property ought to be tried by Writ. And therefore in that Caſe where the Trial is by Plaint, the Plaintiff may have a Writ De proprietate probanda directed to the Sheriff to try the Property; and if thereupon it be found for the Plaintiff, then the Sheriff to make Deliverance; (for ſo be the Words of the Writ) and if for the Defendant, he can no farther proceed, but that is but an Enqueſt of Office: And therefore, if thereby it be found againſt the Plaintiff, yet he may have a Writ of Replevy to the Sheriff; and if he return the Claim of Property, &c. yet ſhall it proceed in the Court of Common Pleas, where the Property ſhall be put in Iſſue and finally tried. And the Sheriff may take a Plaint upon the ſaid Act out of the County, and make Replevin preſently, for it ſhould be inconvenient for the Owner to forbear his Cattle till the County-day.

[d] 30 E. 3. 22. 31 E. 3. Replev. 35.
7 H. 4. 26, 28. 31 H. 6. Prop. prob. 5.
21 E. 4. 64.
21 E. 4. 66.

[e] It is to be noted, That a Man cannot claim Property by his Bailiff or Servant: [49] And the Reaſon is, for that if the Claim fall out to be falſe, he ſhall be fined for his Contempt, which the Lord cannot be, unleſs he maketh Claim himſelf; for Nemo punitur pro alieno Delicto.

F. N. B. 77. e.
[e] 11 H. 4. 4.
34 H. 6. 47.

In a ſpecial Caſe a Man may have a Replevin of Goods not diſtrained; as if the Meſne put in his Cattle in Lieu of the Cattle of the Tenant paravail, that he is bound to acquit, he ſhall have a Replevin of thoſe Cattle that never were diſtrained.

5 Co. Pilkington's Caſe, f. 76.

If a Man by his Deed grant a Rent with Clauſe of Diſtreſs, and grant farther, that he ſhall keep the Goods diſtrained againſt Gages and Pledges, until the Rent be paid; yet ſhall the Sheriff replevy the Goods diſtrained: For it is againſt the Nature of ſuch a Diſtreſs to be irreplevisable, and by ſuch an Invention the Current of Replevins ſhould be overthrown, to the Hindrance of the Common Wealth; and therefore it was diſallowed by the whole Court, and awarded that the Defendant ſhould gage Deliverance, or elſe go to Priſon.

31 E. 3. Gage Deliver. 5.

Bract. lib. 4. f. 233. a. & b.
Dr. & Stud. 130.
Poſt 282. b.

And Bracton is of the ſame Opinion, for he ſaith, Eodem modo de via obſtructa, per breve quod juſticiet propter communem utilitatem, ne tranſeuntes ire diu impediantur, quia hoc eſſet commune damnum, & in hoc vicecomes & juſticiarii faciant ſicut ſuper detentionem averiorum contra vadium plegii, propter communem utilitatem, ne animalia diu incluſa pereant: Which in my Opinion is an excellent Point of Learning.

If the Beaſts of divers ſeveral Men be taken, they cannot join in a Replegiare, but every one muſt have a ſeveral Replevin: And ſo in a Replevin it is a good Plea to ſay, that the Property is to the Plaintiff and to a Stranger, and where there be two Plaintiffs, that the Property is to one of them.

23 E. 3. 92.
34 H. 6. 37. 2 E. 4. 23.
Regiſt. fol. 133.
W. 1. cap. 11.
F. N. B. 66. b.
Doc. Pla. 315.

There is alſo a Writ De homine replegiando. But Littleton is ready to give you farther Inſtruction, therefore hear him.

¶ *Et avowa le priſe, &c. en court de record.* Here it appeareth, that an Avowry in a Court of Record, which is in Nature of an Action, is a Determination of his Election before any Judgment given. And this is a good Proof of that which hath been formerly ſaid of the Writs of Annuity and Aſſiſe.

¶ *Chival.* Nota; In Latin Deſtrarius is a great Horſe, or a Horſe of Service; of the French Word Deſtrier: Palfridus a Horſe to travel on, of the French Word Palfray: And Runcinus a Nag, (you ſhall often read of them in Records;) it cometh of the Italian Word Roncino. But admit that Parcel of the Land holden by ſuch entire Service come to the Lord by Deſcent; whether ſhall the entire Service wholly remain, or be extinct? And it is holden, that in ſome Caſes it ſhall be extinct for the whole, as Suit-ſervice, and ſuch other intire annual Suit-Services. But if the Service be, to render yearly at ſuch a Feaſt, a Horſe, or the like, and the Tenant infeoff the Father of the Lord of Part, which diſcends; yet the Feoffor ſhall hold by a Horſe, becauſe the Service was multiplied, and each of them, viz. the Feoffor and the Feoffee held by a Horſe.

Anno 6 R. 1. Rot. 5. War. Bruerton's Caſe, l. 6. f. 2. 35 H. 6. Exec. 21. Pl. Com. 72. 40 E. 3. 40. 5 E. 2. tit. Avowry 206. 2 Inſt. 503. 8 Co. 105.

A. hath Common of Paſture ſauns nombre in twenty Acres of Land, and ten of thoſe Acres deſcend to A. the Common ſauns nombre is intire and uncertain, and cannot be apportioned, but ſhall remain. But if it had been a Common certain, (as for ten Beaſts) in that Caſe the Common ſhould be apportioned. And ſo it is of Common of Eſtovers, of Turbary, of Piſchary, &c. And yet in none of theſe Caſes the Deſcent, which is an Action in Law, ſhall work any Wrong to the Tertenant, for he ſhall have that which belongeth to him; for the Act in Law ſhall work no Wrong.

If three Jointenants hold by an entire yearly Rent, as of a Horſe, or of a Grain of Wheat, and the Tenant ceaſe by two Years, and the Lord recover two Parts of the Land againſt two of them, and the third ſaves his Part by tendring of the Rent, &c. and finding Surety; albeit the Lord come to the two Parts by lawful Recovery, grounded upon the Default and Wrong of the two Jointenants, yet ſhall the entire annual Rent be extinct.

F. N. B. 209. 40 E. 3. 40.

If the Tenant holdeth by Fealty, and a Buſhel of Wheat, or a Pound of Cummin, or of Pepper, or ſuch like, and the Lord purchaſeth Part of the Land, there ſhall be an Apportionment, as well as if the Rent were in Money: And yet if the Rent were by one Grain of Wheat, or one Seed of Cummin, or one Pepper-corn, by the Purchaſe of Part the Whole ſhould be extinct. But if an entire Service be pro bono publico, as Knight's Service, Caſtle-guard, Coinage, &c. for the Defence of the Realm, or to repair a Bridge, or a Way, to keep a Beacon, or to keep the King's Records, or for Advancement of Juſtice and Peace, as to aid the Sheriff, or to be Conſtable of England, though the Lord purchaſe Part, the Service remains. So it is if the Tenure be pro opera devotionis ſive pietatis, as to find a Preacher, or to provide the Ornaments of ſuch a Church, or pro opera charitatis, as to marry a poor Virgin, or to bind a poor Boy Apprentice, or to feed a poor Man. And ſo note a Diverſity between theſe Caſes and entire Services for the private Benefit of the Lord.

Vide Litt. cap. Tenant in Common 71. b. Litt. fo. 49. 11 H. 7. 12. b. 24 H. 8. Tenures 53. Brooke. 35 H. 6. 6. 11 El. Dyer 285. 16 E. 3. Avowry 93.

Sect. 223.

¶ MES ſi un homme tient ſa terre dun auter per Homage, Fealtie, & Eſcuage, & per certeine Rent, ſi le Sñr purchaſe parcel de la terre, &c. en tiel cas le rent ſerra apportion, come eſt avantdit; mes uncore en ceſt caſe le Homage & Fealty demurront entier a le Sñr: Car le Seignior avera le homage & Fealtie de ſon tenant pur le remnant de les

BUT if a Man hold his Land of another by Homage, Fealty and Eſcuage, and certain Rent, if the Lord purchaſe Part of the Land, *&c.* in this caſe the Rent ſhall be apportioned, (as is aforeſaid;) but yet in this Caſe the Homage and Fealty abide entire to the Lord: For the Lord ſhall have the Homage and Fealty of his Tenant for the reſt of the Lands and Tenements

¶ *Purchaſe parcel del terre, &c.* Here by this [&c.] is implied that the Reaſons wherefore Homage and Fealty remain, and are not extinct in this Caſe, are, firſt, becauſe it can be no Loſs to the Tenant, as it might in the Caſe of an Horſe, or other entire Service; for there it may be the Remnant is not ſufficient in Value to pay it. Secondly, There is no Land but it muſt be holden by ſome Service or other, and Homage and Fealty are the freeſt and leaſt chargeable Services to the Tenant.

5 E. 2. Avowry 206.

¶ *Pur ceo que tiels ſervices ne ſont paſſe annual ſervices, &c.* This is Ratio una, but not unica, as it appeareth

the Diſtreſs is an Incident inſeparable to the Fealty, as hath been ſaid: [a] And therefore a Releaſe of Diſtreſs is void.

[a] 7 E. 4. 11. Poſt 164. b. 192. a.

¶ *Incident.* Incident is a Thing appertaining to, or following another, as a more worthy or principal, whereof you ſee here, and in divers other Places of Littleton, Examples. And of Incidents ſome be ſeparable, and ſome inſeparable, as hath been ſaid.

íl eſt ſever per le grant le Seignior de les auters ſervices, íl ne poít eſtre dít rent ſervíce, pur ceo que íl ne ad a ceo fealty, que eſt íncident a cheſcun manner de rent ſervíce, & pur c̄ eſt dít rent ſecke. Et le Seignior ne poít grant tiel rent ove díſtreſſe, come eſt dít.

by the Grant of the Lord from the other Services, it cannot be ſaid Rent-Service, for that it hath not Fealty unto it, which is incident to every manner of Rent-Service, and therefore it is called Rent-ſeck. And the Lord cannot grant ſuch a Rent with a Diſtreſs, as it is ſaid.

Sect. 228.

¶ *Savant a luy le reverſion, &c.* By this Word (&c.) is to be obſerved, [b] that this Rent reſerved is a Rent-Service, and hath Fealty incident to it, and both Rent and Fealty are incident to the Reverſion, viz. [c] the Rent incident to the Reverſion ſeparably, but the Fealty incident to the Reverſion inſeparably: But by the Grant of the Rent, the Fealty in this Caſe ſhall not paſs, becauſe the Fealty is inſeparably incident to the Reverſion, but the Grantee ſhall have the Rent as a Rent-ſeck. Alſo by this (&c.) is implied an Attornment of the Tenant; for without that, although by the Grant the Rent is turned to a Rent-ſeck, ſo as the Tenant cannot be charged with any Diſtreſs, yet to the paſſing thereof there muſt be an Attornment.

[b] 41 E. 3. 16.

[c] 12 E. 4. 3. 32 H. 8. tit. Patents. Br. 26. Aſſ. 66. 48 E. 3. 9. b.

¶ Item ſi hõe leſſa a un auter terres pur terme de vie, reſervant a luy certain rent, ſil grant le rent a un auter p̄ ſon fait, ſavãt a luy le reverſion de la terre iſſint leſſe, &c. tiel rent neſt forſq̄ rent ſeck, pur ceo que l' grantee nad riens en le reverſion del terre, &c. Mes ſil grant le reverſion del terre a un auter pur terme de vie, & le Tenant atturne, &c. donques ad le grantee le rent come rent ſervice, pur c̄ que íl ad le reverſion p̄ terme de vie.

ALſo if a Man let to another Lands for Term of Life, reſerving to him certain Rent, if he grant the Rent to another by his Deed, ſaving to him the Reverſion of the Land ſo letten, *&c.* ſuch Rent is but a Rent-ſeck, becauſe that the Grantee had nothing in the Reverſion of the Land, *&c.* But if he grant the Reverſion of the Land to another for Term of Life, and the Tenant attorn, *&c.* then hath the Grantee the Rent as a Rent-Service, for that he hath the Reverſion for Term of Life.

¶ *Attorne, &c.* Here is implied by this (&c.) an Attornment in the Life of the Grantee, and other Incidents of an Attornment, whereof you ſhall read more at large in the Chapter of Attornment.

¶ *Donques ad le grantee le rent come rent ſervice pur ceo il ad le reverſion pur terme de vie.* And the Reaſon hereof is, becauſe the Rent is incident to the Reverſion, as hath been ſaid, and (as Littleton ſaith here) paſſeth away by the Grant of the Reverſion, as with the Superior, without ſaying, Cum pertinentiis, &c. for the Reverſion cannot be ſeck: But by the Grant of the Rent the Reverſion doth not paſs.

2 E. 2. tit. Exting. 6. 26 H. 6. ibid. 7.

in this Case it were Reason that by the Purchase of the Lord Paramount his Seigniory should be only extinct, and that he should become Tenant to the Mesne, and the Mesne to hold over as the Lord Paramount held. But that cannot be, for that one Man cannot be both Lord and Tenant, nor one Land immediately holden of divers Lords.

If the Tenant infeoff the Lord Paramount and his Wife, and their Heirs, in this Case the Mesnalty is but suspended; for if the Wife survive, both Mesnalty and Seigniory are revived.

Dyer 10. a.

It is said, That if there be Lord, Mesne and Tenant, each of them by Fealty and Sixpence, the Lord confirms the Estate of the Tenant to hold of him by Fealty and Three-pence, that the Mesnalty is extinct. [a] And so in the same Case, if the Tenant be an Abbot, and the Lord confirm his Estate to hold of him in Frankalmoign, the Mesnalty is extinct. [b] So it is, if the Lord release to the Tenant; for whether the Lord purchase the Tenancy, or the Tenant the Seigniory, the Mesnalty is extinct. And albeit the Mesne grant the Mesnalty for Life, and then the Lord release to the Tenant, both the Reversion and Estate for Life are drowned. [c] So if there be Lord and Tenant, and the Tenant make a Gift in Tail, the Remainder to the King, the Seigniory is extinct.

[a] 4 E. 3. 19. See for this hereafter in the Chapter of Confirmation, Sect. 538.

[b] 8 H. 6. 24.

Post 280. a. [c] 4 & 5 P. & M. Dyer 154. 2 Co. 92. b. Vide Sect. 138, 139.

¶ *Que serra inconvenient.* Here it appeareth, that Argumentum ab inconvenienti is forcible in Law, as hath been said before, and shall be often observed hereafter.

[d] 13 H. 4. 3. 40 Ass. p. 27. 12 R. 2. Vouch. 81.

¶ [d] *Le ley voit pluis toft suffer mischiefe que inconvenience.* Lex citius tolerare vult privatum damnum, quam publicum malum. Here be two Maxims of the Common Law.

First, That no Man can hold one and the same Land immediately of two several Lords.

Secondly, That one Man cannot of the same Land be both Lord and Tenant. And it is to be observed, that it is holden for an Inconvenience, that any of the Maxims of the Law should be broken, though a private Man suffer Loss: For that by infringing of a Maxim, not only a general Prejudice to many, but in the End a publick Incertainty and Confusion to all, would follow. And the Rule of Law is regularly true, Res inter alios acta alteri nocere non debet. Et factum unius alteri nocere non debet: Which are true with this Exception, unless an Inconvenience should follow, as our Author here teacheth us.

de xii. s. si le Seignior paramount purchase le tenancie en fee, donques le service de le mesnaltie est extinct, pur ceo que quant le Seignior paramount ad le tenancie, il tient de son Seignior procheine paramount a luy; & sil doit tener ceo de luy que fuit mesne, donques il tiendra un mesme tenancie immediate de divers Seigniors per divers services, que serroit inconvenient, & la ley voit plus toft suffer un mischiefe que un inconvenience; & pur ceo le Seigniory del mesnaltie est extinct.

holdeth over by the Service of twelve pence, if the Lord Paramount purchase the Tenancy in Fee, then the Service of the Mesnalty is extinct, because that when the Lord Paramount hath the Tenancy, he holdeth of his Lord next Paramount to him; and if he should hold this of him which was Mesne, then he should hold the same Tenancy immediately of divers Lords by divers Services, which should be inconvenient, and the Law will sooner suffer a Mischief than an Inconvenience; and therefore the Seigniory of the Mesnalty is extinct.

Sect. 232.

¶ IL *avera le iiii. s. come Rent secke.*

¶ MES entant q̃ le tenant te-

BUT inasmuch as the Tenant holds

nut

ing this Grant. Brown, his Heirs and Assigns might dig also, and like to the Case of Common sauns nombre. Thirdly, That the Lord Mountjoy might assign his whole Interest to one, two, or more; but then if there be two, or more, they could make no Division of it, but work together with one Stock; neither could the Lord Mountjoy, &c. assign his Interest in any Part of the Waste to one or more, for that might work a Prejudice and a Surcharge to the Tenant of the Land; and therefore if such an incertain Inheritance descendeth to two Coparceners, it cannot be divided between them.

Ante 122. a. 1 Saund. 351. Ney 145. 2 Cro. 256, 257.

But then it may be demanded, what shall become of these Inheritances? The Answer is, That it appeareth in our Books, that regularly (a) the Eldest shall have reasonable Estovers, Common, Piscary, Corody incertain, &c. and the Rest shall have a Contribution, that is, an Allowance of the Value in some other of the Inheritance, and so of the like. But what if the common Ancestor left no other Inheritance, to give any Thing in Allowance, what Contribution or Recompence shall the younger Coparceners have? It is answered, That if the Estovers, or Piscary, or Common be uncertain, then shall one Coparcener have the Estovers, Piscary, or Common, &c. for one Time, and the other for the like Time: As the one for one Year, and the other for another, or more or lesser Time, whereby no Prejudice can grow to the Owner of the Soil. Or in the Case of the Piscary, the one may have one Fish, and the other the Second, &c. or the one may have the first Draught, and the Second the second Draught, &c. And if it be of a Park, one may have the first Beast, and the Second the Second, &c. And if of a Mill, one to have the Mill for a Time, and the other the like Time, or the one the one Toll-dish, and the other the Second, &c. And this appeareth to be the ancient Law; for it is said, [b] Sunt aliæ res hæreditariæ quæ veniunt in partitionem, quæ cum dividi non possunt conceduntur uni, ita quod aliæ cohæredes alibi de communi hæreditate habeant ad valorem, sicut sunt vivaria, piscariæ, parci, vel saltem quod partem habeant pro defectu, sicut secundum piscem, tertium vel quartum; vel secundum tractum, tertium vel quartum. Item in parcis secundam, tertiam aut quartam.

F. N. B. 162. e. [a] 2 E. 2. Dower 123. 13 E. 2. Quar. Imp. 170.

7 Co. 5. [b] Bracton, lib. 2. 76. Britton, cap. 71, 72. Fleta, lib. 5. cap. 9.

But now let us turn our Eye to Inheritances of Honour and Dignity. And of this there is an ancient Book Case * in 23 H. 3. tit. Partition 18. in these Words: Note; If the Earldom of Chester descend to Coparceners, it shall be divided between them as well as other Lands, and the Eldest shall not have this Seigniory and Earldom entire to her self; Quod nota, adjudged per totam Curiam. By this it appeareth, That the Earldom (that is, the Possessions of the Earldom) shall be divided; and that where there be more Daughters than one, the Eldest shall not have the Dignity, and Power of the Earl, that is, to be a Countess. What then shall become of a Dignity? The Answer is, [c] That in that Case the King, who is the Sovereign of Honour and Dignity, may for the Incertainty confer the Dignity upon which of the Daughters he pleases. And this hath been the Usage since the Conquest, as it is said.

Ante 18. b. 27. a. 68. b. * 13 H. 2. tit. Part. 13.

[c] 3 H. 3. tit. Prescription.

But if an Earl that hath his Dignity to him and his Heirs dieth, having Issue one Daughter, the Dignity shall descend to the Daughter; for there is no Incertainty, but only one Daughter, so the Dignity shall descend unto her and her Posterity, as well as any other Inheritance; and this appeareth by many Precedents, and by a late Judgment given in Sampson Leonard's Case, who married with Margaret the only Sister and Heir of Gregory Fines, Lord Dacre of the South, and in the Case of William, Lord Ros.

But there is a Difference between a Dignity or Name of Nobility, and an Office of Honour. For if a Man hold a Manor of the King to be High Constable of England, and die, having Issue two Daughters, the eldest Daughter taketh Husband, he shall execute the Office solely, and before Marriage it shall be exercised by some sufficient Deputy; and all this was resolved by all the Judges of England, in the Case of [d] the Duke of Buckingham. But the Dignity of the Crown of England is without all Question descendable to the eldest Daughter alone, and to her Posterity, and so it hath been declared by Act of Parliament: * For Regnum non est divisibile. And so was the Descent of Troy.

[d] 11 Eliz. Dyer 285. the Duke of Buckingham's Case. * 25 H. 8. cap. 22.

Præterea sceptrum Ilione quod gesserat olim
Maxima natarum Priami. ———— Virgil. 1. Æneid.

If a Castle, that is used for the necessary Defence of the Realm, descend to two, or more Coparceners, this Castle might be divided by Chambers and Rooms, as other Houses be; but yet for that it is Pro bono publico & pro defensione Regni, it shall not be divided; for as one saith, Propter jus gladii dividi non potest. And another saith, Pur le droit del espee que ne soeffre division en aventure que la force del Realm ne defaille pax taunt. But Castles of Habitation for private Use, that are not for the necessary Defence of the Realm, ought to be parted between Coparceners as well as other Houses, and Wives may thereof be endowed, as hath been said in the Chapter of Dower.

If there be two Coparceners of certain Lands with Warranty, and they make Parti-

6 Co. 12. b.
[a] 20 E. 3. Garranty 70.
[b] Itin. Pickering 8 E. 3. Rot. 34.
Post 233.

tion of the Land, the Warranty ſhall remain, becauſe they are compellable to make Partition. [a] But otherwiſe it was of Jointenants at the Common Law, as ſhall be ſaid hereafter in its proper Place. [b] Thomas de Eberſton, ſeiſed of the Manor of Eberſton, within the Foreſt of Pickering, had kept, Time out of Mind, a Woodward for Keeping of the Woods, Parcel of that Manor, and had the Bark of all the Trees felled in the ſaid Woods by any of the Foreſters of that Foreſt as belonging to his Manor (which he could not have without a Preſcription.) Thomas Eberſton infeoffed two of the ſaid Manor, between whom Partition was made, ſo as one of them had the one Half in Severalty, and the other the other Half. Robert Wyerne afterwards had the one Half, and Thomas Thurniſe the other, and they in the Eyre of Pickering claimed to keep a Woodward within the ſaid Woods, and the Bark aforeſaid; and the Truth thereof, and the Uſage, being ſpecially found by the Foreſters, Verderors, and Regardors, Willoughby, Hungerford, and Hanbury, Juſtices Itinerant within that Foreſt, gave Judgment as followeth: Ideo conſideratum eſt quod prædict' Robertus & Thomas habeant Woodwardum & Corticem in boſco prædicto de quercubus prædictis ſibi & hæredibus ſuis in perpetuum. Salvo ſemper jure, &c.

Sect. 242.

¶ Auxy ſi home ſeiſie de tenements en fee-ſimple ou en fee taile, devie ſauns iſſue de ſon corps engender, & les tenements diſcendont a ſes ſoers, els ſont Parceners, come eſt avantdit. Et en meſme le manner, lou il nad pas ſoers, mes les tenements diſcendont a ſes aunts, els ſont Parceners, &c. Mes ſi home nad forſque un file, el ne poit eſtre dit Parcener, mes el eſt appelle file & heire, &c.

ALſo if a Man ſeiſed of Tenements in Fee-ſimple or in Fee-tail, dieth without Iſſue of his Body begotten, and the Tenements deſcend to his Siſters, they are Parceners, as is aforeſaid. And in the ſame Manner, where he hath no Siſters, but the Lands deſcend to his Aunts, they are Parceners, *&c.* But if a Man hath but one Daughter, ſhe ſhall not be called Parcener, but ſhe is called Daughter and Heir, *&c.*

¶ *Ou en Fee taile.* This muſt be intended of an Eſtate-tail made to the Father, and to the Heirs of his Body; for otherwiſe, if the State-tail were made to a Man, and to the Heirs of his Body, his Siſters cannot inherit. And not only Daughters ſhall be Coparceners, but Siſters, Aunts, Great Aunts, &c.

¶ *File & heire, &c.* Here by [&c.] is implied Siſter and Heir, Aunt and Heir, Great Aunt and Heir, and ſo upward.

Sect. 243.

¶ By this Section, and the [&c.] in the End of it, it is to be underſtood, that there are two Kind of Partitions between Coparceners, the one in Deed or expreſs, and the other in Law or implicit. Of Partitions in Deed or expreſs, ſome be voluntary, whereof Littleton enumerates four Manners, and one compulſory, that is, by Writ of Partition.

¶ Et eſt aſcavoir, que partition enter parceners poit eſtre fait en divers manners. Un eſt quant els agreeont de faire partition, & font partition de les tenements, ſicome ſi ſoyent deux Parceners

AND it is to be underſtood, that Partition may be made in divers Manners. One is, when they agree to make Partition, and do make Partition of the Tenements. As if there be two Parceners, to divide between them

tition by the Twelve, and that the Sheriff should not return what Partition he would. Now after all this, this [&c.] viz. twelve, &c. doth imply, that the principal Judgment upon the Partition so returned is, Ideo consideratum est per Curiam quod partitio firma & stabilis in perpetuum teneatur: The later two [&c.] are evident.

Sect. 250.

¶ Et nota q̃ partition per agreement pereenter parceners, poit estre fait per la ley enter eux auxi bien p̃ parol sans fait, come per fait.

AND note, that Partition by Agreement between Parceners may be made by Law between them, as well by Parol without Deed, as by Deed.

¶ HEre it appeareth that [a] not only Lands and other Things that may pass by Livery without Deed, but Things that do lie in Grant, as Rents, Commons, Advowsons, and the like, that cannot pass by Words without Deed, whether they be in one County or in several Counties, may be parted and divided by Parol without Deed. [b] But a Partition between Jointenants is not good without Deed, albeit it be of Lands, and that they be compellable to make Partition by the Statutes of 31 H. 8. cap. 10 and 32 H. 8. cap. 32. because they must pursue that Act by Writ de partitione facienda, and a Partition between Jointenants without Writ remains at the Common Law, which could not be done by Parol. And so it is, and for the same Reason, of Tenants in Common. But if two Tenants in Common be, and they make Partition by Parol, and execute the same in Severalty by Livery, this is good and sufficient in Law. And therefore, where Books say, that Jointenants made Partition without Deed, it must be intended of Tenants in Common, and executed by Livery.

[a] 3 E. 4. 9, 10. 9 E. 4. 28. 11 H. 4. 3. 9 H. 4. Partition 13. 21 E. 3. 38.

Dyer 350. b. Post 187. a. 198. b.

[b] Vide Sect. 290. 3 H. 4. 1. 19 H. 6. 25. 28 H. 6. 2. 47 E. 3. 22. 19 H. 6. 1. 17 E. 3. 46. 2 Eliz. Dyer 179. 6 Co. 12. 8 Co. 42.

Nota; Between Jointenants there is a twofold Privity, viz. in Estate and in Possession: Between Tenants in Common there is Privity only in Possession, and not in Estate: But Parceners have a threefold Privity, viz. in Estate, in Person, and in Possession.

Sect. 251.

¶ Item si deux meases descennont a deux Parceners, & lun mease vault per ans 20 s. lauter forsque 10 s. per an, en cest cas partition poit estre fait enter eux en tiel forme, cestassavoir q̃ un parcener avera lun mease, & que lauter parcener avera lauter mease, & celuy q̃ aver le mease q̃ est de value de 20 s. & ses heires, payera un annual rent

ALso if two Meases descend to two Parceners, and the one Mease is worth 20 Shillings *per Ann.* and the other but 10 Shillings *per Annum*, in this case Partition may be made between them in this manner, to wit, the one Parcener to have the one Mease, and the other Parcener the other Mease. And she which hath the Mease worth 20 Shillings *per Ann.* and her Heirs, shall pay

¶ *Per Parol.* Nota; Here [c] a Rent may be granted for Dwelty of Partition without Deed, [53] even as a Rent in case of a Lease for Years, for Life, or a Gift in Tail may be reserved without Deed; and so may a Rent be assigned to a Woman out of the Land whereof she is dowable, &c. without Deed: But albeit an Exchange for Lands in the same County may be without Deed, yet a Rent granted for Egality of the same Exchange cannot be without Deed; and the Cause of the Difference is apparent, for Coparceners are in by Descent, and compellable to make Partition.

Ante 164.

[c] 21 E. 3. 33. 11 H. 4. 43, 61. 45 E. 3. 21. 2 H. 6. 14.

¶ *Le Rent, &c.* The same Law is of Common of Estovers, or a Corody, or a Common of Pasture, &c. or a

May

be unequal, and the Infant hath the leſſer Part, yet is not the Partition void, but voidable by his Entry; for if he take the whole Profits of the unequal Part, after his full Age, the Partition is made good for ever. And therefore Littleton here giveth him a Caveat, That in that Caſe he take not the whole Profits of his unequal Part: Neither ſhall an unequal Partition in the Chancery, bind an Infant, as appeareth before. But a Partition made by the King's Writ De partitione facienda, by the Sheriff, by the Oath of twelve Men, and Judgment thereupon given, ſhall bind the Infant, though his Part be unequal, Cauſa qua ſupra.

le puiſne durant l' temps de ſon nonage, & auſi quant el vient a pleine age, ſ. de 21. ans, poit enter en la purparty a ſa ſoer allot & defeatera la partition. Mes bien ſoy gard tiel Parcener quant el vient a ſa plein age, que el ne preigne a ſon uſe demeſne touts les profits des terres ou tenements que a luy fuer allots. Car donques el ſoy agreea a la partition a tiel age, en quel caſe la partition eſtoyera & demurra en ſa force: Mes peraventure les profits de la moity el poit prender, relinquiſant les profits de lauter moity a ſa ſoer.

other; in this Caſe the youngeſt during the Time of her Nonage, and alſo when ſhe cometh to full Age, *i. e.* of 21 Years, may enter into the Part allotted to her Siſter, and ſhall defeat the Partition: But let ſuch Parcener take heed, when ſhe comes to her full Age, that ſhe taketh not to her own Uſe, all the Profits of the Lands or Tenements which were allotted unto her: For then ſhe agrees to the Partition at ſuch Age, in which Caſe the Partition ſhall ſtand and remain in its Force: But peradventure ſhe may take the Profits of the Moiety, leaving the Profits of the other Moiety to her Siſter.

Sect. 259.

2 Inſt. 673.

* Vide Sect. 402, 403. F N. B. 27. h. 192. g. Poſt 337. b. 380.

2 Roll. 84. Sid. 258. 8 Co. 44. b. Britt. f. 65, 66. Fleta, lib. 3. cap. 14.

THE Law hath provided for the Safety of a Man's or Woman's Eſtate, that * before their Age of twenty-one Years they cannot bind themſelves by any Deed, or alien any Land, Goods or Chattels.

¶ *Age de* 21. *ans.* Before this Age, a Man or Woman is called an Infant.

¶ *Fait.* Factum, Anglice, a Deed, and ſignifieth in the Common Law, an Inſtrument conſiſting on three Things, viz. Writing, Sealing and Delivery, comprehending a Bargain or Contract between Party and Party, Man or Woman. It is called of the Civilians, Literarum obligatio.

¶ *Feoffment.* Of this Word, ſufficient hath been

ET eſt aſcavoir que quant il eſt dit, que males ou females ſont de pleine age, ceo ſerra entendue de age de 21. ans. Car ſi devant tiel age, aſcun fait ou feoffment, grant, releaſe, confirmation, obligation, ou auter ſcripture ſoit fait per aſcun de eux, &c. ou ſi aſcun deins tiel age, ſoit Baylife ou receiver a aſcun home, &c. tout ſerve pur nient, & poit eſte avoyde

AND it is to be underſtood, that when it is ſaid, that Males or Females be of full Age, this ſhall be intended of the Age of 21 Years, for if before ſuch Age any Deed or Feoffment, Grant, Releaſe, Confirmation, Obligation, or other Writing be made by any of them, *&c.* or if any within ſuch Age be Bailiff or Receiver to any Man, *&c.* all ſerve for nothing, and may be avoided. Al-

Auſi

¶ *Ne ſerra jure en un Enqueſt, &c.* By this (&c.) is implied a Maxim in Law, [a] Quod minor jurare non poteſt. For Example; [b] An Infant cannot make his Law of Non Summons: [c] And therefore the Default ſhall not grieve him, for ſeeing the Mean to excuſe the Default is taken away by Law, the Default it ſelf ſhall not prejudice him. But yet this Rule hath an Exception. That [d] an Infant, when he is of the Age of twelve Years, ſhall take the Oath of Allegiance to the King: And this was, as Bracton ſaith, Secundum leges Sancti Edwardi. But indeed ſuch was the Law in the Time of King Arthur. [e] An Infant cannot upon his Oath make his Law in an Action of Debt. [f] And the Husband and Wife of full Age for the Debt of the Wife before the Coverture ſhall make their Law.

[a] Bract. l. 5. f. 340. b.
[b] 13 E. 3. Ley 50.
[c] 26 E. 3. 63.
[d] Vide devant cap. de Homage & cap. de Fealty, Sect. 85, 91.
[e] 11 H. 6. 40. 1 H. 7. 25. 15 E. 4. 2.
[f] 46 E. 3. 10. 9 E. 4. 24. 15 E. 4. 2. 21 H. 3. 23.

Sect. 260.

¶ *A terre en fee ſimple eſt allot a la file puiſne.* It is firſt to be obſerved upon this whole Caſe, that the Fee-ſimple Land is allotted to the youngeſt Daughter, and the Land entailed to the eldeſt. This Partition prima facie is good; and herein the Partition differeth from the Exchange, where in the Exchange the Eſtates muſt be equal.

4 Co. 121.

But yet this Partition by Matter ſubſequent may become voidable, (as Littleton here puts the Caſe) the eldeſt Coparcener hath, by the Partition and the Matter ſubſequent, barred her ſelf of the Right in the Fee-ſimple Lands, inſomuch as when the youngeſt Siſter alieneth the Fee-ſimple Lands, and dieth, and her Iſſue entreth into Half the Lands entailed; yet ſhall not the eldeſt enter into Half of the Lands in Fee-ſimple upon the Alienee; for by the Alienation the Privity of the Eſtate is deſtroyed.

Ante 51. a.

¶ *Le puiſne file alien la terre en Fee ſimple, &c.* The ſame Law it is of the youngeſt Daugh-

¶ Item ſi terres ou Tenements ſoyent dones a un home en le taile, quel ad tant des terres en fee ſimple, & ad iſſue deux files, & devie, & ſes deux files font partition enter eux, iſſint que la terre en fee ſimple eſt allot a le file puiſne en allowance des Terres & Tenements tailes allottes a le file eigne, ſi apres tiel partition fait, la puiſne file alienast ſa terre en fee ſimple a un auter en fee, & ad iſſue fits ou file & devie, liſſue poit bien enter en les Tenements tailes & eux tener & occupier en purparty ovesque ſon Aunt. Et ceo eſt pur deux cauſes: un eſt, pur ceo que liſſue ne poit aver aſcun remedie de la terre alien p ſa mere, pur ceo que la terre fuit a luy en fee ſimple, & pur tant que il eſt un de les heires en taile, & nad my aſcun recompence de ceo que a luy affiert de les Tenements tailes, il eſt

Also if Lands or Tenements be given to a Man in Tail, who hath as much Land in Fee-ſimple, and hath Iſſue two Daughters, and die, and his two Daughters make Partition between them, ſo as the Land in Fee-ſimple is allotted to the younger Daughter, in Allowance for the Lands and Tenements in Tail allotted to the elder Daughter; if after ſuch Partition made, the younger Daughter alieneth her Land in Fee-ſimple to another in Fee, and hath Iſſue a Son or Daughter, and dies, the Iſſue may enter into the Lands in Tail, and hold and occupy them in Purparty with her Aunt: And this is for two Cauſes; one is, for that the Iſſue can have no Remedy for the Land ſold by the Mother, becauſe the Land was to her in Fee-ſimple, and inaſmuch as ſhe is one of the Heirs in Tail, and hath no Recompence of that which belongeth to her of the Lands in Tail, it is Reaſon

reaſon

quant le donor & ſes heires naveront aſcun rent ne ſervice de eux, ſinon que ſoit fealty, tanque le quart degree ſoit paſſe, &c. Et pur tiel cauſe la ley eſt que el avera riens de les auters terres ou tenements diſcendus a lauter parcener, &c. ſinon que el voile mitter les terres dones en frankmariage en Hotchpot, come eſt dit. Et ſi el ne voile mitter les terres dones en Frankmariage en Hotchpot, donque el navera riens del remnant, pur ceo que ſerra entendu per la ley que el eſt ſufficientment avance, a que avancement el ſoy agree & luy tient content.

the Donor and his Heirs ſhall have no Rent or Service of them, but Fealty until the fourth Degree be paſt. And for this Cauſe the Law is, that ſhe ſhall have nothing of the other Lands or Tenements deſcended to the other Parcener, *&c.* unleſs ſhe will put the Lands given in Frankmarriage in Hotchpot, as is ſaid. And if ſhe will not put the Lands given in Frankmarriage in Hotchpot, then ſhe ſhall have nothing of the Remnant, becauſe it ſhall be intended by the Law, that ſhe is ſufficiently advanced, to which Advancement ſhe agreeth and holds her ſelf content.

¶ *De ceo enſueroit inconvenience & choſe encounter reaſon que la ley ne voet ſuffer.* Quod eſt inconveniens aut contra rationem non permiſſum eſt in lege. Hereby it appeareth, as it hath been often noted, [a] that an Argument ab inconvenienti aut ab eo quod eſt contra rationem, is forcible in Law. [b] Nihil enim quod eſt inconveniens eſt licitum.

Regula.
[a] Vide Sect. 132, 139, 231, 440, 478, 488, 722.
[b] 40 Aſſ. 27.

¶ *Tanque le 4. degree ſoit paſſe, &c.* Here by [&c.] is implied how the Degrees ſhall be accounted, whereof ſufficient hath been ſaid before.

Sect. 270.

¶ Meſme la ley eſt penter les heires de les donees en Frankmariage, & les auters parceners, &c. ſil les donees en frankmariage deviont devant lour aunceſtor, ou devant tiel partition, &c. quant a mitter en Hotchpot, &c.

THE ſame Law is between the Heirs of the Donees in Frankmarriage, and the other Parceners, *&c.* if the Donees in Frankmarriage die before their Anceſtor, or before ſuch Partition, *&c.* as to put in Hotchpot, *&c.*

¶ By theſe three [&c.] in this Section is implied, that if either the Donees die before the Anceſtor, or ſurvive the Anceſtor, and die before ſuch a Partition, or if the Donees and all the Parceners die before ſuch Partition upon the putting into Hotchpot, their Iſſues ſhall have the ſame Benefit to put the Lands into Hotchpot, and that Benefit is heritable and deſcendible to the Iſſues.

Sect. 271.

¶ Et nota que dones en Frankmariage fueront per

AND note, that Gifts in Frankmarriage were by the Common

¶ *Continue, &c.* By this [&c.] is to be underſtood that before the Statute it was a Fee-ſimple, and ſince

Sect. 274.

¶ ET eſt aſcavoire, que terres ou tenements dones en frankmariage ne ſerra miſe en Hotchpot, forſque ou terres diſcendont en fee ſimple, car de terre diſcendus en fee taile Partition ſerra fait, ſicome nul tiel done en frankmariage uſt eſte fait.

Ante 172. b.

AND it is to be underſtood, that Lands or Tenements given in Frankmarriage ſhall not be put in Hotchpot, but where Lands deſcend in Fee-ſimple; for of Lands deſcended in Fee-tail Partition ſhall be made, as if no ſuch Gift in Frankmarriage had been made.

¶ FOR of Lands intailed the Donee in Frankmarriage ſhall have as much Part as the other Coparcener, becauſe over and beſides the Land given in Frankmarriage, the Iſſue in Tail claimeth per formam doni, and both of the Parceners muſt equally inherit by Force of the Gift, & voluntas Donatoris, &c. obſervetur.

11 Aſſ. pla. 14.

Sect. 275.

¶ ITem nuls Terres ſerra miſe en Hotchpot ove auters ſinon terres que fueront done en frankmariage tantſolement: Car ſi aſcun feme ad aſcuns auters terres ou tenements per aſcun auter done en taile, el ne unques mittera tiel terre iſſint done en Hotchpot, mes el avera ſa purpartie de le remnant diſcendus, &c. ſ. a tant que lauter Parcener avera de ñ le remnant.

ALſo no Lands ſhall be put in Hotchpot with other Lands, but Lands given in Frankmarriage only: For if a Woman have any other Lands or Tenements by any other Gift in Tail, ſhe ſhall never put ſuch Lands ſo given in Hotchpot, but ſhe ſhall have her Purparty of the Remnant deſcended, *&c.* (*videlicet*) as much as the other Parcener ſhall have of the ſame Remnant.

¶ FOR if the Anceſtor infeoffeth one of his Daughters of Part of his Land, or purchaſe Lands to him and her, and their Heirs, or giveth to her Part of his Lands in Tail ſpecial or general, ſhe notwithſtanding this ſhall have a full Part in the Remnant of the Lands in Fee-ſimple; for the Benefit of putting, &c. into Hotchpot, is only appropriated to a Gift in Frankmarriage, (Quia maritagium cadit in partem) which ſhall be (as is aforeſaid) accounted as Parcel of her Advancement.

13 E. 2. tit. Tail 26.

Sect. 276.

¶ ITem un auter Partition poet eſtre fait enter Parceners, que variaſt de les Partitions avantdits. Sicome y ſont trois Parceners, & le puiſne voet aver partition, & les auters deux ne voilont, mes voilent tener en Parcenarie ceo que a eux af-

ALſo another Partition may be made between Parceners, which varieth from the Partitions aforeſaid. As if there be three Parceners, and the youngeſt will have Partition, and the other two will not, but will hold in Parcenary that which to them belong-

the Agreement of him in the Reverſion, for that it maketh him a Wrong-doer, and therefore no Relation of an Eſtate by Wrong can help him.

¶ *Coadjutor.* Coadjutor eſt qui auxiliatur alteri, and is derived a Coadjuvando, Anglice, a Fellow-helper.

Sect. 279.

¶ ET nota q̃ diſſeiſin eſt pꝛoperment lou un home entra en aſcun terres ou tenements lou ſon entre neſt pas congeable, & ouſta celuy que ad Franktenement, &c.

AND note, That Diſſeiſin is properly where a Man entreth into any Lands or Tenements where his Entry is not congeable, and ouſteth him which hath the Freehold, *&c.*

¶ This Deſcription of a Diſſeiſin, and the [&c.] in this Place is underſtood only of ſuch Lands and Tenements whereinto an Entry may be made, and not of Rents, Commons, &c. where- Sid. 227. 3 E. 4. 2. 34 Aſſ. 11, 12. 26 Aſſ. 17. 41 Aſſ. 10. 24 E. 3. 31. Parſon de Hony Lane. 45 Aſſ. 7. 39 Aſſ. 1. Vide Dyer 31. b.
of ſufficient hath been ſaid before in the Chapter of Rents, and ſo in Effect Littleton deſcribed it before the Edition of his Book. And note here, That every Entry is no Diſſeiſin, unleſs there be an Ouſter alſo of the Freehold. And therefore Littleton doth not ſet down an Entry only, but an Ouſter alſo, as an Entry and a Claimer, or Taking of Profits, &c.

Now as there be Jointenants by Diſſeiſin, ſo are there Jointenants by Abatement, Intruſion, and Uſurpation, all which are included in the latter &c.

Sect. 280.

¶ ET eſt aſcavoir que la nature de jointenancie eſt q̃ celuy que ſurveſquiſt avera ſolement lentier tenancie ſolonq̃ tiel eſtate que il ad, ſi le jointure ſoit continue, &c. Sicome ſi trois Jointenants ſont en Fee ſimple, & lun ad iſſue & devie, uncore ceux que ſurveſquont averont les tenements entier, & liſſue navera riens. Et ſi le 2. jointenant ad iſſue & devie, uncore le tierce que ſurveſquiſt avera les tenements entier, & eux avera a luy & a ſes

AND it is to be underſtood, that the Nature of Jointenancy is, that he that ſurviveth ſhall have only the entire Tenancy, according to ſuch Eſtate as he hath, if the Jointure be continued, *&c.* As if three Jointenants be in Fee-ſimple, and the one hath Iſſue, and dieth, yet they which ſurvive ſhall have the whole Tenements, and the Iſſue ſhall have nothing. And if the ſecond Jointenant hath Iſſue and die, yet the Third which ſurviveth ſhall have the whole Tene-

¶ *Si le Jointure ſoit continue, &c.* Here by this [&c.] many Points of Learning are to be obſerved, as that it is proper to Jointenants only to have Lands by Survivor; for no Survivor of other Tenants pro indiviſo ſhall have the whole by Survivor, but only Jointenants, and this is called in Law, Jus accreſcendi. 2 Rol. 91. Bract. lib. 4. fo. 262. b. Brit. c. 35. Fleta, lib. 3. c. 4. 49 E. 3. f. 5, 6.
Omnes feoffati ſunt ſimul habendi & tenendi, nec totum nec partem ſeparatam, nec per ſe, ſed & quilibet eorum totum habeat cum aliis in communi, & cum unus moriatur non deſcendit aliqua pars hæredi morientis, nec ſeparata nec in communi ante mortem omnium, ſed pars illa communis per jus accreſcendi accreſcit ſuperſtitibus de perſona ad perſonam uſque ad ultimum ſuperſtitem. But although Survivorſhip be proper to Jointenants, yet it is not proper quarto modo (that is) omni, ſoli & ſemper; for there may be Jointenants, though

Sect. 295.

¶ Item ſi ſoient deux Jointenants en fee, & lun dona ceo que a luy affiert a un auter en le taile, & lauter done ceo que a luy affiert a un auter en le taile, les donees ſont tenants en common, &c.

ALſo if there be two Jointenants in Fee, and the one giveth that to him belongeth to another in Tail, and the other giveth that to him belongs to another in Tail, the Donees are Tenants in Common, *&c.*

Vide Sect. 300.

¶ THE [&c.] in the End of this Section implieth, that ſo it is when a Leaſe for Life, or pur auter vie is made; for in that Caſe alſo the Leſſees are Tenants in Common.

Sect. 296.

Ante 182. a.

¶ *SI terr' ſont dones a* 2. *homes, &c.* Of this ſufficient hath been ſpoken in the Chapter [a] of Jointenants.

[a] Sect. 283.

¶ *Mes ſi terres ſont dones a* 2. *Abbes, &c.*

2 Roll. 91.

In this Caſe of the two Abbots in reſpect of their ſeveral Capacities, albeit the Words be joint, yet the Law [b] doth adjudge them to be ſeverally ſeiſed.

[b] 7 H. 7. 9. b. 16 H. 7. 15. b. 3 H. 7. 11. 10 E. 4. 16. b. 5 H. 7. 25. 18 E. 2. 7. 49 E. 3. 25. b. Vide Sect. 200.

The [&c.] in the End of this Section implieth, that ſo it is of any [c] Body Politick or Corporate, be they regular, as dead Perſons in Law (whereof our Author here ſpeaketh,) or

[c] 4 H. 7. 45. 18 E. 3. 27. b.

¶ MES ſi terres ſont dones a 2. homes & les heires de lour deux corps engendrez, les donees ount joint eſtate pur terme de lour vies, & ſi cheſcun de eux ad iſſue & devy, lour iſſues tiendront en common, &c. Mes ſi terres ſont dones a deux Abbes, ſicome al Abbe de Weſtminſter, & al Abbe de S. Alban, a aver & tener a eux & a lour ſucceſſors, en ceſt cas ils ont maintenant al commencement eſtate en common, & nemy joint eſtate. Et la cauſe eſt, pur ceo que cheſcun Abbe, ou auter Soveraigne de meaſon de Religion, devant que il fuit fait Abbe, ou Soveraigne, &c. il fuit forſque come mort perſon en ley, & quant il eſt fait Abbe, il eſt come un home perſonable en ley tantſolement a purchaſer & aver terres ou tenements, ou

BUT if Lands be given to two Men, and to the Heirs of their two Bodies begotten, the Donees have a joint Eſtate for Term of their Lives, and if each of them hath Iſſue and die, their Iſſues ſhall hold in Common, *&c.* But if Lands be given to two Abbots, as to the Abbot of *Weſtminſter*, and to the Abbot of Saint *Albans*, to have and to hold to them and to their Succeſſors; in this Caſe they have preſently at the Beginning an Eſtate in Common, and not a joint Eſtate. And the Reaſon is, for that every Abbot or other Sovereign of a Houſe of Religion, before that he was made Abbot or Sovereign, *&c.* was but as a dead Perſon in Law, and when he is made Abbot, he is as a Man perſonable in Law only to purchaſe and have Lands or Tenements or other Things to the Uſe of his Houſe, and

de tenants a terme de vie. Sícome deux joyntenants sont en fee, & lun lessa a un home ceo que a luy affiert pur terme de vie, & lauter Jointenant lessa ceo que a luy affiert a un auter pur terme de vie, &c. les deux Lessees sont Tenants en common pur lour vies, &c.

manner may it be of Tenants for Term of Life. As if two Jointenants be in Fee, and the one letteth to one Man that which to him belongeth for Term of Life, and the other Jointenant letteth that which to him belongeth to another for Term of Life, *&c.* the said two Lessees are Tenants in Common for their Lives, *&c.*

Vid. Sect. 295. Where this is sufficiently explained before.

Sect. 301.

¶ Item, si home lessa terres a deux homes pur terme de lour vies, & lun granta tout son estate de ceo que a luy affiert a un auter donques lauter tenant a terme de vie, & celuy a que le graunt est fait sont Tenants en common, durant le temps que ambideux les lessees sont en vie.

¶ Et memorandum, que en touts auters tiels cases, coment que ne sont icy expressement moves ou specifies, si sont ẽ semblable reason, sont en semblable ley.

Also, if a Man let Lands to two Men for Term of their Lives, and the one grants all his Estate of that which belongeth to him to another, then the other Tenant for Term of Life, and he to whom the Grant is made are Tenants in Common during the Time that both the Lessees be alive.

¶ And *memorandum*, that in all other such like Cases, although it be not here expresly moved or specified, if they be in like Reason, they are in the like Law.

¶ AND so it is if Lands be letten to two for Term of their Lives, Et eorum alterius diutius viventi, and one of them granteth his Part to a Stranger, whereby the Jointure is severed, and dieth, here shall be no Survivor, but the Lessee shall enter into the Moiety, and the Survivor shall have no Advantage of these Words, Et eorum alterius diutius viventi, for two Causes: First, For that the Jointure is severed. Secondly, For that those Words are no more than the Common Law would have implied without them, and Expressio eorum quæ tacite insunt nihil operatur. Hereby it appeareth, that in Case of Leases for Life it is more beneficial for the Lessor to have the Jointure severed, than to have it continue. 2 Roll. 89, 90. 1 Co. 84. b. 2 Cro. 378, 417, 696. Post 201. b. 205. a. 219. b. Hob 170, 208.

¶ *Si sont en semblable reason sont en semblable ley.* Here Littleton citeth one of the Maxims of the Common Law, That whersoever there is the like Reason, there is the like Law, Ubi eadem ratio, ibi idem jus, or Ubi eadem ratio, ibi idem jus esse debet, for Ratio est anima legis. And therefore Ratio potest allegari deficiente lege. But it must be Ratio vera & legalis, & non apparens. And here it appeareth that Argumentum à simili is good in Law; Sed similitudo legalis est casuum diversorum inter se collatorum similis ratio, quod in uno similium valet, valebit in altero, dissimilium dissimilis est ratio. Vide Sect. 1.

ceo poſſeſſes, lun de les leſſees grant ceo q̃ a luy affiert durant le terme a un auter, donque meſme celuy a que le grant eſt fait, & lauter tiendront & occupieront en common.

one of the Leſſees grant that which to him belongeth to another during the Term, then he to whom the Grant is made, and the other ſhall hold and occupy in Common. Noy 11.

Grant ceo que a luy affiert. The ſame Law it is, if the one Leſſee in this Caſe make a Leaſe for Part of the Term, the ſecond Leſſee and the other are Tenants in Common, as hath been ſaid in the Chapter of Jointenants. The [&c.] in this Section implieth other Hereditaments, whereof Men may be Tenants in Common, whereof ſufficient hath been ſaid before. Cro. El. 37

Sect. 320.

¶ Item ſi deux ont jointment le garde de corps & de tre dun enfant deins age, & lun d̃ eux granta a un auter ceo que a luy affiert de m̃ le garde, donque le grantee & lauter que ne granta pas averont & tiendront ceo en common, &c.

ALſo if two have jointly the Wardſhip of the Body and Land of an Infant within Age, and the one of them grant to another that which to himſelf belongeth of the ſame Ward, then the Grantee, and the other which did not grant ſhall have and hold this in Common, *&c.*

HEreby it appeareth that there may be Tenants in Common as well of Chattels real entire, as Wardſhip of the Body, &c. as of Chattels perſonal, as a Hawk or a Horſe. If two Tenants in Common be of a Seigniory, and a Ward fall, they are Tenants in Common of the Wardſhip as well of the Body as Land. And ſo it is if the Land it ſelf eſcheat to them, they ſhall be Tenants in Common thereof; and ſo it is of Parceners. 16 E. 3. tit. Aid.

¶ *En common, &c.* Here (&c.) implieth any other entire Chattel.

Sect. 321.

¶ En meſme le maner eſt de chateux perſonals: Sicome deux ont joyntment per done ou per achate un chival ou boeſe, &c. & lun grant ceo que a luy affiert de meſme le chival ou boeſe a un auter: Donques le grãtee, & lauter que ne granta pas, averont & poſſideront tiels chateux perſonals en common. Et en tiels caſes, ou divers perſons ont chateux reals ou perſonals en common & per divers titles, ſi lun de eux moruſt les auters que ſurveſquont, navera ceo per le ſurvivor

IN the ſame Manner it is of Chattels perſonals. As if two have jointly by Gift, or by buying a Horſe or an Ox, *&c.* and the one grant that to him belongs of the ſame Horſe or Ox to another, the Grantee and the other which did not grant ſhall have and poſſeſs ſuch Chattels perſonals in Common: And in ſuch Caſes where divers Perſons have Chattels real or perſonal in Common, and by divers Titles, if the one of them dieth, the other which ſurvives ſhall not have this as Survivor, but the Exe-

ſurvivor

Vide Sect. 325.

This (&c.) implies any other Rent or Sum in groſs, or any collateral Condition whatſoever, either to be performed by the Feoffee, (whereof our Author here putteth his Caſe) or by the Feoffor, and extendeth to all kinds of Conditions in Deed before ſpecified.

de certaine terre, habendum & tenendum eidem B. & hæredibus ſuis, ſub conditione, quod idem B. & hæredes ſui ſolvant ſeu ſolvi faciant præfat' A. & hæredibus ſuis annuatim talem redditum, &c. En ceſt caſe ſans aſcun pluis dire le Feoffee ad eſtate ſur condition.

tain Land, To have and to hold to the ſaid *B.* and his Heirs, upon Condition that the ſaid *B.* and his Heirs do pay or cauſe to be paid to the aforeſaid *A.* and his Heirs, yearly, ſuch a Rent, *&c.* In this Caſe, without any more ſaying, the Feoffee hath an Eſtate upon Condition.

Sect. 329.

Proviſo. Vide Sect. 220. 13 H. 4. Entre Cong. 57. Seigni. Cromwel's Caſe. Lib. 2. fol. 71, 72. at large. 35 H. 8. tit. Condition.

¶ *Proviſo ſemper qd* B. *ſolvat, &c.* Our Author putteth his Caſe where a Proviſo cometh alone; and ſo it is if a Man by Indenture letteth Lands for Years, provided always, and it is covenanted and agreed between the ſaid Parties, That the Leſſee ſhould not alien: And it was adjudged that this was a Condition by Force of the Proviſo, and a Covenant by Force of the other Words.

This Word Proviſo ſhall be alſo taken as a Limitation or Qualification, as hereafter in its proper Place ſhall be ſaid; and ſometimes it ſhall amount to a Covenant. All which do appear by the Authorities in the Margent. *

For the [&c.] in this Section, Explanation is made in the Section next before.

*27 H. 8. 15, &c. Flet. lib. 4. cap. 9.

¶ *Ou fueront tiels.* our Author makes mention.

¶ Aury ſi les parols fuerent tiels, Proviſo ſemper quod prædict' *B.* ſolvat, ſeu ſolvi faciat præfato *A.* talem redditum, &c. ou fueront tiels, Ita quod prædict' *B.* ſolvat, ſeu ſolvi faciat præfato *A.* talem redditum, *&c.* En ceux caſes ſauns pluis dire, le Feoffee nad Eſtate forſq; ſur condition, iſſint que ſil ne perform aſt le condition, le Feoffor & ſes heires poyent entrer, &c.

ALſo if the Words were ſuch, Provided always that the aforeſaid *B.* do pay or cauſe to be paid to the aforeſaid *A.* ſuch a Rent, *&c.* or theſe; So that the ſaid *B.* do pay or cauſe to be paid to the ſaid *A.* ſuch a Rent, *&c.* In theſe Caſes, without more ſaying, the Feoffee hath but an Eſtate upon Condition: So as if he doth not perform the Condition, the Feoffor and his Heirs may enter, *&c.*

Ita quod. This is the third Condition in Deed, whereof

Sect. 330.

Ante 146. b. 6 E. 2. Entrie Cong. 65. 8 E. 2. Aſſ. 320. adjudged. Quod ſi contingat. Paſch. 37 Eliz. Rot. 254. inter Sayer & Hares in Com. Banco.

¶ *Quod ſi contingat, &c.* This is the fourth Condition in Deed, ſet down by our Author.

¶ *Dentrer, &c.* Hereby it is evident, That

¶ Item auters parols ſont en un fait queux cauſont les Tenements eſtre conditionals. Sicome ſur tiel feoff-

ALSO there be other Words in a Deed which cauſe the Tenements to be conditional: As if upon ſuch a Feoffment

of the Mortgagor or his Heir (without his Consent or Privity) tender the Money, and the Mortgagee accepteth it, this is a good Satisfaction; and the Mortgagor or his Heir agreeing thereunto, may re-enter into the Land; Omnis ratihabitio retro trahitur & mandato æquiparatur. But the Mortgagor or his Heir may disagree thereunto if he will.

Plowd. 133. a. b. Ante 180. b. Post 245. a. 258. 2.

Sect. 335.

¶ ET memorandum q̄ en tiel cas, lou tiel tender de le money est fait, &c. & le feoffee de receiver ceo refusa, per que le feoffor ou ses heires entront, &c. donque le feoffee nad ascun remedy daver le money per le common ley, pur ceo que il serra rette sa folly que il refusa le money quant un loyal tender de ceo fuit fait a luy.

AND be it remembred that in such Case, where such Tender of the Money is made, *&c.* and the Feoffee refuse to receive it, by which the Feoffor or his Heirs enter, *&c.* then the Feoffee hath no Remedy by the Common Law to have this Money, because it shall be accounted his own Folly that he refused the Money, when a lawful Tender of it was made unto him.

¶ *Tender de le money est fait, &c.* Here is implied, at the due Time and Place according to the Condition.

6 Co. 13. Noy 12. Ante 180. b. Sid. 364, 365.

¶ *Entront, &c.* viz. into the Lands or Tenements.

¶ *Donque le feoffee nad ascun remedy daver le money per le common ley, &c.* And the Reason is because the Money is collateral to the Land, and the Feoffee hath no Remedy therefore.

8 E. 2. tit. Ass. 389. 31 Ass. 32.

If an Obligation of an hundred Pound be made with Condition for the Payment of fifty Pounds at a Day, and at the Day the Obligor tender the Money, and the Obligee refuseth the same; yet in Action of Debt upon the Obligation, if the Defendant plead the Tender and Refusal, he must also plead that he is yet ready to pay the Money, and tender the same in Court. But if the Plaintiff will not then receive it, but take Issue upon the Tender, and the same be found against him, he hath lost the Money for ever.

2 Rol. 523, 524. Sid. 13, 30, 365, 369. 22 H. 6. 39. 21 E. 4. 25. 22 E. 3. 5. Lib. 9. fo. 79. H. Peytoe's Case.

If a Man be bound in two hundred Quarters of Wheat for Delivery of a hundred Quarters, if the Obligor tender at the Day a hundred Quarters, &c. he shall not plead uncore prist, because albeit it be Parcel of the Condition, yet they be Bona peritura, and it is a Charge for the Obligor to keep them. And the Reason wherefore in the Case of the Obligation the Sum mentioned in the Condition is not lost by the Tender and Refusal, is not only for that it is a Duty and Parcel of the Obligation, and therefore is not lost by the Tender and Refusal, but also for that the Obligee hath Remedy by Law for the same. And in this Case, Liberata pecunia non liberat offerentem.

2 Rol 523. 3 Cro. 258. Doct. pla. 6. 389, 390, 107. ‡ Dyer 24. b. 25. contra. 8 E. 2. 2. tit. Ass. 389.

But if a Man make a single Bond, or acknowledge a Statute or Recognizance, and afterwards make a Defeazance for the Payment of a lesser Sum at a Day, if the Obligor or Conusor tender the lesser Sum at the Day, and the Obligee or Conusee refuseth it, he shall never have any Remedy by Law to recover it, because it is no Parcel of the Sum contained in the Obligation, Statute or Recognizance, being contained in the Defeasance, made at the Time or after the Obligation, Statute or Recognizance. And in this Case in Pleading of the Tender and Refusal the Party shall not be driven to plead, that he is yet ready to pay the same, or to tender it in Court: Neither hath the Obligee or Conusee any Remedy by Law to recover the Sum contained in the Defeasance. [a] And so it is if a Man make an Obligation of one hundred Pound, with Condition for the Delivery of Corn or Timber, &c. or for the Performance of an Arbitrement, or the Doing of any Act, &c. This is collateral to the Obligation, that is to say, is not Parcel of it, and therefore a Tender and Refusal is a perpetual Bar.

‡ 2 Saun. 48. 7 H. 4. 18. 5 Mar. Dyer 150. 21 E. 4. 25. 22 E. 3. 5. 33 H. 6. 2. b. 17 Ass. Pl. 2. 20 E. 4. 1. b. 9 H. 6. 16. 35 H. 6. 26. 15 E. 4. 1. 16 H. 7. 13. 18 E. 3. 53. 7 E. 4. 4. b. 19 H. 8. 12. 27 H. 8. 12. 22 H. 6. 39. tit. Abatement 11. 49 E. 3. 3. 19 H. 6. 12. Mo. 36. 3 Cro. 755. Post 236. Saund. 48. 2 Rol. 528. [a] Henry Peytoe's Case, ubi supra.

But if a Man be bound to make a Feoffment in Fee to the Obligee, and he make a Lease and a Release to him and his Heirs, albeit this be a collateral Condition, yet is it well performed, because this amounts in Law to a Feoffment.

31 Ass. 25. 11 H. 4. 33. 1 H. 6. 8. 1 E. 4. 1. 7 E. 4. 3. Pl. Com. Fogasse's Case. fo. 6. Post 210, 219. Lib. 5. fo. 114, 115. Wade's Case, Lib. 9. fo. 78.

¶ *Money, moneta, Legalis moneta Angliæ.* Lawful Money of England, either of Gold or Silver, is of two Sorts, viz. the English Money coined by the King's Authority,

of the Mortgagor or his Heir (without his Consent or Privity) tender the Money, and the Mortgagee accepteth it, this is a good Satisfaction; and the Mortgagor or his Heir agreeing thereunto, may re-enter into the Land; Omnis ratihabitio retro trahitur & mandato æquiparatur. But the Mortgagor or his Heir may disagree thereunto if he will.

Plowd. 133. a. b. Ante 180. b. Post 245. a. 258. 2.

Sect. 335.

¶ ET memorandum q̄ en tiel cas, lou tiel tender de le money est fait, &c. & le feoffee de receiver ceo refusa, per que le feoffor ou ses heires entront, &c. donque le feoffee nad ascun remedy daver le money per le common ley, pur ceo que il serra rette sa folly que il refusa le money quant un loyal tender de ceo fuit fait a luy.

AND be it remembred that in such Case, where such Tender of the Money is made, *&c.* and the Feoffee refuse to receive it, by which the Feoffor or his Heirs enter, *&c.* then the Feoffee hath no Remedy by the Common Law to have this Money, because it shall be accounted his own Folly that he refused the Money, when a lawful Tender of it was made unto him.

¶ *Tender de le money est fait, &c.* Here is implied, at the due Time and Place according to the Condition.

6 Co. 13. Noy 12. Ante 180. b. Sid. 364, 365.

¶ *Entront, &c.* viz. into the Lands or Tenements.

¶ *Donque le feoffee nad ascun remedy daver le money per le common ley, &c.* And the Reason is because the Money is collateral to the Land, and the Feoffee hath no Remedy therefore.

8 E. 2. tit. Ass. 389. 31 Ass. 32.

If an Obligation of an hundred Pound be made with Condition for the Payment of fifty Pounds at a Day, and at the Day the Obligor tender the Money, and the Obligee refuseth the same; yet in Action of Debt upon the Obligation, if the Defendant plead the Tender and Refusal, he must also plead that he is yet ready to pay the Money, and tender the same in Court. But if the Plaintiff will not then receive it, but take Issue upon the Tender, and the same be found against him, he hath lost the Money for ever.

2 Rol. 523, 524. Sid. 13, 30, 365, 369. 22 H. 6. 39. 21 E. 4. 25. 22 E. 3. 5. Lib. 9. fo. 79. H. Peytoe's Case.

If a Man be bound in two hundred Quarters of Wheat for Delivery of a hundred Quarters, if the Obligor tender at the Day a hundred Quarters, &c. he shall not plead uncore prist, because albeit it be Parcel of the Condition, yet they be Bona peritura, and it is a Charge for the Obligor to keep them. And the Reason wherefore in the Case of the Obligation the Sum mentioned in the Condition is not lost by the Tender and Refusal, is not only for that it is a Duty and Parcel of the Obligation, and therefore is not lost by the Tender and Refusal, but also for that the Obligee hath Remedy by Law for the same. And in this Case, Liberata pecunia non liberat offerentem.

2 Rol 523. 3 Cro. 258. Doct. pla. 6. 389, 390, 107. ‡ Dyer 24. b. 25. contra. 8 E. 2. 2. tit. Ass. 389.

But if a Man make a single Bond, or acknowledge a Statute or Recognizance, and afterwards make a Defeazance for the Payment of a lesser Sum at a Day, if the Obligor or Conusor tender the lesser Sum at the Day, and the Obligee or Conusee refuseth it, he shall never have any Remedy by Law to recover it, because it is no Parcel of the Sum contained in the Obligation, Statute or Recognizance, being contained in the Defeasance, made at the Time or after the Obligation, Statute or Recognizance. And in this Case in Pleading of the Tender and Refusal the Party shall not be driven to plead, that he is yet ready to pay the same, or to tender it in Court: Neither hath the Obligee or Conusee any Remedy by Law to recover the Sum contained in the Defeasance. [a] And so it is if a Man make an Obligation of one hundred Pound, with Condition for the Delivery of Corn or Timber, &c. or for the Performance of an Arbitrement, or the Doing of any Act, &c. This is collateral to the Obligation, that is to say, is not Parcel of it, and therefore a Tender and Refusal is a perpetual Bar.

‡ 2 Saun. 48. 7 H. 4. 18. 5 Mar. Dyer 150. 21 E. 4. 25. 22 E. 3. 5. 33 H. 6. 2. b. 17 Ass. Pl. 2. 20 E. 4. 1. b. 9 H. 6. 16. 35 H. 6. 26. 15 E. 4. 1. 16 H. 7. 13. 18 E. 3. 53. 7 E. 4. 4. b. 19 H. 8. 12. 27 H. 8. 12. 22 H. 6. 39. tit. Abatement 11. 49 E. 3. 3. 19 H. 6. 12. Mo. 36. 3 Cro. 755. Post 236. Saund. 48. 2 Rol. 528. [a] Henry Peytoe's Case, ubi supra.

But if a Man be bound to make a Feoffment in Fee to the Obligee, and he make a Lease and a Release to him and his Heirs, albeit this be a collateral Condition, yet is it well performed, because this amounts in Law to a Feoffment.

31 Ass. 25. 11 H. 4. 33. 1 H. 6. 8. 1 E. 4. 1. 7 E. 4. 3. Pl. Com. Fogasse's Case. fo. 6. Post 210, 219. Lib. 5. fo. 114, 115. Wade's Case, Lib. 9. fo. 78.

¶ *Money, moneta, Legalis moneta Angliæ.* Lawful Money of England, either of Gold or Silver, is of two Sorts, viz. the English Money coined by the King's Authority,

le jour assesse, &c. a le feoffor, ceo serra assets bone pur salvation destate de le second feoffee, pur ceo q̃ le p̃mr Feoffee fuit p̃vy a le condition, & issint le tender de ascun de eux deux est assets bone, &c.

☞ Condition, and so the Tender of either of them two is good enough, *&c.*

Feoffee after such Sale of the Land will tender the Money at the Day appointed, *&c.* to the Feoffor, this shall be good enough for the Safeguard of the Estate of the second Feoffee, because the first Feoffee was privy to the

Proclamation, as hath been said.

¶ *Tender le summe.* Noy 74.
The Feoffee may tender the Money in Purses or Bags, without shewing or telling the same, for he doth that which he ought, viz. to bring the Money in Purses or Bags, which is the usual Manner to carry Money in, and then it is the Part of the Party, that is to receive it, to put it out and tell it. [56]

¶ *Le primer feoffee.* Post 210. a.
Here it appeareth, that the first Feoffee may notwithstanding his Feoffment pay the Money to the Feoffor, because he is Party and P̃vy to the Condition, and by his Tender may save the Estate of his Feoffee, which in all good Dealing he ought to do.

Sect. 337.

¶ Item si Feoffemẽt soit fait sur condition, Que si le Feoffor paya certain sume dargent al Feoffee, adonques bien lirroit al Feoffor, & a ses heirs dentrer: En ceste case si le Feoffor devie devant le payment fait, & le heir voile tender al Feoffee les deniers, tiel tender est voyd, pur ceo que le temps deins quel ceo doit estre fait est passe, car quaunt le condition est, que si le Feoffor paya les deniers al Feoffee, &c. ceo est tant a dire, que si le Feoffor durant sa vie paya les deniers al Feoffee, &c. & quant le Feoffor morust, donq̃s le temps

ALso if a Feoffment be made upon Condition, That if the Feoffor pay a certain Sum of Money to the Feoffee, then it shall be lawful to the Feoffor and his Heirs to enter. In this Case if the Feoffee *or* die before the Payment made, and the Heir will tender to the Feoffee the Money, such Tender is void, because the Time within which this ought to be done, is past. For when the Condition is, That if the Feoffor pay the Money to the Feoffee, *&c.* this is as much as to say, as if the Feoffor during his Life pay the Money to the Feoffee, *&c.* and when the Feof-

¶ THis Diversity is plain and evident, and agreeth with our [a] Books, and yet somewhat shall be observed hereupon: For here it appeareth, That seeing no Time is limited, the Law doth appoint the Time, and that is during the Life of the Feoffor; wherein divers Diversities are worthy the Observation. [a] 14 H. 7. 31. 15 H. 7. 1. Post 219. a. 2 Cro. 70.

First, Between this Case that Littleton here putteth, of the Condition of a Feoffment in Fee, for the Payment of Money where no Time is limited, and the Condition of a Bond for the Payment of a Sum of Money where no Time is limited: For in such a Condition of a Bond the Money is to be paid presently, that is, in convenient Time. And yet in Case of a Condition of a Bond there is a Diversity between a Condition of an Obligation which concerns the Doing of a transitory Act without Limitation of any Time, as Payment of Money, Delivery of Charters, or the like; for there the Condition is to be performed presently, that is, in convenient Time, and when by the Condition of the Obligation the Act that is to be done 15 E. 4. 30. 21 E. 4. 38. b. 9 H. 7. 17. b. 10 H. 7. 15. 14 H. 8. 21. a. & 29. b. 3 Cro. 798.

9 Co. 77.

of B. and after mortgageth the Land to B. upon Condition for Payment thereof. If A. tender the Money to B. and he refuseth it. A. may enter into the Land, and the Land is freed for ever of th' Condition, but yet the Debt remaineth, and may be recovered by Action of Debt. But if A. without any Loan, Debt or Duty preceding, infeoff B. of Land, upon Condition for the Payment of a hundred Pounds to B. in Nature of a Gratuity or Gift: In that Case, if he tender the hundred Pound to him according to the Condition, and he refuseth it, B. hath no Remedy therefore; and so is our Author in this and his other Cases of like Nature to be understood.

foits refuse, celuy que duissoit tender le money est de ceo assouth, & pleinment discharge p touts temps apres.

fused, he which ought to tender the Money is of this quit and fully discharged for ever after.

Sect. 339.

¶ *Piera tiel summe a tiel jour, &c.*

18 E. 4. fol. 8. lib. 5. fol. 96. Goodale's Case, 19 H. 6. 54. Account Pl. 70. 5 Co. 117.

Here is implied that this Payment ought to be real, and not in Shew or Appearance. For if it be agreed between the Feoffor and the Executors of the Feoffee, that the Feoffor shall pay to the Executors but part of the Money, and that yet in Appearance the whole Sum shall be paid, and that the Residue shall be repaid, and accordingly at the Day and Place, the whole Sum is paid, and after the Residue is repaid, this is no Performance of the Condition; for the State shall not be devested out of the Heir which is a third Person, without a true and effectual Payment, and not by a Shadow or Colour of Payment; and the Agreement precedent doth guide the Payment subsequent.

5 Co. 96.

9 Co. 39.

And by this Section also it appeareth, that the Executors do more represent the Person of the Testator, than the Heir doth the Ancestor; for tho' the Executor be not named, yet

¶ Item si le feoffee en mortgage, devant le jour de payment que serroit fait a luy face ses Executors & devie, & son heire enter en le terre come il devoit, &c. il semble en cest cas que le Feoffor doit payer le money al jour assesse al Executors, & nemy al heire le Feoffee, pur ceo que le money al commencement trenchast al Feoffee en manner come un dutie, & serra entendue que l'estate fuit fait pur cause de le prompter de le money per le Feoffee, ou pur cause dauter dutie. Et pur ć le payñt ne serra fait al heire, come il semble. Mes les parols del condition poyent estre tiels, que le payment serra fait al heire, come si le condition fuit, que si le Feoffor paya al Feoffee, ou a ses heires, tiel summe a tiel jour, &c. la apres

Also if the Feoffee in Mortgage, before the Day of Payment which should be made to him, makes his Executors and die, and his Heir entreth into the Land as he ought, *&c.* It seemeth in this Case, that the Feoffor ought to pay the Money at the Day appointed to the Executors, and not the Heir of the Feoffee, because the Money at the Beginning trenched to the Feoffee in Manner as a Duty, and shall be intended that the Estate was made by Reason of the lending of the Money by the Feoffee, or for some other Duty; and therefore the Payment shall not be made to the Heir, as it seemeth; but the Words of the Condition may be such, as the Payment shall be made to the Heir. As if the Condition were, that if the Feoffor pay to the Feoffee, or to his Heirs, such a Sum at

la

le feasans de le condition destre performe, covient estre fait sur la terr̃, &c. nient plus que si le condition fuit que le Feoffor serra a tiel jour, &c. un especial corporal service al Feoffee, nient nosmant le lieu ou tiel corporal service serra fait, en tiel cas le feoffor doit faire tiel corporal service al jour limitte al Feoffee en quecunque lieu Dengleterre que le Feoffee est, sil voile aver advantage de le condition, &c. Issint il semble en lauter cas. Et il semble a eux q̃ il serroit pluis properment dit, que lestate de la terre est dependant sur la condition, que adire, que le condition est dependant sur la terre, &c. Sed quære, &c.

said that the Condition is depending upon the Land, yet this proves not that the making of the Condition to be performed, ought to be made upon the Land, *&c.* no more than if the Condition were that the Feoffor at such a Day shall do some special corporal Service to the Feoffee, not naming the Place where such corporal Service shall be done. In this Case the Feoffor ought to do such corporal Service at the Day limited to the Feoffee in what Place soever of *England* that the Feoffee be, if he will have Advantage of the Condition, *&c.* so it seemeth in the other Case. And it seems to them, that it shall be more properly said that the Estate of the Land is depending upon the Condition, than to say that the Condition is depending upon the Land, *&c. Sed quære, &c.*

said) that the Rent be tendred upon the Land, out of which it issueth. But Homage, or any other special corporal Service must be done to the Person of the Lord, and the Tenant ought by the Law of Convenience to seek him to whom the Service is to be done in any Place within England. 27 E. 3. 34. 7 E. 4. 4. 21 E. 4. 17. 20 E. Avowry 113. 45 E. 3. 9. 46 E. Barr. 216.

If a Man be bound to pay twenty Pounds at any Time during his Life, at a Place certain, the Obligor cannot tender the Money at the Place when he will, for then the Obligee should be bound to perpetual Attendance; and therefore the Obligor in respect of the Incertainty of the Time, must give the Obligee Notice, that on such a Day at the Place limited, he will pay the Money, and then the Obligee must attend there to receive it: For if the Obligor then and there tender the Money, he shall save the Penalty of the Bond for ever. Mich. 22 & 23 Eliz. in Bank le Roy, which I my self heard and observed. 19 Eliz. Dyer 354. Lib. 8. fol. 92. in France's Case. Cro. Jac. 9. Ante 206. a. 210. b.

The same Law it is if a Man make a Feoffment in Fee upon Condition, if the Feoffor at any Time during his Life pay to the Feoffee twenty Pounds at such a Place certain, that then, &c. In this Case the Feoffor must give Notice to the Feoffee when he will pay it; for without such Notice, as is aforesaid, the Tender will not be sufficient. But in both these Cases, if at any Time the Obligor or Feoffor meet the Obligee or Feoffee at the Place, he may tender the Money. 18 Eliz. Dyer 154. 2 Co. 59. 3 Co. 64. 8 Co. 92. Post Sect. 353.

If A. be bound to B. with Condition that C. shall inteoff D. at such a Day, C. must give Notice to D. thereof, and to request him to be on the Land at the Day to receive the Feoffment, and in that Case he is bound to seek D. and give him Notice. Hob. 51.

¶ *De tender*, or Tendre, is a Word common both to the English and French, in Latin, Offerre, and in that Sense, and with that Latin Word it is always used in the Common Law. Vide Sect. 514. the Tender of the Half Mark. And before Sect. 333, 334, 337. 2 E. 4. 3 & 4. 9 Co. 77.

Sect.

here yielded by our Author is worthy of Observation. And in this Case if the Feoffee infeoff J. N. of Intent and Purpose that he shall infeoff J. S. some hold that this is a Breach of the Condition; for quando aliquid prohibetur fieri, ex directo prohibetur & per obliquum.

a eſcun ò ſes heires ou ò iſſues ò un tiel, &c. ou hujuſmodi, les ꝙur cõditiõs ne tolent tout la power dalienation del feoffee, &c. dongꝫ tiel condition eſt bone.

Heirs, or of the Iſſues of ſuch a one, *&c.* or the like, which Conditions do not take away all Power of Alienation from the Feoffee, *&c.* then ſuch Condition is good.

If a Feoffment be made, upon Condition that the Feoffee ſhall not alien in Mortmain, this is good, becauſe ſuch Alienation is prohibited by Law; and regularly whatſoever is prohibited by the Law, may be prohibited by Condition, be it malum prohibitum, or malum in ſe. In ancient Deeds of Feoffment in Fee there was moſt commonly a Clauſe, Quod licitum ſit donatori rem datam dare vel vendere cui voluerit, exceptis viris religioſis & Judæis.

Sect. 362.

33 Aſſ. 11. li. 6. 40, 41. Mildmay's Caſe. 21 H 6. 33. 13 H 7. 23. 21 H. 7. 11. Vide Sect. 220. Ante 146. b.

¶ NOte here, the double Negative in legal Conſtruction ſhall not hinder the Negative, viz. Sub conditione quod ipſi nec hæredes ſui non alienarent. And therefore the Grammatical Conſtruction is not always in Judgment of Law to be followed.

¶ Item ſi Tenements ſoient dones en le taíl ſur tiel condition, que le tenant en le taíl ne ſes heires ne alienerõt en fee, ne en le taíl, ne pur termꝫ dauter vie, forſque pur lour vies demeſne, &c. tiel condition eſt bone. Et la cauſe eſt, pur ceo que quant il fiſt tiel alienation & diſcontinuance ò l' taíl, il faít le contrary a lentẽt del donor, pur que leſtatute de W. 2. cap. 1. fuít faít, per quel eſtatute les eſtates en le taíl ſont ordeines.

Also if Lands be given in Tail, upon Condition, that the Tenant in Tail nor his Heirs ſhall not alien in Fee, nor in Tail, nor for Term of another's Life, but only for their own Lives, *&c.* ſuch Condition is good. And the Reaſon is, for that when he maketh ſuch Alienation and Diſcontinuance of the Entail, he doth contrary to the Intent of the Donor, for which the Statute of *W.* 2. *cap.* 1. was made, by which Statute the Eſtates in Tail are ordained.

Forſque pur lour vies demeſne, &c. And yet if a Man make a Gift in Tail, upon Condition that he ſhall not make a Leaſe for his own Life, albeit the Eſtate be lawful, yet the Condition is good, becauſe the Reverſion is in the Donor. As if a Man make a Leaſe for Life or Years, upon Condition, that they ſhall not grant over their Eſtate, or let the Land to others; this is good, and yet the Grant or Leaſe ſhould be lawful.

21 H. 6. 33. 13 H. 7. 23, 24. 27 H. 8. 17, 19.

* Perk. 277.

* If a Man make a Gift in Tail, upon Condition that he ſhall not make a Leaſe for three Lives, or twenty-one Years, according to the Statute of 33 H. 8. the Condition is good, for the Statute doth give him Power to make ſuch Leaſes, which may be reſtrained by Condition, and by his own Agreement; for this Power is not incident to the Eſtate, but given to him collaterally by the Act, according to that Rule of Law, Quilibet poteſt renunciare juri pro ſe introducto.

Hob. 170. 1 Co. 84.

¶ *Quant il fiſt tiel alienation & diſcontinuance del eſtate taile.* And therefore if a Gift in Tail be made upon Condition, That the Donee, &c. ſhall not alien, this Condition is good to ſome Intents, and void to ſome: For as to all thoſe Alienations which amount to any Diſcontinuance of the Eſtate-tail, (as Littleton here ſpeaketh) or is againſt the Statute of Weſtminſter 2. the Condition is good without Queſtion. But as to a Common Recovery, the Condition is void, becauſe this is no Diſcontinuance, but a Bar;

doit estre pay, doñs bien lirroit al Lessor dentrer, &c. p force d quel lease le Plaintiff fuit seisie en son demesne come de franktenement, & que puis apres le rent fuit aderere a tiel Feast, &c. p que le Lessor entra en le terre sur le possessiõ le Lessee & prieroit le discretion de les Justices, si ceo soit un disseisin fait al Plaintiff ou nemy, donque pur ceo que appiert a les Justices, que ceo fuit nul disseisin fait al Plaintiff, entant que lentry de le Lessor fuit congeable sur luy; les Justices doyent doner judgment q̃ le Plaintiff næ prendra riens per son briefe dassise. Et issint en tiel cas le Lessor serra aide, & uncore nul escripture unques fuit fait del condition. Car cibien que les Jurors poyent aver conusance de le lease, aury bien ils poyent aver conusãce de le condition que fuit declare & rehearse sur le leas.

it ought to be paid, then it should be lawful for the Lessor to enter, *&c.* by Force of which Lease the Plaintiff was seised in his Demesne as of Freehold, and that afterwards the Rent was behind at such a Feast, *&c.* by which the Lessor entred into the Land upon the Possession of the Lessee, and pray'd the Discretion of the Justices, if this be a Disseisin done to the Plaintiff or not. That for that it appeareth to the Justices that this was no Disseisin to the Plaintiff, insomuch as the Entry of the Lessor was congeable on him; the Justices ought to give Judgment that the Plaintiff shall not take any Thing by his Writ of Assise. And so in such Case the Lessor shall be aided, and yet no Writing was ever made of the Condition. For as well as the Jurors may have Conusance of the Lease, they also as well may have Conusance of the Condition which was declared and rehearsed upon the Lease.

found in Pleas of the Crown, or criminal Causes that concern Life or Member.

6 Co. 46. b.

A Verdict finding Matter incertainly or ambiguously is insufficient, and no Judgment shall be given thereupon; as if an Executor plead Pleinment administre, and Issue is joined thereupon, and the Jury find that the Defendant hath Goods within his Hands to be administred, but find not to what Value, this is uncertain, and therefore insufficient.

2 Cro. 113, 114, 653. 40 E. 3. 13. 20 E. 3. Amendment 57. 18 E. 3. 49. in Cessavit. 30 E. 3. 23. 7 H. 4. 39.

17 E. 3. 47. 18 E. 3. 48. 22 E. 3. 1. 18 E. 3. 56. 15 E. 3. Judgments 58. 2 H. 5. 3. 7 H. 6. 5. Cro. Jac. 31.

A Verdict that finds Part of the Issue, and finding nothing for the Residue, this is insufficient for the whole, because they have not tried the whole Issue wherewith they are charged. As if an Information of Intrusion be brought against one for intruding into a Messuage, and 100 Acres of Land, upon the general Issue the Jury find against the Defendant for the Land, but say nothing for the House, this is insufficient for the whole, and so was it twice adjudged. [a] But if the Jury give a Verdict of the whole Issue, and of more, &c. that which is more is Surplusage, and shall not [b] stay Judgment, for Utile per inutile non vitiatur, but necessary Incidents required by Law, the Jury may find.

10 Co. 119. Hob. 64. 6 Co. 47. Ante 114. b. 10 Co. 97. b. Hob. 207.

If the Matter and Substance of the Issue be found, it is sufficient, as Littleton himself saith hereafter.

Estoppels which bind the Interest of the Land, as the taking of a Lease of a Man's own Land by Deed indented, and the like, being specially found by the Jury, the Court ought to judge according to the special Matter; for albeit the Estoppels regularly must be pleaded and relied upon by an apt Conclusion, and the Jury is sworn ad veritatem dicendam, yet when they find veritatem facti, they pursue well their Oath, and the Court ought to adjudge according to Law. [c] So may the Jury find a Warranty being given in Evidence, though it be not pleaded, because it bindeth the Right, unless it be in a Writ of Right, when the Mise is joined upon the meer Right.

[a] Hill. 25 Eliz. in a Writ of Error between Brace and the Queen in the Exchequer Chamber, Mich. 28 & 29 Eliz. inter Gomersal & Gomersal in Account in the King's Bench. ‡ God. 55.

[b] 32 E. 3. Cessavit. 25. 17 E. 3. 6. 18 Ass. 2. 35 Ass. 8. Post 282.

[c] 1 H. 4. 6. b. 27 H. 8. 22. b. Pl. Com. 515. Lib. 4. fo. 53. Rawlins's Case & ib. Pledol's Case. Hill. 31 Eliz. between Sutton and Dicons in the Common Place, the Case of the Lease for Years by Deed indented. 34 E. 3. Droit 29. Post 283. a. 303. b.

[a] After

If a Deed be made dated in a Foreign Kingdom, of Lands within England, yet if Livery and Seisin be made secundum formam chartæ, the Land shall pass, for it passeth by the Livery.

Sect. 367.

EN meſme le maner eſt de Feoffm̃t en fee, ou dõe en le taile ſur Conditiõ, coũt q̃ nul eſcripture unque fuit fait de ceo. Et ſicome eſt dit de Verdict a large en Aſſiſe, &c. En meſme le maner eſt en briefe dentr̃ founde ſur diſſeiſin, & en touts autres actions, ou les Juſtices voylent prender le verdict a large y la ou tiel verdict a large eſt fait, la manner del entry entire eſt mis en iſſue, &c.

IN the ſame manner it is of a Feoffment in Fee, or a Gift in Tail, upon Condition, although no Writing were ever made of it. And as it is ſaid of a Verdict at large in an Aſſiſe, *&c.* In the ſame manner it is of a Writ of Entry founded upon a Diſſeiſin, and in all other Actions where the Juſtices will take the Verdict at large, there where ſuch Verdict at large is made the Manner of the whole Entry is put in the Iſſue, *&c.*

AND it is to be obſerved, that the Court cannot refuſe a ſpecial Verdict, if it be pertinent to the Matter put in Iſſue. See the Section next preceding.

¶ *Verdict a large.*

It is called a Verdict at large, becauſe it findeth the Matter at large, and leaves it to the Judgment of the Court: or it is called a ſpecial Verdict, becauſe it findeth the ſpecial Matter, &c. So as hereby it appeareth, That a Verdict (as hath been ſaid) is twofold, viz. a Verdict at large, or a ſpecial Verdict, (which is all one) whereof Littleton here ſpeaketh; and a general Verdict that is generally found according to the Iſſue, as if the Iſſue be Not Guilty, to find the Party Guilty or Not Guilty generally; & ſic de cæteris. There is alſo a Verdict given in open Court, and a priby Verdict given out of Court, before any of the Judges of the Court, ſo called, becauſe it ought to be kept ſecret and priby from each of the Parties, before it be affirmed in Court. 10 Co. 118. Ante 226. b.

Sect. 368.

ITem en tiel caſe lou le enqueſt poit dire lour verdict a large, ſils voilent p̃nõ ſur eur le Conuſance de la ley ſur le matter, ils poyent dire lour verdict generalment, come eſt mis en lour charge, cõe en le caſe avantdit, ils poient bien dire, que le Leſſor ne diſſeiſa pas le Leſſee, ſils voilent, &c.

ALSO in ſuch Caſe where the Enqueſt may give their Verdict at large, if they will take upon them the Knowledge of the Law upon the Matter, they may give their Verdict generally as is put in their Charge, as in the Caſe aforeſaid they may well ſay, that the Leſſor did not diſſeiſe the Leſſee, if they will, &c.

¶ ALthough the Jury, if they will take upon them (as Littleton here ſaith) the Knowledge of the Law, may give a general Verdict, yet it is dangerous for them ſo to do; for if they do miſtake the Law, they run into the Danger of an Attaint; therefore to find the ſpecial Matter is the ſafeſt Way, where the Caſe is doubtful. 8 Co. 65. b. 4 Co. 53. b.

Sect.

enter eux, en ceſt cas ils ont eſtate pur termñ de lour deux vies ſur condition en ley, ſ̃ ſi un de eux devie, ou que divorce ſoit fait enter eux, donq̃s bien lirroit a le Leſſor & a ſes heires dentrer, &c.

the Coverture between them; in this Caſe they have an Eſtate for Term of their two Lives upon Condition in Law, *viz.* if one of them die, or that there be a Divorce between them, then it ſhall be lawful for the Leſſor and his Heirs to enter, *&c.*

Law createth the ſame without any expreſs Words.

Dum alſo maketh a Limitation; as if a Leaſe be made, Dum ſola fuerit, or Dum ſola & caſta vixerit. Dummodo is alſo a Word of Limitation, as, Dummodo ſolverit talem redditum. Quamdiu alſo is a Word of Limitation; for if a Man grant a Rent out of the Manor of D. Quamdiu the Grantor ſhall be dwelling upon the Manor, this is good; or Quamdiu ſe bene geſſerit. And ſo be theſe Words; Donec, Quouſque, Uſque ad, Tam diu, Ubicunque.

37 H. 6. 27. Plowd. 242. a. Vaugh. 32.

14 E. 2. Grants 92. 37 H. 6. 27.

¶ *Si lun de eux devie, &c.* For if one of them die, the Coverture is diſſolved, and conſequently the Eſtate determined by the Limitation.

¶ *Ou que divorce ſoit fait enter eux, &c.* Here is a Diſtinction to be underſtood: For there be two Kinds of Divorces, viz. one, a vinculo matrimonii * and the other, a menſa & thoro. Divortium dicitur a divertendo, or divortendo, quia vir divertitur ab uxore. Divorces a vinculo matrimonii are theſe: Cauſa Præcontractus, Cauſa Metus, Cauſa Impotentiæ ſeu Frigiditatis, Cauſa Affinitatis, Cauſa Conſanguinitatis, &c. And I read in an ancient Record, Coram Rege, Termino Paſch. 30 E. 1. William de Chadworth's Caſe, that he was divorced from his Wife, for that he did carnally know her Daughter before he married the Mother; all which are Cauſes of Divorce preceding the Marriage.

A menſa & Thoro, as Cauſa Adulterii, which diſſolveth not the Marriage a vinculo Matrimonii, for it is ſubſequent to the Marriage. And the Divorce that Littleton here ſpeaketh of is intended ſuch Divorces as diſſolve the Marriage a vinculo matrimonii, and maketh the Iſſue Baſtard, becauſe they were not Juſtæ nuptiæ. And therefore in Littleton's Caſe, though the Husband and Wife be divorced Cauſa Adulterii, yet the Freehold continueth, becauſe the Coverture continueth. And it is further to be underſtood, that many Divorces that were of Force by the Common Law, when Littleton wrote, are not at this Day in Force; for by the Statute of 32 H. 8. c. 38. it is declared, that all Perſons be lawful (that is, may lawfully marry) that be not prohibited by God's Law to marry; that is to ſay, that be not prohibited by the Levitical Degrees.

10 Aſſ. 4. 3 E. 3. 18. Annuity 40. 19 H. 6. 54. Temps E. 1. Annuity 150. 26 E. 3. 69. 7 E. 4. 16. 9 E. 4. 25, 26. 9 H. 6. 39. 14 H. 8. 13. *47 E. 3. 27. 39 E. 3. 32, 33. 11 H. 4. 14, 76. Bracton, fo. 298. 18 E. 4. 28. 24 H. 8. Baſtards. Br. 44. 39 E. 1. Baſtards 21. 22 E. 4. tit. Conſult. 5. 6 E. 3. 249. 25 E. 3. 39. 5 Co. 98. (*) Vide Sect. 399. 32 H. 8. cap. 38. Cro. Car. 463. 2 Inſt. 684. Mo. 907. Vaugh. 221, 319, 321.

A Man married the Daughter of the Siſter of his firſt Wife, and was drawn in Queſtion in the Eccleſiaſtical Court for this Marriage, alledging the ſame to be againſt the Canons: And it was reſolved [a] by the Court of Common Pleas, upon Conſideration had of the ſaid Statute, that the Marriage could not be impeached, for that the ſame was declared by the ſaid Act of Parliament to be good, inaſmuch as it was not prohibited by the Levitical Degrees; & ſic de ſimilibus.

[a] Trin. 2 Jac. Rot. 1032. Richard Parſon's Caſe. Ante 23, 33.

Sect. 381.

¶ ET que ils ont eſtate pur terme de lour deux vies, Probatur ſic, cheſcun home que ad eſtate de franktenement en aſcun terres ou tenements, ou il ad eſtate en fee, ou en fee taile, ou pur terme de ſa vie demeſne, ou pur terme dauter vie, & per tiel leaſe ils ont franktenement, mes ils nont per ceſt grant fee, ne fee taile, ne pur terme dauter vie, Ergo ils ont eſtate pur terme de lour vies, mes ceo eſt ſur condition en ley, en le forme avantdit, & en ceſt

AND that they have an Eſtate for Term of their two Lives, is proved thus; every Man that hath an Eſtate of Freehold in any Lands or Tenements, either he hath an Eſtate in Fee, or in Fee-Tail, or for Term of his own Life, or for Term of another Man's Life, and by ſuch a Leaſe they have a Freehold: But they have not by this Grant, Fee, nor Fee-tail, nor for Term of another's Life, *Ergo* they have an Eſtate for Term of their own Lives; but this is upon Condition in Law in

cas

cas ſils fieront waſt, le feoffor avera enviers eux briefe de waſt ſuppoſant per ſon brief, Quod tenet ad terminum vitæ, &c. mes en ſon count il declare coment & en quel manner le leas fuit fait.

Form aforeſaid; and in this Caſe, if they ſhall do Waſte, the Feoffor ſhall have a Writ of Waſte againſt them; ſuppoſing by his Writ, *Quod tenet ad terminum vitæ, &c.* but in his Count he ſhall declare how, and in what Manner the Leaſe was made.

¶ *Probatur ſic.* By this Argument logically drawn à diviſione, it appeareth, How neceſſary it is that our Student ſhould (as Littleton did) come from one of the Univerſities to the Study of the Common Law, where he may learn the liberal Arts, and eſpecially Logick: For that teacheth a Man not only by juſt Argument to conclude the Matter in Queſtion, but to diſcern between Truth and Falſhood, and to uſe a good Method in his Study, and probably to ſpeak to any legal Queſtion, and is defined thus, Dialectica eſt ſcientia probabiliter de quovis themate diſſerendi; whereby it appeareth how neceſſary it is for our Student.

37 H. 6. 27. ¶ *Suppoſant per ſon brief,* Quod tenet ad terminum vitæ, &c. This and the reſt of this Section is evident and plain.

Sect. 382.

SI un Abbe. So it is of a Biſhop, Arch-Deacon, and other Eccleſiaſtical or Temporal Body politick or corporate, or of any Officer or Graduate, or the like.

¶ *Reſigne, ou ſoit depoſe.* And ſo it is of a Tranſlation and Ceſſion.

EN meſme la maner eſt, ſi un Abbe fait un Leaſe a un hõe, a aũ & tener a luy durãt le tẽps q̃ le leſſor eſt Abbe, en ceſt caſe le Leſſee ad eſtate p̃ termẽ de ſa vie demeſne, mes ceo eſt ſur conditiõ en ley, ſ. que ſi labbe reſigna, ou ſoit depoſe, q̃ bien lirroit a ſ̃ ſucceſſor dentrer, &c.

IN the ſame Manner it is, if an Abbot make a Leaſe to a Man, to have and to hold to him during the Time that the Leſſor is Abbot; in this Caſe the Leſſee hath an Eſtate for Term of his own Life: But this is upon Condition in Law, *i. e.* That if the Abbot reſign or be depoſed, that then it ſhall be lawful for his Succeſſor to enter, *&c.*

Sect. 383.

LIVRE daſſiſes is a Book of the Reports of Caſes in the Reign of King Edward the Third; and it is called the Book of Aſſiſes, becauſe the greateſt Part of the Caſes therein are upon Writs of Aſſiſes, brought as hath been ſaid, and which hath been cited before.

¶ *Deviſa les Tenements a vendre per ſon Executor.* This muſt

¶ Item hõe poit veier en le Livr̃ daſſiſe, viz. Anno 38 E. 3. p. 3. un pl̃ daſſ. en ceſt forme que enſuiſt. ſ̃ Un Aſſiſe de Novel Diſſeiſin auter foits fuit port vers A. que pleda al Aſſiſe, & trove fuit per verdict, Que

ALſo a Man may ſee in the Book of Aſſiſes, *Anno* 38 *E.* 3. *p.* 3. a Plea of Aſſiſe in this Form following, *i. e.* An Aſſiſe of *Novel Diſſeiſin* was ſometime brought againſt *A.* who pleaded to the Aſſiſe; and it was found by Verdict, that laun-

[a] 21 E. 3. 34. b. 30 Aſſ. p. 7.

[b] Brit. c. 73. 20 E. 3. Vouch. 129. 11 E. 3. Age 3. 5 H. 7. 2.

[a] And in the ſame Caſe, if both Daughters enter and make Partition, this Partition ſhall bind the Mulier for ever.

[b] And an Aſſiſe of Mordanceſtor lieth not between the Baſtard and the Mulier in Reſpect of the Proximity of Blood.

And the Baſtard being impleaded or vouched ſhall have his Age.

¶ *Et le Baſtard enter come heire a ſon pier.* If a Man hath Iſſue Baſtardeigne and Mulier Puiſne, and the Baſtard in the Life of the Father hath Iſſue and dieth, and then the Father dieth ſeiſed, and the Son of the Baſtard entreth, as Heir to his Grandfather, and dieth ſeiſed, this Diſcent ſhall bind the Mulier.

¶ *Pur ceo que eſt ancient Ley in tiel caſe uſe, &c.* As hereafter in our Commentary upon the two next Sections ſhall appear by our ancient Books, and the ancient Statutes of the Realm. And here is implied how neceſſary it is, after the Example of our Author, to look into the Antiquities, than which nothing is more venerable, profitable and pleaſant.

Sect. 400.

¶ MES il ad eſte l'opinion daſcuns, que ceo ſerra intendue lou le pier ad un fits baſtard per un feme, & puis eſpouſa meſme la feme, & apres l'eſpouſels il ad Iſſue per meſme la feme un fits, ou un file mulier, & puis le pier mourt, &c. ſi tiel Baſtard enter, &c. & ad Iſſue & devie ſeiſie, &c. donque avera l'iſſue de tiel Baſtard le Terre cleerment a luy, come avant eſt dit, &c. & nemy aſcun auter Baſtard la mere, que ne fuit unque eſpouſe a ſon pier, & ceo ſemble bone & reaſonable opinion. Car tiel Baſtard nee devant eſpouſels celebres perenter ſon pier & ſa mere, per la Ley de Saint Eſglíſe eſt Mulier, coment que per la Ley del Terre il eſt Baſtard, & iſſint il ad un colour dentrer come heire a ſon pier, pur ceo que il eſt per un Ley mulier, &c. ſ̄ p la Ley de Saint Eſglíſe. Mes autrement eſt de Baſtard que nad aſcun maner de colour dentrer come heire, entant que il ne poit per nul Ley eſtre dit mulier, car tiel Baſtard eſt dit en la Ley, Quaſi nullius filius, &c.

Forteſcue 96. a.

BUT it hath been the Opinion of ſome, That this ſhall be intended where the Father hath a Son Baſtard by a Woman, and after marrieth the ſame Woman, and after the Eſpouſals he hath Iſſue by the ſame Woman a Son or a Daughter, and after the Father dieth, *&c.* if ſuch Baſtard entreth, *&c.* and hath Iſſue and die ſeiſed, *&c.* then ſhall the Iſſue of ſuch Baſtard have the Land clearly to him, as it is ſaid before, *&c.* and not any other Baſtard of the Mother which was never married to his Father, and this ſeemeth to be a good and reaſonable Opinion: For ſuch Baſtard born before Marriage celebrated between his Father and his Mother, by the Law of Holy Church is *Mulier*, albeit by the Law of the Land he is a Baſtard, and ſo he hath a Colour to enter as Heir to his Father, for that he is by one Law *Mulier*, ſc. by Law of holy Church. But otherwiſe it is of a Baſtard which hath no Manner of Colour to enter as Heir, inſomuch as he can by no Law be ſaid to be *Mulier*, for ſuch a Baſtard is ſaid in the Law to be, *Quaſi nullius filius, &c.*

Mes

l'entrie l'enfant, mes qu'il poet enter ſur le iſſue que eſt eins per diſcent, &c. pur ceo que nul laches ſerra adjudge en un Enfant deins age en tiel caſe.

Infant, but that he may enter upon the Iſſue which is in by Diſcent, for that no Laches ſhall be adjudged in an Infant within Age in ſuch a Caſe.

twenty-one Years, and certain Privileges he hath in reſpect of his Infancy.

¶ *Nul laches ſerra adjudge en un enfant deins age en tiel caſe.* And Littleton well added (en tiel caſe) that is, in caſe of Diſcent; for in ſome other Caſes, Laches ſhall prejudice

Poſt 380. b.

33 E. 3. Quare Imp. 46.

an Infant: As Laches ſhall be adjudged in an Infant, if he preſent not to a Church within ſix Months; for the Law reſpecteth more the Privilege of the Church, (that the Cure be ſerved,) than the Privilege of Infancy. And ſo the publick Repoſe of the Realm, concerning Men's Freeholds and Inheritances, ſhall be preferred before the Privilege of Infancy, in Caſe of a Fine, where the Time begins in the Time of the Anceſtor. So Non-claim of a Villein, or an Infant by a Year and a Day, who hath fled into ancient Demeſne, ſhall take away the Seiſure of the Infant. And if an Infant bring not an Appeal of the Death of his Anceſtor within a Year and a Day, he is barred of his Appeal for ever; for the Law reſpects more Liberty and Life, than the Privilege of Infancy. And here it is to be obſerved, that Littleton putteth his Caſe, that an Infant ſhall enter upon a Diſcent when a Stranger dieth ſeiſed; but he put it not ſo before, in the Caſe of the Baſtard eigne. B. Tenant in Tail infeoffeth A. in Fee, A. hath Iſſue within Age, and dieth, B. abateth and dieth ſeiſed, the Iſſue of A. being ſtill within Age; this Diſcent ſhall bind [a] the Infant, for the Iſſue in Tail is remitted: And the Law doth more Reſpect an ancient Right in this Caſe, than the Privilege of an Infant that had but a defeaſible Eſtate: And it is ſaid, [b] if the King die ſeiſed of Lands, and the Land diſcend to his Succeſſor, that this ſhall bind an Infant, for that the Privilege of an Infant in this Caſe holds not againſt the King.

Ante 244. a.

Post 380. b.

[a] 11 E. 4. 1, 2. F. N. B. 35. m.

[b] 35 H. 6. 60.

Sect. 403.

¶ Item ſi le Baron & ſa Feme come en droit la feme ont title & droit d'enter en tenements que un auter ad en Fee, ou en Fee taile, & tiel Tenant morust ſeiſie, &c. en tiel caſe l'entrie le Baron eſt tolle ſur le heire que eſt eins per diſcent. Mes ſi le Baron debie, donque la Feme bien poet enter ſur l'iſſue que eſt eins per diſcent, pur ceo que laches le Baron ne turnera la Feme ne ſes heires en prejudice ne en damage

Alſo if Husband and Wife, as in Right of the Wife, have Title and Right to enter into Lands which another hath in Fee, or in Fee-tail, and ſuch Tenant dieth ſeiſed, &c. In ſuch Caſe the Entry of the Husband is taken away upon the Heir which is in by Diſcent: But if the Husband die, then the Wife may well enter upon the Iſſue, which is in by Diſcent, for that no Laches of the Husband ſhall turn the Wife, or her Hers to any Prejudice, nor Loſs

¶ *Si le Baron & Feme come en droit ſa feme ont title & droit d'enter, &c. & tiel Tenant morust ſeiſie, &c.* Theſe Words are general, but are particularly to be underſtood, viz. when the Wrong was done to the Wife during the Coverture; for if a Feme ſole be ſeiſed of Lands in Fee, and is diſſeiſed, and then taketh Husband; in this Caſe the Husband and Wife, as in the Right of the Wife, have Right to enter; and yet the Dying ſeiſed of the Diſſeiſor in that Caſe ſhall take away the Entry of the Wife after the Death of her Husband; and the Reaſon is as well for that ſhe her ſelf, when ſhe was ſole, might have entred and recontinued the Poſſeſſion; as alſo it ſhall be accounted her Folly that ſhe would take ſuch a Husband which would not enter before the Diſcent.

9 H. 7. 24. a. 2 E. 3. 25. 20 H. 6. 28. b. 42 E. 3. 12.

15 E. 4. Diſcent 30.

the Caſe of an Infant) and where the Diſcent is affirmed for a Time, the Eſtate being lawful, and being after defeated by Matter ex poſt facto, by a Title of Re-entry.

Sect. 410.

Vide Sect. 200.

¶ *Entre en Religion, &c.* Here is implied Profeſſion. This Diſcent ſhall not bar the Entry of the Diſſeiſee, for that the Diſcent cometh by the Deed of the Father, becauſe he entred into Religion, wherein there is an excellent Point worthy of Obſervation: For albeit the Entry into Religion make not the Diſcent, but the Profeſſion whereof you have read before, Sect. 200. Yet here you may learn by Littleton, That the Law reſpects the original Act, and that is, his Entry into Religion, which is his own Act, whereupon the Profeſſion followed, whereby the Diſcent happened; for Cujuſq; rei potiſſima pars principium eſt. And again, Origo rei inſpici debet, whereof you ſhall make great Uſe in reading of our Books. * Here Littleton attributeth the Cauſe of the Diſcent to his Entry into Religion, which was his own Act; whereas a Diſcent doth not take away an Entry unleſs it cometh by Death, which, as Littleton ſaith, is the Act of God; and no glorious pretext of an Act, (no, though it be of Religion) ſhall work a Wrong to a Stranger that hath Right, to bar him of his Entry: But it is ſaid, That in the Caſe of the Baſtardeigne, and mulier puiſne, ſuch a Diſcent ſhall bind the Mulier as before hath been ſaid; and ſuch an Heir, that cometh in by ſuch a Diſcent, ſhall have his Age.

Ante 206. b. 238. b.

* Vide Pl. Com. Dame Hale's Caſe.

¶ Item, ſi jeo ſoy diſſeiſie, & le Diſſeiſor ad iſſue & enter en Religion, per force de quel les Tenements diſcendont a ſon iſſue, en ceſt caſe jeo bien puiſſe enter ſur l'iſſue, & uncore la fuit un Diſcent. Mes p̃ ceo q̃ tiel diſcẽt vient al iſſue p̃ fait le pier, ſ. p̃ ceo q̃ il enter en Religion, &c. & le Diſcent ne vient a luy p̃ fait de Dieu, ſ. p̃ mort, &c. mon entre eſt congeable. Car ſi jeo arraigne un Aſſiſe de Novel diſſeiſin envers mon Diſſeiſor, coment que il fuit enter en religion, ceo ne abata my mon brẽ mes mõ brẽ (ceo non obſtant) eſtoyer̃ en ſa force, & mon recovery vers luy ſerr̃ bon. Et p̃ meſme le reaſon le diſcent q̃ aveigne a ſon Iſſue p̃ ſon fait demeſn̄ ne tollera moy ô mõ entrie, &c.

Also if I be diſſeiſed, and the Diſſeiſor hath Iſſue and entreth into Religion, by Force whereof the Lands deſcend to his Iſſue; in this Caſe I may well enter upon the Iſſue, and yet there was a Diſcent: But for that ſuch Diſcent cometh to the Iſſue by the Act of the Father, *ſc.* for that he entred into Religion, *&c.* and the Diſcent came not unto him by the Act of God, (*ſcilicet*) by Death, *&c.* my Entry is congeable: For if I arraign an Aſſiſe of *Novel Diſſeiſin* againſt my Diſſeiſor, albeit he after enter into Religion; this ſhall not abate my Writ, but my Writ (notwithſtanding this) ſhall ſtand in its Force, and my Recovery againſt him ſhall be good. And by the ſame Reaſon the Diſcent which cometh to his Iſſue by his own Act, ſhall not take from me my Entry, *&c.*

3 H. 6. 41. 10 H. 6. 10. b. 18 E. 4. 19. 9 E. 4. 25, 52. 7 E. 4. 15. 18 E. 3. 24. 25 E. 3. 39. 46 E. 3. 25. 30 E. 1. Brief 885. 22 R. 2. Brief 936. Doc. Pla. 398.

¶ *Car ſi jeo arraigne un Aſſiſe, &c.* Nota; If a Man be Tenant or Defendant in a real or perſonal Action, and hanging the Suit, the Tenant or Defendant entreth into Religion, by this the Writ is not abated, becauſe it is by his own Act. And ſo it is of a Reſignation; but otherwiſe it is of a Depoſition or a Deprivation, becauſe he is expelled by Judgment, and yet his Offence, &c. was the Cauſe thereof, ſed in præſumptione Legis, judicium redditur in invitum.

¶ *Moy de mon entry.* Here is implied, or any of my Heirs.

Thirdly, By affirming the Reversion or Remainder to be in a Stranger, and that either actively or passively. Actively by five manner of Ways: As first, if Tenant for Life pray in Aid of a Stranger, whereby he affirms the Reversion to be in him. Secondly, If he attorn to the Grant of a Stranger; and there note also a Diversity between an Attornment of Record to a Stranger, and an Attornment in pais; for an Attornment in pais worketh no Forfeiture. Thirdly, If a Stranger bring a Writ of Entry in casu proviso, and suppose the Reversion to be in him, if the Tenant for Life confess the Action, this is a Forfeiture. Fourthly, If Tenant for Life plead covinously to the Disherison of him in the Reversion, this is a Forfeiture. Fifthly, If a Stranger bring an Action of Waste against the Lessee for Life, and he plead Nul waste fait, this is a Forfeiture, or the like.

Passively, As if Tenant for Life accept a Fine of a Stranger, Sur conusans de droit come ceo, &c. for hereby he affirms of Record the Reversion to be in a Stranger.

21 E. 3. 14. a. 5 Ass. 5. Plowd. 212. 3 Mar. Dyer 148. 2 Co. 56. 9 Co. 106. 13 E. 4. 4.

Littleton here speaketh of the Forfeiture of an Estate; and it is to be known, that the Right of a particular Estate may be forfeited, and he that hath but a Right of a Remainder or Reversion, shall take Benefit of the Forfeiture. As if Tenant for Life be disseised, and he levy a Fine to the Disseisor, he in the Reversion or Remainder shall presently enter upon the Disseisor for the Forfeiture. And so it is, if the Lessee after the Disseisin had levied a Fine to a Stranger, though to some Respects, Partes finis nihil habuerunt, yet it is a Forfeiture of his Right.

Littleton here speaketh of an Alienation in Fee absolutely; but so it is, if the Lessee for Life make a Lease for any other Man's Life, or a Gift in Tail. If A. be Tenant for Life, and make a Lease to B. for his Life, and B. dieth, and the Lessee re-entreth, yet the Forfeiture remaineth.

If a Tenant for Life make a Lease for Life, or a Gift in Tail, or a Feoffment in Fee, upon Condition, and entreth for the Condition broken, yet the Forfeiture remaineth; Littleton speaketh of an Estate for Life, so it is of Tenant in Tail apres possibility, Tenant by the Curtesy, Tenant in Dower, or of him that hath an Estate to him and his Heirs during the Life of J. S. &c. and so of Tenant for Years, Tenant by Statute-Merchant, Statute-Staple, or Elegit.

39 Ass. 15.

Littleton saith, That where the Alienation in Fee is made to another, which must be intended a Stranger, for if it be made to him in Reversion or Remainder, it amounts to a Surrender of his Estate, as at large hath been spoken in the Chapter of Tenant for Life.

By Littleton it appeareth, That Tenant for Life in Remainder may enter for the Forfeiture of the first Tenant for Life, and that if the Tenant for Life in Remainder make Continual Claim, and the Alienee die seised, then may he in the Remainder for Life enter; and if he die before he do enter, then he in the Remainder in Fee shall enter, because he in the Remainder in Fee could not make any Claim: And therefore the Right of Entry, which Tenant for Life in Remainder gained by his Entry, shall go to him in the Remainder in Fee, in respect of the Privity of Estate: And so it is of him in the Reversion in Fee in like Case, for he is also privy in Estate.

If two Jointenants be disseised, and the one of them make a continual Claim, and dieth, the Survivor shall take Benefit of his continual Claim, in respect of the Privity of their Estate.

But if Tenant for Life make continual Claim, this shall not give any Benefit to him in the Remainder, unless the Disseisor died in the Life of Tenant for Life, for the Cause aforesaid, Sect. 414.

If Tenant in Tail, the Remainder in Fee with Garranty, have Judgment to recover in Value, and dieth before Execution without Issue, he in the Remainder shall sue Execution; for he hath Right thereunto, and is privy in Estate.

In the same manner, if a Seigniory be granted by Fine to one for Life, the Remainder in Fee, the Grantee for Life dieth, he in the Remainder shall have a Per quæ servitia; for he hath Right to the Remainder, and is privy in Estate. Here also it appeareth, that none can make continual Claim, but he that hath Right to enter.

Sect. 417.

"MES est a veier a toy (mõ fits) comẽt & en ql maner tiel Continual Claim serra fait, & ceo bien appreñdẽ trois choses sont a intender. La 1. chose

BUT it is to be seen of thee (my Son) how and in what manner such Continual Claim shall be made; and to learn this well, three Things are to be understood. The first

"SI *home ad cause dentrer en ascuns terres ou tenements, &c.*

Plowd. 250. a. Vide 2 Inst. 518. 3 Co. 91. a.

It is not sufficient to tell one generally what he should do, but to direct him how, and in what manner he shall do it, as Littleton doth in this Place. And here, the general Rules of our Author are to be understood,

Sect. 418.

¶ CAR ſi home voile enfeoffer un auter ſans fait de certeine terres ou Tenements, que il ad deins pluſours villes en un County, & il voile liverer ſeiſin al feoffee de parcel de tenements deins un ville en noſme de touts les terres ou tenements q̃il il ad en meſme le ville, & en les auters villes, &c. touts les dits tenemẽts &c. paſſont p force de le dit livery de ſeiſin a celuy a que tiel feoffment en tiel maner eſt fait, & uncore celuy a que tiel livery de ſeiſin fuit fait, navoit droit en touts les terres ou tenements en touts les villes, mes per cauſe de livery de ſeiſin fait de parcel de les terres ou tenements en un ville: A multo fortiori il ſemble boñ reaſon, que quant home ad title d'enter en les terres ou tenements en divers villes deins un m̃ County devant aſcun entry per luy fait, que per l'entry fait p luy en parcel de les terres en un ville en le noſm̃ de touts les terres & tenements as queux il ad title d'enter deins meſme le County, ceo veſt un ſeiſin de touts en luy, & per tiel entry il ad poſſeſſion & ſeiſin en fait, ſicome il avoit enter en cheſcun parcel, &c.

FOR if a Man will infeoff another without Deed of certain Lands or Tenements which he hath in many Towns in one County, and he will deliver Seiſin to the Feoffee of Parcel of the Tenements within one Town in the Name of all the Lands or Tenements which he hath in the ſame Town, and in other Towns, *&c.* all the ſaid Tenements, *&c.* paſs by Force of the ſaid Livery of Seiſin to him to whom ſuch Feoffment in ſuch Manner is made; and yet he, to whom ſuch Livery of Seiſin was made, hath no Right in all the Lands or Tenements in all the Towns, but by Reaſon of the Livery of Seiſin made of Parcel of the Lands or Tenements in one Town: *A multo fortiori* it ſeemeth good Reaſon that when a Man hath Title to enter into the Lands or Tenements in divers Towns in one ſame County, before Entry by him made, that by the Entry made by him into Parcel of the Lands in one Town in the Name of all the Lands and Tenements to which he hath Title to enter within the ſame County, this ſhall veſt a Seiſin of all in him; and by ſuch Entry he hath Poſſeſſion and Seiſin in Deed, as if he had entred into every Parcel.

9 Co. 136.

6 Co. 20.

Poſt 259. a.

¶ THis is evident, but here is a Diverſity between a Feoffment and an Entry; for a Man may make a Feoffment of Lands in another County, and make Livery of Seiſin within the View, albeit he might peaceably enter and make actual Livery, and ſo may he ſhew the Recognitors in an Aſſiſe, the View of Lands in another County; but a Man cannot make an Entry into Lands within the View where he may enter without any Fear (for it is one Thing to inveſt, and another to deveſt) as hereafter ſhall be ſaid in the Section next following.

38 E. 3. 11. 38 Aſſ. 23. Ante 48. b.

¶ *A multo fortiori*, or à Minore ad majus, is an Argument frequent in our Author, and in our Books; the Force of Argument in this Place ſtanding thus: If it be ſo in a Feoffment paſſing a new Right, much more it is for the Reſtitution of an ancient Right, as the worthier and more reſpected in Law, which holdeth affirmatively, as our Author here teacheth us.

The three [&c.'s] in this Section need no Explanation.

in Goods or Chattels: Or mixt, partly in the Realty, and partly in the Perſonalty.

¶ *Releaſe*, Relaxatio: Of the Etymology of this Word you have heard before. Fleta calleth it, Charta de quieta clamantia.

¶ Noverint univerſi per præſentes &c. Here Littleton ſheweth Precedents of Releaſes of Right: And Precedents do both teach and illuſtrate; and therefore our Student is to be well ſtored with Precedents of all Kinds.

24 E. 3. 27. 13 H. 4. Entr. congeab. 57.

¶ Remiſiſſe, relaxaſſe, & quietum clamaſſe. Here Littleton ſheweth, that there be three proper Words of Releaſe, and be much of one Effect: Beſides, there is Renunciare, Acquietare; and there be many other Words of Releaſe: As if the Leſſor grants to the Leſſee for Life, that he ſhall be diſcharged of the Rent, this is a good Releaſe. Vide Sect. 532.

9 Co. 52.

And it is to be underſtood, that there be Releaſes in Deed, or expreſs Releaſes, whereof Littleton here hath ſhewed an Example. Theſe expreſs Releaſes muſt of Neceſſity be by Deed. There be alſo Releaſes in Law, and they are ſometimes by Deed, and ſometimes without Deed. As if the Lord diſſeiſe the Tenant, and maketh a Feoffment in Fee by Deed or without Deed, this is a Releaſe of the Seigniory. And ſo it is, if the Diſſeiſee diſſeiſe the Heir of the Diſſeiſor, and make a Feoffment in Fee by Deed or without Deed, this is a Releaſe in Law of the Right; and the ſame Law it is of a Right in Action.

27 H. 8. 29. of an Uſe. 34 H. 6. 44. of an Attaint. Hob. 10. 1 Cro. 373. Sider. 79. 5 Co. 29. 8 E. 4. 3. 22 E. 4. 2. 11 H. 7. 4. 20 H. 7. 29.

If the Obligee make the Obligor his Executor, this is a Releaſe in Law of the Action, but the Duty remains, for the which the Executor may retain ſo much Goods of the Teſtator.

If the Feme Obligee take the Obligor to Husband, this is a Releaſe in Law. The like Law is, if there be two Femes Obligees, and the one take the Debtor to Husband.

If an Infant of the Age of ſeventeen Years releaſe a Debt, this is void. But if an Infant make the Debtor his Executor, this is a good Releaſe in Law of the Action.

But if a Feme Executrix take the Debtor to Husband, this is no Releaſe in Law, for that ſhould be a Wrong to the Dead, and in Law work a Devaſtavit, which an Act in Law ſhall never work. And ſo it was adjudged in the King's Bench, Mich. 30 & 31 Eliz. in which Caſe I was of Counſel.

1 Leon. 320. 50 E. 3. 24. 32 E. 3. Tit. Scire fac. 102.

But it is to be obſerved, That there is a Diverſity between a Releaſe in Deed and a Releaſe in Law; for if the Heir of the Diſſeiſor make a Leaſe for Life, and the Diſſeiſee releaſe his Right to the Leſſee for his Life; his Right is gone for ever. But if the Diſſeiſee doth diſſeiſe the Heir of the Diſſeiſor, and make a Leaſe for Life, by this Releaſe, in Law, the Right is releaſed but during the Life of the Leſſee: For a Releaſe in Law ſhall be expounded more favourable, according to the Intent and Meaning of the Parties, than a

Finch 294.

auters choſes. Releaſes de tout le droit que homes ont en terres ou Tenements, &c. ſont communeñt fait en tiel form ou de tiel effect.

Sect. 445.

¶ Noverint univerſi per præſentes, me A. de B. remiſiſſe, relaxaſſe, & omnino de me & hæredib. meis quietum clamaſſe: *vel ſic*, Pro me & hæredibus meis quietum clamaſſe C. de D. totum jus, titulum, & clameum quæ habui, habeo, vel quoviſmodo in futuro habere potero, de & in uno meſſuagio cum pertinentiis in F. &c. Et eſt aſcavoire, que ceux Verbs, Remiſiſſe, & quietum clamaſſe ſont de un tiel effect, ſicome tiels Verbs, Relaxaſſe.

Know all Men by theſe Preſents, That I A. *of* B. *have remiſed, releaſed, and altogether from me and my Heirs quiet claimed:* Or thus, *For me and my Heirs quiet claimed to* C. *of* D. *all the Right, Title, and Claim which I have, or by any Means may have, of and in one Meſſuage, with the Appurtenances in* F. &c. And it is to be underſtood, that theſe Words *Remiſiſſe & quietum clamaſſe*, are of the ſame Effect as theſe Words, *Relaxaſſe*.

[a] And ſo it is if the Tenant alien, hanging the Præcipe, the Releaſe of the Demandant to the Tenant to the Præcipe is good, and yet he hath nothing in the Land. [a] 10 E. 4. 14. 8 E. 3. 21. 46 E. 3. 6. b.

In Time of Vacation an Annuity, that the Parſon ought to pay, may be releaſed to the Patron in reſpect of the Privity; but a Releaſe to the Ordinary only ſeemeth not good, becauſe the Annuity is temporal.

If a Diſſeiſor make a Leaſe for Life, the Diſſeiſee may releaſe to him, for to ſuch a Releaſe of a bare Right there needs no Privity, as ſhall be ſaid hereafter. But if the Diſſeiſor make a Leaſe for Years, the Diſſeiſee cannot releaſe to him, becauſe he hath no Eſtate of Freehold. And yet in ſome Caſe a Right of Freehold ſhall drown in a Chattel; as if a Feme hath a Right of Dower, ſhe may releaſe to the Guardian in Chivalry, and her Right of Freehold ſhall drown in the Chattel, becauſe the Writ of Dower doth lie againſt him, and the Heir ſhall take Advantage of it. And it is to be obſerved, that by the ancient Maxim of the Common Law, a Right of Entry, or a Choſe in Action cannot be granted or transferred to a Stranger; and thereby is avoided great Oppreſſion, Injury and Injuſtice; Nul charter, nul vende, ne nul done vault perpetualment ſi le donor neſt ſeiſie al temps de contracts de 2. droits, ſc. del droit de poſſeſſion, & del droit del property. And therefore well ſaith Littleton, that he, to whom a Releaſe of Right is made, muſt have a Freehold. 8 Co. 148. 5 Co. 24. 2 Cro. 151. Dyer 30. b. Mirror, cap. 2. ſect. 17. Poſt 280.

For the better underſtanding of transferring of naked Rights to Lands or Tenements, either by Releaſe, Feoffment, or otherwiſe, it is to be known, that there is Jus proprietatis, a Right of Ownerſhip; Jus poſſeſſionis, a Right of Seiſin or Poſſeſſion; and Jus proprietatis & poſſeſſionis, a Right both of Property and Poſſeſſion: And this is anciently called Jus duplicatum, or Droit droit. For Example; if a Man be diſſeiſed of an Acre of Land, the Diſſeiſee hath Jus proprietatis, the Diſſeiſor hath Jus poſſeſſionis; and if the Diſſeiſee releaſe to the Diſſeiſor, he hath Jus proprietatis & poſſeſſionis. And regularly it holdeth true, that when a naked Right to Land is releaſed to one that hath Jus poſſeſſionis, and another by a mean Title recover the Land from him, the right of Poſſeſſion ſhall draw the naked Right with it, and ſhall not leave a Right in him to whom the Releaſe is made. For Example; if the Heir of the Diſſeiſor being in by Diſcent, A. doth diſſeiſe him, the Diſſeiſee releaſe to A. now hath A. the meer Right to the Land. But if the Heir of the Diſſeiſor enter into the Land, and regain the Poſſeſſion, that ſhall draw with it the meer Right to the Land, and ſhall not regain the Poſſeſſion only, and leave the meer Right in A. but by the Recontinuance of the Poſſeſſion, the meer Right is therewith veſted in the Heir of the Diſſeiſor. Bracton, lib. 2. fol. 32. Britton, fol. 121. Bracton, lib. 5. fol. 372.

But if the Donee in Tail diſcontinue in Fee, now is the Reverſion of the Donor turned to a naked Right, if the Donor releaſe to the Diſcontinuee and die, and the Iſſue in Tail doth recover the Land againſt the Diſcontinuee, he ſhall leave the Reverſion in the Diſcontinuee; for the Iſſue in Tail can recover but the Eſtate-tail only, and by Conſequence muſt leave the Reverſion in the Diſcontinuee; for the Donor cannot have it againſt his Releaſe: But if the Diſſeiſee enter upon the Heir of the Diſſeiſor, and infeoff A. in Fee, and the Heir of the Diſſeiſor recover the whole Eſtate, that ſhall draw with it the meer Right, and leave nothing in the Feoffee. Nota the Diverſity. Another Diverſity is obſervable, when the naked Right is precedent before the Acquiſition of the defeaſible Eſtate; for there the Recontinuance of the defeaſible Eſtate ſhall not draw with it the preceding Right. [b] As if the Diſſeiſee diſſeiſe the Heir of the Diſſeiſor, albeit the Heir recover the Land againſt the Diſſeiſee, yet ſhall he leave the precedent Right in the Diſſeiſee. So if a Woman that hath Right of Dower diſſeiſe the Heir, and he recover the Land againſt her, yet ſhall he leave the Right of Dower in her. Poſt 319. a. [b] 50 E. 3. 7. 4 E. 3. Eſtop. 133. 11 E. 3. Entry 56. 27 E. 3. 84. 488. 6 Co. 73. a.

Another Diverſity is to be noted, when the meer Right is ſubſequent, and transferred by Act in Law; there, albeit the Poſſeſſion be continued, yet that ſhall not draw the naked Right with it, but ſhall leave it in him; as if the Heir of the Diſſeiſor be diſſeiſed, and the Diſſeiſor infeoff the Heir apparent of the Diſſeiſee being of full Age, and then the Diſſeiſee dieth, and the naked Right deſcend to him, and the Heir of the Diſſeiſor recover the Land againſt him, yet doth he leave the naked Right in the Heir of the Diſſeiſee. So if the Diſcontinuee of Tenant in Tail infeoff the Iſſue in Tail of full Age, and Tenant in Tail die, and then the Diſcontinuee recover the Land againſt him, yet he leaveth the naked Right in the Iſſue. [c] But if the Heir of the Diſſeiſor be diſſeiſed, and the Diſſeiſee releaſe to the Diſſeiſor upon Condition, if the Condition be broken, it ſhall reveſt the naked Right. And ſo if the Diſſeiſee had entred upon the Heir of the Diſſeiſor, and made a Feoffment in Fee, upon Condition, if he entred for the Condition broken, and the Heir of the Diſſeiſor entred upon him, the naked Right ſhould be left in the Diſſeiſee. But if the Heir of the Diſſeiſor had entred before the Condition broken, then the Right of the Diſſeiſee had been gone for ever. But now let us hear what Littleton ſaith. 23 H. 8. tit. Reſtore al Action Br. 5. 50 E. 3. 7. [c] 38 E. 3. 16. 9 H. 7. 24 Poſt 279. 4 Co. 9. b.

Title, this ſhall bar him of his Eſcheat, which is to be underſtood of a Diſcent or Feoffment, after the Title of Eſcheat accrued; [a] for if the Diſſeiſor make a Feoffment in Fee, or die ſeiſed, and after the Diſſeiſee die without Heir, then there is no Eſcheat at all, because the Lord hath a Tenant in by Title. And when Littleton wrote, the Diſſeiſee in the Caſe here put, ſhould have compelled the Lord to have avowed upon him, as Littleton holdeth. But now this is altered by a later Statute of [b] 21 H. 8. for whereas by Fines, Recoveries, Grants and ſecret Feoffments, &c. made by Tenants to Perſons unknown, the Lords were put from Knowledge of their Tenants, upon whom by Order of Law they ſhould make their Avowry, &c. It is by that Statute enacted, That if the Lord ſhall diſtrain upon the Lands and Tenements holden, &c. that he may avow, &c. upon the ſame Lands, &c. as in Lands, &c. within his Fee or Seigniory, &c. without naming of any Perſon certain, and without making Avowry of a Perſon certain. Upon which Statute theſe four Points are to be obſerved: First, That the Lord hath ſtill Election either to avow according to the Common Law, or by Force of the Statute, by reaſon of this Word (May.) Secondly, Albeit the Purview of the Act be general, yet all neceſſary Incidents are to be ſupplied, and the Scope and End of the Act to be taken: And therefore though he need not to make his Avowry upon any Perſon certain, yet he muſt alledge Seiſin by the Hands of ſome Tenant in certain, within forty Years. Thirdly, That if the Avowry be made according to the Statute, every Plaintiff in the Replevin, or ſecond Deliverance, be he Termor or other, may have every Anſwer to the Avowry that is ſufficient, and alſo have Aid, and every other Advantage in Law (Diſclaimer only excepted) for diſclaim he cannot, becauſe in that Caſe the Avowry is made upon no certain Perſon. Fourthly, Where the Words of the Statute be, If the Lord diſtrain upon the Lands and Tenements holden, yet if the Lord come to diſtrain, and the Tenant enchaſe his Beaſts which were within the View out of the Land holden, and there the Lord diſtrain, albeit the Diſtreſs be taken out of his Fee and Seigniory, in that Caſe, yet is it within the ſaid Statute; for in Judgment of Law the Diſtreſs is lawful, and as taken within his Fee and Seigniory; and this Statute being made to ſuppreſs Fraud, is to be taken in Equity.

[a] 7 H. 1. 7. 3 R. 2. Entr. cong. 38. 2 H. 4. 8. 6 H. 7. 9. Vide Sect. 556.

[b] 21 H. 8. cap. 19.

Lib. 9. fo. 136. Aſcough's Caſe. 27 H. 8. fo. 4. 32 H. 8. cap. 2. Lib. 9. fol. 36. Bucknal's Caſe.

1 Cro. 83. 34 H. 8. Avowry Br. 113. 27 H. 8. 4 & 20.

Lib. 9. f. 22. in Caſe Davowry. 44 E. 3. 20. 11 H. 7. 4. 21 H. 7. 40. 34 H. 6. 18. 6 R. 2. Reſcous 11. Ante 161. a.

Sect. 455.

¶ ITem, ſi terre ſoit done a un home en Tail, reſervant al Donor, & a ſes heires un certain Rent, ſi le Donee ſoit diſſeiſie, & puis le Donor releſſa al Donee & a ſes heires tout le droit q̃ il avoit en la terr̃, & puis l'Donee enter en la terr̃ ſur le Diſſeiſor, en ceſt caſe le Rent eſt ale, pur ceo que le Diſſeiſee al temps de releaſe fait fuit tenant en droit, & en le Ley al Donor, & avowry a fine force covient de eſtre fait ſur luy per le Donor pur le rent aderere, &c. Mes uncore rien de droit de terres, ſ̃. de le droit de le reverſion paſſera per tiel Releaſe, pur ceo que le Donee a q̃ le Releaſe eſt fait, adonqz navoit riens en la terre forſqz tantſolement un droit, & iſſint le droit del terre ne puiſſoit adonques paſſer al Donee per tiel Releaſe.

ALſo if Land be given to a Man in Tail, reſerving to the Donor and to his Heirs a certain Rent, if the Donee be diſſeiſed, and after the Donor releaſe to the Donee and his Heirs, all the Right which he hath in the Land, and after the Donee enter into the Land upon the Diſſeiſor, in this Caſe the Rent is gone, for that the Diſſeiſee at the Time of the Releaſe made, was Tenant in Right, and in Law, to the Donor, and the Avowry of fine Force ought to be made upon him by the Donor for the Rent behind, *&c.* but yet nothing of the Right of the Lands, *viz.* of the Reverſion, ſhall paſs by ſuch Releaſe, for that the Donee to whom the Releaſe is made, then had nothing in the Land, but only a Right, and ſo the Right of the Land could not then paſs to the Donee by ſuch Releaſe.

and the ſame Land, then could not the ſaid Statute execute either of them for the Uncertainty. But if A. diſſeiſe one to the Uſe of B. and A. doth bargain and ſell the Land for Money to C. C. hath an Uſe: And here be two Uſes of one Land, but of ſeveral Natures, the one, viz. upon the Bargain and Sale to be executed by the Statute, and the other not. Ante 22. b.

But ſince Littleton wrote, all Uſes are transferred by Act of Parliament into Poſſeſſion; ſo as the Caſe which Littleton here puts, is thereby altogether altered. Yet it is neceſſary to be known what the Common Law was before the making of the Statute, and may ſerve for the Knowledge of the Law in like Caſe.

¶ *Incontinent ſur le Feoffment.* Quæ incontinenti fiunt in eſſe videntur.

¶ *A lour volunt, &c.* Here is implied, every Tenancy at Will is at the Will of both Parties, as before in its proper Place hath been ſhewed.

Sect. 464.

¶ UN auť cauſe ils allegeōt, Que ſi tiel fre vault rls. p an, &c. donq̄ tiel Feoffor ſerra jure en Aſſiſes & en auters enqueſts en Pleas reals, & aury en Pleas perſonals, de quel grand ſum que les Plaintiffs voilent counter, &c. Et ceo eſt p l'Common Ley de la fre, Ergo ceo eſt p̄ un grand cauſe, & la cauſe eſt, q̄ la Ley voet que tiels Feoffors & lour Heires doient occupier, &c. & p̄nder & enjoyer touts maner de p̄fits, iſſues, & revenues, &c. ſicome les Teneñts fuerōt lour meſmes ſans interruption de les Feoffees, nient obſtant tiel Feoffm̄t, Ergo meſme la Ley done p̄vity perenter tiels Feoffors & lour Heires & les Feoffees, & lour Heires, & ſic de Gradu in Gradum, &c.

ANother Cauſe they alledge, That if ſuch Land be worth forty Shillings a Year, *&c.* then ſuch Feoffor ſhall be ſworn in Aſſiſes and other Enqueſts in Pleas real, and alſo in Pleas perſonal, of what great Sum ſoever the Plaintiffs will declare, *&c.* And this is by the Common Law of the Land: *Ergo* this is for a great Cauſe: And the Cauſe is, for that the Law will that ſuch Feoffors and their Heirs ought to occupy, *&c.* and take and enjoy all Manner of Profits, Iſſues, and Revenues, *&c.* as if the Lands were their own, without Interruption of the Feoffees, notwithſtanding ſuch Feoffment: *Ergo* the ſame Law giveth a Privity between ſuch Feoffors and the Feoffees upon Confidence,

¶ BY the Statute of 2 H. 5. c. 3. Stat. 2. it is enacted, That in three Caſes he that paſſeth in an Inqueſt, ought to have Lands and Tenements to the Value of forty Shillings, viz. Firſt, Upon Trial of the Death of a Man. Secondly, In Plea real between Party and Party. And Thirdly, In Plea perſonal, where the Debt, or the Damages in the Declaration amount unto forty Marks. And it is worth the noting, That the Judges that were at the making of that Statute, did conſtrue it by Equity: For where the Statute ſpeaks in the Diſjunctive, Debt or Damages, they adjudged, that where the Debt and Damages amounted to forty Marks, that it was within the Statute. Forteſcue [a] ſaith, Ubi damna vel debitum in perſonalibus Actionibus non excedunt quadraginta Marcas monetæ Anglicanæ, hinc non requiritur, quod Juratores in Actionibus hujuſmodi tantum expendere poſſint: habebunt tamen terram vel redditum, ad valorem competentem, juxta diſcretionem Juſticiariorum, &c. And forasmuch as at the Time of the making of this Statute, the greater Part of the Lands in England, in thoſe troubleſome and dangerous Times, (when that unhappy Controverſy between the Houſes of York and Lancaſter was begun,) were in Uſe; and the Statute was made

Ante 156. b.
Vide W. 2. cap. 38.
Leſtat. de 21 E. 1. de Juratis ponendis in Aſſ. &c.
Forteſc. 62. a.
27 El. cap. 6.

9 H. 5. fol. 5.
[a] Forteſc. cap. 15.

le releaſe eſt fait. Sícome jeo leſſa certain terre a un home pur terme des ans, per force de que il eſt en poſſ. & puis jeo releſſa a luy tout le droit q̃ jeo aye en le terre ſans pluis parolx mitter en le fait, & deliver a luy le fait, donques il ad eſtate forſq̃ pur terme de ſa vie. Et la cauſe eſt, p̃ ceo q̃ quant le reverſion ou le remainder eſt en un home, le quel voile enlarger per ſon releas l'eſtate le tenant, &c. il navera plus greinder eſtate mes en tiel maner & forme, ſicome tiel Feoffor fuit ſeiſie en fee, & voiloit per ſon fait faire eſtate a un en certain forme, & deliver a luy ſeiſin p force de meſme le fait: ſi en tiel fait de feoffment ne ſoit aſcun parol de inheritance, donques il ad forſq̃ eſtate pur terme de vie, & iſſint il eſt en tiels releaſes faits p eux en la reverſion, ou en le remainder. Car ſi jeo leſſa la terre a un home p̃ terme de ſa vie, & puis jeo releſſa a luy tout mon droit, ſauns pluis dire en le releas, ſon

whom the Releaſe is made. As if I let certain Land to one for Term of Years, by Force whereof he is in Poſſeſſion, and after I releaſe to him all the Right which I have in the Land, without putting more Words in the Deed, and deliver to him the Deed, then hath he an Eſtate but for Term of his Life. And the Reaſon is, for that when the Reverſion or Remainder is in a Man who will by his Releaſe enlarge the Eſtate of the Tenant, &c. he ſhall have no greater Eſtate, but in ſuch Manner and Form, as if ſuch Leſſor were ſeiſed in Fee, and by his Deed will make an Eſtate to one in a certain Form, and deliver to him Seiſin by Force of the ſame Deed: If in ſuch Deed of Feoffment there be not any Word of Inheritance, then he hath but an Eſtate for Life, and ſo it is in ſuch Releaſes made by thoſe in the Reverſion or in the Remainder. For if I let Land to a Man for Term of his Life, and after I releaſe to him all my Right without more ſaying in the Releaſe, his Eſtate is not

Leſſee maketh a Leaſe for Years, and after A. releaſeth to the Leſſee for Years, and his Heirs, this Releaſe is void to enlarge the Eſtate, becauſe there is no Privity between A. and the Leſſee for Years.

If a Man make a Leaſe for twenty Years, and the Leſſee make a Leaſe for ten Years, if the firſt Leſſor doth releaſe to the ſecond Leſſee and his Heirs, this Releaſe is void for the Cauſe aforeſaid. Ante 270. a.

For the ſame Cauſe, if the Donee in Tail make a Leaſe for his own Life, and the Donor releaſe to the Leſſee and his Heirs, this Releaſe is void to enlarge the Eſtate.

And as Privity is neceſſary in this Caſe, ſo Privity only is not ſufficient. As if an Infant make a Leaſe for Life, and the Leſſee granteth over his Eſtate with Warranty, the Infant at full Age bringeth a Dum fuit infra ætatem, the Tenant voucheth his Grantor, who entreth into Warranty, the Demandant releaſeth to him and his Heirs: Here is Privity in Law, and a Tenancy in Suppoſition of Law, and yet becauſe he in rei veritate hath no Eſtate, it cannot enure to him by Way of Enlargement; for how can his Eſtate be enlarged that hath not any?

If a Tenant by the Curteſy grant over his Eſtate; yet he is Tenant as to an Action of Waſte, Attornment, &c. and yet a Releaſe to him and his Heirs cannot enure to enlarge his Eſtate that hath no Eſtate at all.

But if a Man make a Leaſe for Years, the Remainder for Life, a Releaſe by the Leſſor to the Leſſee for Years, and to his Heirs, is good, for that he hath both a Privity and an Eſtate, and the Releaſe alſo to him in the Remainder for Life, and his Heirs, is good alſo.

If I grant the Reverſion of my Tenant for Life, to another for Life, now ſhall not I have an Action of Waſte: But if I releaſe to the Grantee for Life, and his Heirs, now he hath

46 E. 3. 16. a. per Perſay & Finchden.
41 E. 3. 17. a. 7 E. 4. 17.

leas fait al Tenant del terre de un Rent-charge ou Common de paſture, &c. pur ceo q̃ le Tenant ne poit aver ceo q̃ a luy eſt releſſe, &c. iſſint tiels releases urera per extinguiſhment en touts voyes.

made to the Tenant of the Land of a Rent-charge or Common of Paſture, *&c.* becauſe the Tenant cannot have that which to him is releaſed, *&c.* ſo ſuch Releaſes ſhall enure by Way of Extinguiſhment in all Ways.

this muſt of Neceſſity enure by Way of Extinguiſhment to all Men, for the Tenant cannot have Service to be taken of himſelf, nor one Man can be both Lord and Tenant. The ſecond is of a Rent-charge; a Man cannot have Land and Rent iſſuing out of the ſame Land. Thirdly, A Man cannot have Land and a Common of Paſture iſſuing out of the ſame Land; Et ſic de cæteris. For in all theſe Caſes, and the like, he to whom the Releaſe is made cannot have and enjoy the Thing that is releaſed. But in the Caſe of the Right of the Land, the Tenant of the Land may take and enjoy it for Strengthening his Eſtate therein.

The Meſne being a Feme entermarries with the Tenant peravail, if the Lord releaſe to the Feme, the Seigniory only is extinct; but if he releaſe to the Husband, both Seigniory and Meſnalty are extinct. And in this Caſe if the Lord releaſe to the Husband and Wife, it is a Queſtion how the Releaſe ſhall enure; but it is no Queſtion but that a Releaſe may be made to a Meſnalty or a Seigniory ſuſpended in Part of the Eſtate. Ante 273. b.

But here obſerve a Diverſity where a Releaſe enureth by Way of Extinguiſhment of an Inheritance, which is in Poſſeſſion and may be granted over, and a Releaſe of a Right, or an Action to Lands which cannot be granted over. [a] For the Lord may releaſe his Seigniory to the Tenant of the Land for Life or in Tail; Et ſic de cæteris. But ſo cannot one releaſe a Right or an Action, for if it be releaſed but for an Hour, it is extinct for ever, as hath been ſaid.

[a] 13 E. 3. tit. Extinguiſhment. Brook 45. & tit. Voucher. F. 120. 30 E. 3. 13. 19 H. 6. 19. 21 E. 3. 33. 38 Aſſ. 17. 11 H. 4. tit. Releaſe 21. 26 H. 8. 5. Poſt 298. b.

And two Things are to be obſerved here; Firſt, That by the Releaſe of all the Right in the Land, the Seigniory is extinct, as well as by the Releaſe of all the Right in the Seigniory, for the Seigniory iſſueth out of the Land. Secondly, That by the Releaſe of all his Right in the Seigniory or the Land, the whole Seigniory is extinct without any Words of Inheritance. If the Tenancy be given to a Lord and to a Stranger, and to the Heirs of the Stranger, the Lord releaſe to his Companion all the Right in the Land, this Releaſe doth not only paſs his Eſtate in the Tenancy, but extinguiſheth alſo his Right in the Seigniory; and ſo one Releaſe enures to extinguiſh ſeveral Rights in one and the ſame Land.

If there be Lord and Tenant by Fealty and Rent, the Lord granteth the Seigniory for Years, and the Tenant atturneth, the Lord releaſeth his Seigniory to the Tenant for Years and to the Tenant of the Land generally, the whole Seigniory is extinct, and the Eſtate of the Leſſee alſo. But if the Releaſe had been to them and their Heirs, then the Leſſee had had the Inheritance of the one Moiety, and the other Moiety had been extinct. And the Reaſon of this Diverſity is, becauſe when the Releaſe is made generally, it can enure to the Leſſee but for Life, becauſe it enureth by Way of Enlargement of Eſtate; and being made to the Tenant of the Land, it enureth by Way of Extinguiſhment, as Littleton here ſaith; and then there cannot remain a particular Eſtate in the Seigniory for Life. But when the Releaſe is made to them and their Heirs, each one takes a Moiety; the one by Way of Increaſing the Eſtate, and the other by Extinguiſhment. 11 Co. 17. Sect. 544.

Sect. 481.

¶ Item de prober que le grand Aſſiſe doit paſſer pur le demandant en le caſe avantdit, jeo aye oye ſovent la Lecture de l'eſtatute

ALſo to prove that the grand Aſſiſe ought to paſs for the Demandant in the Caſe aforeſaid, I have often heard the Reading of the Statute of *Weſt.* 2.

¶ *Jeo aye oye ſovent la Lecture de Weſt.* 2. 2 Inſt. 345.

Here it is to be obſerved, of what Authority ancient Lectures or Readings upon Statutes were, for that they had five excellent Qualities: Firſt, they declared what the Common Law was before the Making

king of the Statute, as here it appeareth. Secondly, They opened the true Senſe and Meaning of the Statute. Thirdly, There Caſes were brief, having at the moſt one Point at the Common Law, and another upon the Statute. Fourthly, plain and perſpicuous, for then the Honour of the Reader was to excel others in Authorities, Arguments and Reaſons, for Proof of his Opinion, and for Confutation of the Objections againſt it. Fifthly, They read to ſuppreſs ſubtle Inventions to creep out of the Statute. But now Readings having loſt the ſaid former Qualities, have loſt alſo their former Authorities; for now the Caſes are long, obſcure and intricate, full of new Conceits, liker rather to Riddles than Lectures, which when they are opened, they vaniſh away like Smoak; and the Readers are like to Lapwings, who ſeem to be neareſt their Neſts when they are fartheſt from them, and all their Study is to find nice Evaſions out of the Statute. By the Authority of Littleton, ancient Readings may be cited for Proof of the Law, but new Readings have not that Honour, for that they are ſo obſcure and dark.

6 Co. 8. 6.

de Weſtminſter ſecõd, q̃ commence, In caſu quo vir amiſerit per defaltam tenementum quod fuit jus uxoris ſuæ, &c. q̃ a le Common Ley devant meſme l'eſtatute, ſi leaſe ſoit fait a un home pur terme de vie, le remainder ouſter en Fee, & un eſtrange p feint Action uſt recover envers le Tenant a terme de vie per default, & puis le Tenant morust, celuy en le remainder navoit aſcun remedy devant le Statute, pur ceo que il navoit aſcun poſſeſſion del terre.

which begun thus: *In caſu quo vir amiſerit per defaltam tenementum quod fuit jus uxoris ſuæ, &c.* that at the Common Law before the ſaid Statute, if a Leaſe were made to a Man for Term of Life, the Remainder over in Fee, and a Stranger by feigned Action recovered againſt the Tenant for Life by Default, and after the Tenant dieth, he in the Remainder had no Remedy before the Statute, becauſe he had not any Poſſeſſion of the Land.

¶ *Leſtatute de W.* 2. Which is the third Chapter.

¶ *Le remainder ouſter en fee.* Here is to be obſerved, that although the Statute ſpeaketh of a Reverſion, [a] yet by the Authority of Littleton, a Remainder is within the Statute.

[a] 24 E. 3. 35. 28 E. 3. 36. 18 E. 2. Entry 74. 3 E. 2. Entry 7. 6 E. 3. 24. 7 E. 3. Entry 62. 15 E. 4. 15. Regiſter 241.

See the Statute of 14 Eliz. cap. 8. which provideth fully for him in the Remainder.

¶ *Feint action.* Feint is a Participle of the French Word Feindre, which is to feign, or falſly pretend; ſo as a feint Action is a falſe Action.

[b] W. 2. cap. 5. Vide 14 E. 3. Formedon 31. 11 E. 3. Ibid. 31. 7 H. 7. 13.

¶ *Navoit aſcun remedy devant leſtatute.* [b] Here it appeareth by Littleton, That if a Man maketh a Leaſe for Life, the Remainder in Fee, and the Tenant for Life ſuffereth a Recovery by Default, that he in the Remainder ſhould not have a Formedon, by the Common Law: For Littleton ſaith, That he had not any Remedy before the Statute. Neither is there any ſuch Writ in that Caſe in the Regiſter, albeit in ſome Books Mention is made of ſuch a Writ.

Sect. 482.

38 E. 3. 3. Fit. Juris utrum 1.

Poſt 293. a.

THERE a Diſſeiſin gotten by Wrong, and defeated by the Entry of him that Right hath, is ſufficient to maintain a Writ of Right againſt the Recoveror in this Caſe; for albeit

¶ MES ſi celuy en le remainder uſt enter ſur le Tenãt a terme de vie, & luy diſſeiſiſt, & apres

BUt if he in the Remainder had entred upon the Tenant for Life, and diſſeiſed him, and after the Te-

le

B. acknowledgeth a Statute, and Execution is ſued of the Seigniory. A. dieth without heir, and the Conuſee entreth, and is evicted by the Diſſeiſee; he ſhall have the Aid of this Statute; and yet it is out of the Letter of the Law, for the Seigniory was delivered in Execution, and not the Tenancy; but he was Tenant by Execution of thoſe Lands, and therefore within the Statute. But the Perquiſite of a Villein being evicted is out of the Statute; for he is Tenant in Fee-ſimple thereof, and not Tenant by Execution.

Seventhly, Where the Words be (delivered and taken in Execution) yet if after the Liberate the Conuſee entreth (as he may) ſo as the Land is never delivered, yet is he within the Remedy of this Statute, for he is Tenant by Execution.

Eighthly, Where the Statute ſaith, (then every ſuch Recoveror, Obligee, and Recognizee, ſhall, &c.) and ſaith not, their Executors, Adminiſtrators or Aſſigns, but they are omitted in this material Place; yet by a benign Interpretation this Statute ſhall extend to them, becauſe they are mentioned in the next precedent Clauſe of the Eviction; and the Remedy muſt by Conſtruction be extended to all the Perſons that appear by the Act to be grieved; a Point worthy the Obſervation. Ante 268. b.

Ninthly, Where the Statute giveth a Scire facias out of the ſame Court, &c. if the Record be removed by Writ of Error into another Court, and there affirmed, the Tenant by Execution that is evicted ſhall have a Scire facias by the Equity of this Statute out of that Court, becauſe the Scire facias muſt be grounded upon the Record. Et ſic de ſimilibus. F. N. B. 265. d.

Tenthly, Where the Statute giveth the Scire facias againſt ſuch Perſon or Perſons, &c. that were Parties to the firſt Execution, their Heirs, Executors or Aſſigns, &c. this muſt not be taken ſo generally as the Letter is; for if the firſt Execution were had againſt a Purchaſor, &c. ſo as nothing was liable in his Hands but the Land recovered; if this Land be evicted from Tenant by Execution, no Scire facias ſhall be awarded againſt him, his Heirs, Executors or Aſſigns; but if he hath other Lands ſubject to the Execution, then a Scire facias lieth againſt him or his Aſſigns, but not againſt his Executors; neither in that Caſe can he have a Scire facias upon the Statute againſt the firſt Debtor or Recogniſor, becauſe it giveth it only againſt him, &c. that was Party to the firſt Execution, his Heirs, Executors or Aſſigns. But if there be ſeveral Aſſigns of ſeveral Parcels of Lands ſubject to the Execution, one Scire facias upon this Statute ſhall lie againſt all the Aſſigns. Sed eſt modus in rebus. This little Taſte ſhall give a Light to the diligent Reader, not only to ſee into the Secrets of this Statute, but to others alſo of like Nature.

And by the Statute of 23 H. 8. cap. 6. it is provided, that the Obligee, &c. ſhall have in every Point againſt ſuch Recogniſor, &c. like Proceſs, Execution, Commodity and Advantage in every Behalf, as hath been had or made upon the Statute-Staple, and under ſuch Manner and Form, as is for the ſame Statute-Staple provided: By Force of which Branch, if the Tenant by Execution by Force of the Act of 23 H. 8. be evicted, he ſhall have the Remedy provided for Tenants by Execution upon a Statute-Staple, by the Act of 32 H. 8. In like manner by Force of that Clauſe, 32 H. 8 if the Extendors upon a Statute-Staple, &c. do extend the Lands, &c. at too high a Rate, the Obligee may pray that the Extendors themſelves may take the Lands, &c. at that Rate, &c. by Force of the ſaid Statutes of Acton Burnel and De mercatoribus. Alſo no Execution ſhall be ſued againſt the Heir within Age. 40 E. 3. 26. b. 44 E. 3. f. 10. 2 H. 4. 17. 15 H. 7. 15.

But note; That upon a Writ of Elegit the Plaintiff cannot make any ſuch Prayer, becauſe thoſe ancient Statutes do extend to a Statute-Merchant, or a Statute-Staple only, and neither to a Recovery of Debt or Damages, nor to a Recognizance in Court; and ſo hath it been reſolved. [a]

Nota; It appeareth by the Preamble of the ſaid Act of 32 H. 8. and by divers [b] Books, that after a full and perfect Execution had by Extent returned, and of Record, there ſhall never be any Re-extent upon any Eviction: But if the Extent be inſufficient in Law, there may go out a new Extent.

[c] If a Man have a Judgment given againſt him for Debt or Damages, or be bound in a Recognizance, and dieth, his Heir within Age; or having two Daughters, and the one within Age; no Execution ſhall be ſued of the Lands by Elegit during the Minority, albeit the Heir is not ſpecially bound, but charged as Terre-tenant; [d] and ſo againſt an Heir within Age no Execution ſhall be ſued upon a Statute-Merchant or Staple, nor upon the Obligation or Recognizance upon the Statute of 32 H 8. for it is excepted in the Proceſs againſt the Heir. Neither if the Heir within Age endow his Mother, ſhall Execution be ſued againſt her during his Minority.

Note, That by the Statute [e] of 27 E. 3. the Execution of Lands upon a Statute-Staple is referred to the Statute-Merchant; and by the Statute De mercatoribus no Execution ſhall be had againſt the Heir ſo long as he is within Age.

And ſince Littleton wrote, there is a right profitable Statute [f] made againſt fraudulent Feoffments, Gifts, Grants, &c. Judgments and Executions, as well of Lands and Tene-

[a] Mich. 4 & 5 Ph. & Mar. Bendloes, by all the Juſtices of the Common Pleas, 15 E. 3. Extent 7. Plowd. 82. b. 205. b.

[b] 15 E 3. Extent 7. 22 E. 3. Recovery in Value 22. 31 E. 3. Extent 13.

[c] 11 E. 3. Age 4. 15 E. 3. Age 95. 24 E. 3. 28. 29 Aſſ. 37. 29 E. 3. 50. Brook Age 33. 2 Cro. 338, 694. Sidenf. 184.

[d] Temp. E. 1. Aſſ. 402, 417. 16 H. 7. 6. Lieure d'entre, 545. 1 Cro. 295.

[e] 27 E. 3. cap 22.

[f] 13 El cap. 5. Lib. 3 fol. 80. b. Twine's Caſe. Lib. 5. f. 60. Gooche's Caſe.

See the Statutes of 3 H. 7. cap. 4. & 50 E. 3. c. 6. Mich. 12 & 13 Eliz. Dyer 295. 18 El. 351. 8 Co. 132. W. 2. cap. 18.

ments, as of Goods and Chattels, to delay, hinder or defraud Creditors, and others of their juſt and lawful Actions, Suits, Debts, Damages, Penalties, Forfeitures, Heriots, Mortuaries, and Releaſes; for the Expoſition of which and other Statutes, ſee the Authorities quoted in the Margent.

And it is to be obſerved, that the Words of the ſaid Act of 13 Eliz. are, Be it therefore declared, ordained, and enacted: And therefore like Caſes in ſemblable Miſchief ſhall be taken within the Remedy of this Act, by reaſon of this Word (declared) whereby it appeareth, what the Law was before the making of this Act. But let us now return to Littleton.

¶ *Fieri facias.* This is a Writ mentioned in the ſaid Statute, but is a Writ of Execution at the Common Law. And is called a Fieri facias, becauſe the Words of the Writ directed to the Sheriff be, Quod fieri facias de Bonis & Catallis, &c. and of thoſe Words the Writ taketh its Denomination.

But note, That a Capias ad ſatisfaciendum is not mentioned in the ſaid Statute, becauſe no Capias ad ſatisfaciendum did lie at the Common Law upon a Judgment for Debt, &c. or Damages, but only when the original Action was, Quare vi & armis, &c. But later Statutes have given a Capias ad ſatisfaciendum where Debt, &c. or Damages are recovered; as it appeareth at large in Sir William Herbert's Caſe, whereunto I refer the Reader.

Hob. 2 3. F. N. B. 104.

And it is to be obſerved, that theſe three Writs of Execution ought to be ſued out within the Year and the Day after Judgment; but if the Plaintiff ſueth out any of them within the Year, he may continue the ſame after the Year until he hath Execution. And to none of theſe Writs of Execution the Defendant can plead; but if he hath any Matter ſince the Judgment to diſcharge him of Execution, he may have an Audita querela, and relieve himſelf that Way, but plead he cannot. As if the Plaintiff after releaſe unto the Defendant all Executions; yet in none of theſe three Writs he ſhall plead it, but is driven to his Audita querela, as hath been ſaid.

Sect. 505.

¶ *Scire facias.* This is a judicial Writ, and properly lieth after the Year and Day after Judgment given, and is ſo called, becauſe the Words of the Writ to the Sheriff be, Quod Scire facias præfat' T. (being the Defendant) quod ſit coram, &c. oſtenſurus ſi quid pro ſe habeat aut dicere ſciat, quare, &c. So as by the Writ it appeareth, that the Defendant is to be warned to plead any Matter in Bar of Execution; and therefore albeit it be a judicial Writ, yet becauſe the Defendant may thereupon plead, this Scire facias is accounted in Law to be in Nature of an Action; and therefore [a] a Releaſe of all Actions is a good Bar of the ſame, and likewiſe a Releaſe of Executions is a good Bar in a Scire facias; this Writ was given in this Caſe by the

Cro. Car. 240, 255, 328.

[a] 19 H. 6. 3. 18 E. 4. 7.

8 Co. 152. Doc. pla. 330. Cro. Jac. 364.

¶ Mes ſi apres lan & jour le Plaintiff voit ſuer un Scire facias, a ſacher ſi le Defendant poit rien dire pur que le Plaintiff navera execution, donques il ſemble que tiel releas de touts actions ſerra bon plee en barr: Mes aſcuns ont ſemble contrary, entant que le briefe de Scire facias eſt un briefe d'execution, & eſt d'aver execution, &c. Mes uncore entant q̃ ſur m̃ le briefe le defendant poit pleader divers matters puis le Judgment rendue de luy ouſter d'execution, come utlagary, &c. & divers auters

But if after the Year and Day the Plaintiff will ſue a *Scire facias*, to know if the Defendant can ſay any Thing why the Plaintiff ſhould not have Execution, then it ſeemeth that ſuch Releaſe of all Actions ſhall be a good Plea in Bar. But to ſome ſeems the contrary, inaſmuch as the Writ of *Scire facias* is a Writ of Execution, and is to have Execution, &c. But yet inaſmuch as upon the ſame Writ the Defendant may plead divers Matters after Judgment given to ouſt him of Execution, as Outlawry, &c. and divers other Matters, this matters,

as here in the Writ of Right in the Attaint, and in Wager of Law; for the Judgment in every of theſe Three is final.

¶ *Le miſe eſt joyne.* Miſe is a Word of Art appropriated only to a Writ of Right, ſo called, becauſe both Parties have put themſelves upon the meer Right to be tried by Grand Aſſiſe, or by Battail; ſo as that, which in all other Actions is called an Iſſue, in a Writ of Right in that Caſe is called a Miſe. And in this Senſe Littleton taketh it here. But in a Writ of Right, if a collateral Point is to be tried, there it is called an Iſſue, and is derived of this Word [Miſſum] becauſe the whole Cauſe is put upon this Point. It is alſo taken for Expences, as Miſæ & Cuſtagia. And ſometimes it ſignifieth a cuſtomary Grant to the King, or Lords Marchers of Wales, by their Tenants at their firſt coming to their Lands.

33 H. 8. cap. 13.

¶ *Tender di. marke al Roy.* Maſter Lambard ſaith, That Mancuſa & Marca Saxonice Manucap. 7. Mearc' Nummus 30 valens denarios. And this Mearc' now called a Mark, being an old Saxon Word, is the Cauſe that England moſt commonly reckoned by Marks. Libra, Saxonice is a Pund, a pondo, which is called ſo until this Day. Solidus, qui apud nos eſt pars libræ viceſima, denarios per id temporis continebat quinque, nunc duodecim, and Scilling is a Saxon Word, and with us uſed to this Day. Penny Saxonice Pennig, Latin Denarius, but the Value of theſe have not been always one.

10 E. 3. 20. 31 E. 3. Droit. 11. 22 E. 3. 17. 18 H. 3. Droit 62. 33 E. 3. Ib. 39. Lamb. Explicat. verborum, verbo Mancuſa.

In a Writ of Right of Advowſon brought by the King, the Tenant ſhall not tender the Di. Mark, becauſe Nullum tempus occurrit Regi; and therefore the King ſhall alledge, that he or his Progenitor was ſeiſed, without ſhewing any Time.

F. N. B. 3. c. 31 E. 3. Droit. 15.

¶ *En attaint.* Attincta, is a Writ that lieth where a falſe Verdict in a Court of Record, upon an Iſſue joined by the Parties, is given. And of ancient Writers it is called Breve de convictione; and it is derived of the Participle Tinctus or Attinctus; for that if the Petty Jury be attainted of a falſe Oath, they are ſtained with Perjury, and become infamous for ever; for the Judgment at the Common Law in the Attaint importeth eight great and grievous Puniſhments. 1. Quod amittant liberam legem in perpetuum, that is, he ſhall be ſo infamous, as he ſhall never be received to be a Witneſs, or of any Jury. 2. Qd. forisfaciant omnia bona & catalla ſua. 3. Quod terræ & tenementa in manus Domini Regis capiantur. 4. Quod uxores & liberi extra domus ſuas ejicerentur. 5. Quod domus ſuæ proſtrentur. 6. Quod arbores ſuæ extirpentur. 7. Quod prata ſua arentur. Et 8. Quod corpora ſua carceri mancipentur. So odious is Perjury in this Caſe in the Eye of the Common Law, and the Severity of this Puniſhment is to this End, Ut pœna ad paucos, metus ad omnes perveniat, for there is Miſericordia puniens, and there is Crudelitas parcens: And ſeeing all Trials of real, perſonal, and mixt Actions, depend upon the Oath of twelve Men, prudent Antiquity inflicted a ſtrange and ſevere Puniſhment upon them, if they were attainted of Perjury.

Mirror, ca. 1. ſect. 17. c 3. de Attaint, ca. 3. ſect. 1. Forteſcue, ca. 26. 3 Inſt. 163, 222.

But ſince Littleton wrote, a Statute hath been made in Mitigation of the Severity of the Common Law, in Caſe when the Petty Jury is attainted, and therefore it is taken by Equity. For where the Statute ſaith, that the Party grieved ſhall have an Attaint againſt the Party which ſhall have Judgment upon the Verdict, yet an Attaint ſhall be maintained upon that Statute againſt the Executors of the Party; Et ſic de ſimilibus. [a] But ſee the Statute and Authorities quoted in the Margent. Only I thought good to obſerve three Things.

[a] 23 H. 8. cap. 3. 24 H. 8. Br. Attaint 96. 20 H. 7. 5. 42 E. 3. 26. Glanv. l. 2. c. 3. Lib. 8. ca. 9.

Firſt, That no Attaint can be maintained upon this Statute, but between Party and Party.

Secondly, That no Conuſance can be granted upon any Attaint, becauſe all Attaints are to be taken, either before the King in his Bench, or before the Juſtices of the Common Pleas, and in no other Courts, &c.

Thirdly, Conſider what Pleas may be pleaded in an Attaint by Force of this Act, and what not.

¶ *En battaile.* Duellum, Monomachia, and it ſignifieth in the Common Law a Trial by ſingle Fight, by Battail or Combat, Monomachia. [b] And in the Writ of Right neither the Tenant or Demandant ſhall fight for themſelves, but find a Champion to fight for them; becauſe if either the Demandant or Tenant ſhould be ſlain, no Judgment could be given for the Lands or Tenements in queſtion. But in an Appeal the Defendant ſhall fight for himſelf, and ſo ſhall the Plaintiff alſo; for there if the Defendant be ſlain, the Plaintiff hath the Effect of his Suit, that is, the Death of the Defendant; the Order and Solemnity whereof you may read in our ancient and later Books. And this the Law did inſtitute, when the Tenant failed of his Witneſſes, or Evidences, or other Proofs; and the Preſumption of Law is, that God will give Victory to him that hath Right.

[b] 19 H. 6. 35. 1 H. 4. 3. 30 E. 3. 20. 29 E. 3. 12. 13 H. 4. 4. Stan. 74, 17 9 E. 4. 35. Vide l. 9. f. 32. b. Mirror, ca. 4. Del Office des Juſtices, &c.

¶ *Ley gager.* Vadiare Legem, and there is alſo facere Legem, by making of his Law. That is, to take an Oath, (for Example) that he oweth not the Debt demanded of him upon a ſingle Contract, nor any Penny thereof. And it is called Wager of Law, becauſe of ancient Time

Sid. 366.

A Departure in Pleading is said to be when the second Plea containeth Matter not pursuant to his former, and which fortifieth not the same, and thereupon it is called Decessus, because he departeth from his former Plea; and therefore whensoever the Rejoinder (taking one Example for all) containeth Matter subsequent to the Matter of the Bar, and not fortifying the same, this is regularly a Departure, because it leaveth the former, and goeth to another Matter. As if in an Assise the Tenant plead a Discent from his Father, and giveth a Colour, the Demandant intitleth himself by a Feoffment from the Tenant himself, the Plaintiff cannot say, That that Feoffment was upon Condition, and to shew the Condition broken; for that should be a clear Departure from his Bar, because it containeth Matter subsequent. But in an Assise, if the Tenant pleadeth in Bar, That I. S. was seised and infeoffed him, &c. and the Plaintiff sheweth, That he himself was seised in Fee, until by I. S. disseised, who infeoffed the Tenant, and he re-entred, the Defendant may plead a Release of the Plaintiff to I. S. for this doth fortify the Bar. Sid. 10, 77, 176. Finch 391. 2 Cro. 264. 39 E. 3. 13. b. 39 H. 6. 15. 6 H. 7. 8. 21 H. 6. 32. Pl. Com. 105. 1 Mar. Dyer 97. 28 H. 8. ib. 31. Doc. Pla. 119. 6 H. 7. 8. 3 H. 6. Departure 2. 1 Cro. 228, 229, 257.

If a Man plead Performance of Covenants, and the Plaintiff reply, That he did not such an Act according to his Covenant, the Defendant saith, That he offered to do it, and the Plaintiff refused it; this is a Departure, because the Matter is not pursuant: For it is one Thing to do a Thing, and another to offer to do it, and the other refused to do it; therefore that should have been pleaded in the former Plea. Vide & Cave in a Quare impedit, what Plea shall be safely pleaded in primo placito. 8 El. Dy. 253. 23 El. Dy. 271. 6 E. 3. 3. 46 E. 3. 32. 43 E. 3. 11. 1 E. 4. 4. 18 E. 3. 4. 24. 5 H. 7. 27. 8 H. 6. 11. 33 H. 6. 14. ‡ 1 Saun. 83.

When a Man in his former Plea pleadeth an Estate made by the Common Law, in the second Plea regularly he shall not make it good by an Act of Parliament. So when in his former Plea he intitleth himself generally by the Common Law; in his second Plea he shall not enable himself by a Custom, but should have pleaded it first. 21 H. 7. 25. 27 H. 8. 3. 21 H. 7. 17. 37 H. 6. 5. 38 H. 6. 25. ‡ 1 Lev. 81. S. C. ‡ Raym. 60. ‡ Sid. 142.

If a Man plead an Estate generally, (as for Example a Feoffment in Fee) he in his second Plea shall not maintain it by other Matter tantamount in Law, as by a Disseisin and Release, or by a Lease and Release, or a Gift in Tail in Bar, and in the second Plea a Recovery in Value; for this is a Departure: But he in that Case shall count of a Gift, and maintain it in his Replication by a Recovery in Value, because he could have no other Count. 21 H. 7. 25. 1 E. 4. 4. 3 H. 7. 5. 7 H. 7. 2.

See more of this Matter, where the Plaintiff varying from Time or Place alledged in the Count of Actions transitory, shall commit no Departure.

The Plea that contains Duplicity or Multiplicity of distinct Matter to one and the same Thing, whereunto several Answers (admitting each of them to be good) are required, is not allowable in Law. And this Rule, you see, extendeth to Pleas perpetual or peremptory, and not to Pleas dilatory: For in their Time and Place a Man may use divers of them, and hereof ancient Writers speak notably; Sicut Actor una actione debet experiri saltem illa durante, sic oportet tenentem una exceptione, dum tamen peremptoria (quod de dilatoriis non est tenendum) quia si liceret pluribus uti exceptionibus peremptoriis simul & semel, sicut fieri poterit in dilatoriis, sic sequeretur, quod si in probatione unius defecerit, ad aliam probandam possit habere recursum, quod non est permissibile, non magis quam aliquem se defendere duobus baculis in duello, cum unus tantum sufficiat. Pl. Com. 139, 142.

But where the Tenant or Defendant may plead a general Issue, there upon the general Issue pleaded, he may give in Evidence as many distinct Matters, to bar the Action or Right of the Demandant or Plaintiff, as he can.

A special Verdict may contain double or treble Matter, and therefore in those Cases the Tenant or Defendant may either make Choice of one Matter, and plead it to bar the Demandant or Plaintiff, or to plead the general Issue, and to take Advantage of all; or he may plead to Part one of the Pleas in Bar, and to another Part another Plea; and his Conclusion of his Plea shall avoid Doublenels; and hereby neither the Court nor the Jury is so much inbeigled, as if one Plea should contain divers distinct Matters. And if the Tenant make Choice of one Plea in Bar, and that be found against him, yet he may resort to an Action of an higher Nature, and take Advantage of any other Matter. And the Law in this Point is by them that understand not the Reason thereof milliked, saying, Nemo prohibetur pluribus defensionibus uti. 17 E. 3. 73. Doc. Pla. 135. 39 H. 6. 27. Ante 139. a.

And it is worthy of Observation, That in the Reigns of Edward the Second, Edward the First, and upwards, the Pleadings were plain and sensible, but nothing curious; evermore having chief Respect to Matter, and not to Forms of Words, and were often holpen with a Quæsitum est, and then the Questions moved by the Court, and the Answers by the Parties, were also entred into the Roll. But even in those Days the Forms of the Register of Original Writs were then punctually observed, and Matters in Law excellently debated and resolved; and where any great Difficulty was, then it was resolved by all the Judges and Sages of the Law, (who were for Matters in Law called Concilium Regis) and their Assembly and Resolution was entred into the Roll. As for Example; In the great Case in a Quare impedit, between the King and the Prior of Worcester, concerning an Appropriation, whether it were a Mortmain, the Record saith, Ad quem diem venit prædictus Hill. 32 E. 1. Cor. Reg. in fine Rotul.

Prior

caſe l'Abbe avera un bꝛief de meſne, ſil ſoit diſtreine en ſon default per foꝛce de le dit confirmation, lou ꝑ caſe il ne puiſſoit aver un bꝛief adevant, &c.

Caſe the Abbot ſhall have a Writ of Meſne if he be diſtrained in his Default, by Force of the ſaid Confirmation, where percaſe he might not have ſuch a Writ before.

22 E. 3. 15. b. the Lord Wake's Caſe.
15 E. 3. Confirmat. 8.
F. N. B. 136. h. & q.
4 E. 4. 35. 31 E. 1. Meſne 55.
11 E. 3. Avowry 100.
22 E. 3. 18. b. 30 E. 3. 13.
16 H. 3. Avowry 243.

¶ HEre our Authoꝛ having ſeen the foꝛmer Books putteth his Caſe, that the Meſne maketh the Confirmation to hold in Frankalmoigne, and not the Loꝛd Paramount.

¶ *Et en ceſt caſe l'Abbe avera briefe de meſne.* Here is to be noted, that upon a Confirmation to hold in Free-Almoigne, there lieth a Writ of Meſne, albeit the Cauſe of Acquittal begin after the Seignioꝛ. And ſo upon ſuch a Confirmation the Tenant ſhall have Contra formam feoffamenti.

Sect. 541.

45 E. 3. 10. 30 H. 6. tit. Barre 59. Regiſtrum 102. 1 H. 6. cap. 5.

¶ HEre is to be obſerved a Diverſity between the Cuſtody of the Body of a Ward within Age, and a Right of Inheritance in the Body of a Villein in Gꝛoſs; foꝛ a Man may be put out of Poſſeſſion of the Cuſtody of his Ward, but not of his Villein in Gꝛoſs, no moꝛe than a Man can be of his Pꝛiſoner which he hath taken in War.

Poſt 323. a.
Brook, tit. Property 28.

Sect. 589, 590, 591.

Alſo of Things that are in Gꝛant, as Rents, Commons, and the like, it is at the Election of the Party whether he will be diſſeiſed of them oꝛ no, as ſhall be ſaid after in its pꝛoper Place. But of a Villein in Gꝛoſs he cannot at all be diſſeiſed. [a] Non valet confirmatio niſi ille qui confirmat ſit in poſſeſſione rei vel juris unde fieri debet confirmatio, & eodem modo niſi ille cui confirmatio fit, ſit in poſſeſſione.

24 E. 3. tit. Diſcont. 16. 42 E. 3. 18. 40 E. 3. 17. 43 E. 3. 4. 9 E. 4. 38. Dyer 10 Eliz. Crowch's Caſe.

And materially doth Littleton put his Caſe of a Villein in Gꝛoſs, foꝛ of a Villein regardant to a Manoꝛ, the Loꝛd may be put out of Poſſeſſion; foꝛ by putting him out of Poſſeſſion of the Manoꝛ which is the Pꝛincipal, he may likewiſe be put out of Poſſeſſion of the Villein regardant which is but acceſſoꝛy. And by the Recovery of the Manoꝛ the Villein is recovered.

¶ ITem ſi jeo ſue ſeiſie d'un Villein come de Villein en groſs, & un auter luy pꝛent hoꝛs de ma poſſeſſion, enclaimant luy d'eſtre ſon Villein la ou il naveit aſcun dꝛoit d'aver luy come ſon Villein, & puis jeo confirma a luy l'eſtate q̄ il ad en mon Villein, ceſt confirmation ſemble void, ꝑ ceo q̄ nul poit aver poſſeſſion de un home come de Villein en groſſe, ſi non celuy que ad dꝛoit de luy aver come ſon Villein en groſſe. Et iſſint entant q̄ celuy a que le confirmation fuit fait, ne fuit ſeiſie de luy come de ſon Villein a le temps de confirmation fait, tiel confirmation eſt void.

Alſo if I be ſeiſed of a Villein as of a Villein in Groſs, and another taketh him out of my Poſſeſſion, claiming him to be his Villein there where he hath no Right to have him as his Villein, and after I confirm to him the Eſtate which he hath in my Villein, this confirmation ſeemeth to be void, for that none may have Poſſeſſion of a Man as of a Villein in Groſs, but he which hath Right to have him as his Villein in Groſs. And ſo inaſmuch as he to whom the Confirmation was made, was not ſeiſed of him as of his Villein at the Time of the Confirmation made, ſuch Confirmation is void.

But if another doth take away my Villein in Gꝛoſs oꝛ regardant, he gaineth no Poſſeſſion of him. And this doth well appear by the Writ of Nativo habendo, foꝛ that Writ is not bꝛought againſt any Perſon in Certain (becauſe no Man can

Sect. 544.

¶ EM meſm̃ le manner eſt, lou un ad un rent charge hors de certain terre, & il granta al tenant de la terr̃ le Rent-charge, &c. & la cauſe eſt, pur ceo que appiert, per les parols del grant, que le volunt le donor eſt, que le tenant avera le rent, &c. & entant que il ne puit aver ne perceiver aſcun rent hors de ſon terre demeſne, pur ceo le fait ſerra intendue & pris pur l' pluis advantage & availe pur le Tenant que puit eſte pris, & ceo eſt per voy de extinguiſhment.

IN the ſame Manner it is, where one hath a Rent-charge out of certain Land, and he grant to the Tenant of the Land the Rent-charge, *&c.* And the Reaſon is, for that it appeareth by the Words of the Grant, That the Will of the Donor is, That the Tenant ſhall have the Rent, *&c.* and inaſmuch as he cannot have or perceive any Rent out of his own Land, therefore the Deed ſhall be intended and taken for the moſt Advantage and Avail for the Tenant, that it may be taken, and this is by Way of Extinguiſhment.

34 H. 6. fo. 42. Ante 280. a.

¶ BUT if the Grantee of the Rent-charge granteth it to the Tenant of the Land and a Stranger, it ſhall be extinguiſhed but for the Moiety: And ſo it is of a Seigniory.

Sect. 545.

¶ JTem, ſi jeo leſſa Terre a un home per terme dans, & puis jeo confirma ſõ eſtate ſans pluis parolx mitter en le fait, per cel il nad pluis greinder eſtate q̃ p terñ dans, ſicome il avoit adevant.

ALſo, if I let Land to a Man for Term of Years, and after I confirm his Eſtate, without putting more Words in the Deed, by this he hath no greater Eſtate than for Term of Years, as he had before.

Sect. 546.

¶ MES ſi jeo releſſa a luy mon droit que jeo aye en le terre ſans pluis parols mitter en le fait, il ad eſtate de frankte-nement. Iſſint poyes entend, mõ fits, divers grands diverſities penter Releaſes & Cõfirmations.

BUT if I releaſe to him all my Right which I have in the Land, without putting more Words in the Deed, he hath an Eſtate of Freehold. So thou mayſt underſtand (my Son) divers great Diverſities between Releaſes and Confirmations.

In theſe two Sections is the ſeventh Caſe, wherein a Releaſe and Confirmation do differ.

Impliedly, as if a Reversion be granted to two by Deed, and the Lessee attorn to one of them according to the Grant, this Attornment is good, but not to vest the Reversion only in him to whom Attornment is made, but it shall enure to both the Grantees, for that is according to the Grant, and for that it cannot vest the Reversion only in him to whom the Attornment is made. And so it is if one Grantee dieth, the Attornment to the Survivor is good. Ante 52. a. 297. b. 11 H. 7. 12.

If the Lord grant by Deed his Seigniory to A. for Life, the Remainder to B. in Fee, A. dieth, and then the Tenant attorn to B. this Attornment is void, because it is not according to the Grant; for then B. should have a Remainder without any particular Estate. 20 H. 6. 7.

If a Reversion be granted to a Man and a Woman, they are to have Moieties in Law; but if they intermarry, and then Attornment is had, they shall have no Moieties, (and yet by the Purport of the Grant they are to have Moieties) because it is by Act in Law. Pl. Com. 483. 2 R. 2. tit. Attornment 8. 1 Leon. 58. Temps E. 1. Attorn. 22. 18 E. 4. 7. 6 Co. 63.

If a Feme grant a Reversion to a Man in Fee, and marry with the Grantee, the Lessee attorn to the Husband, this is a good Attornment in Law to the Husband.

If a Reversion be granted by Deed to the Use of J. S. and the Lessee hearing the Deed read, or having Notice of the Contents thereof, attorn to Cestuy que use, this is an implied Attornment to the Grantee. 5 Co. Ford's Case, fo. 81. 3 Leon. 17. 4 Leon. 23.

If a Reversion be granted for Life, the Remainder in Tail, the Remainder in Fee, the Attornment to the Grantee for Life shall enure to them in the Remainder to vest the Remainder in them.

And in those Cases, if the Tenant should say, that I do attorn to the Grantee for Life, but that it shall not benefit any of them in Remainder after his Death, yet the Attornment is good to them all; for having attorned to the Tenant for Life, the Law, which he cannot controul, doth vest all in the Remainder. And of this more shall be said hereafter in this Chapter.

Littleton here putteth five Examples of an express Attornment; but of them the last is the best, because the Ear is not only a Witness of the Words, but the Eye of the Delivery of the Penny, &c. and so there is dictum & factum. And any other Words which import an Agreement or Assent to the Grant, do amount to an Attornment. And albeit these five express Attornments be all set down by Littleton, to be made to the Person of the Grantee; [a] yet an Attornment in the Absence of the Grantee is sufficient; for if he doth agree to the Grant either in his Presence or in his Absence, it is sufficient.

[a] 28 H. 8. tit. Attornment. Br. 40. Cro. Car. 440. Dyer 298. a.

Sect. 552.

¶ Item si le Seignior grant le service de son tenant a un home, & puis per un fait portant un darreine date, il granta mesmes les services a un auter, & le tenant attorne a le second grantee, ore le dit grantee ad les services, & cont que apres le Tenant voile attorner a le primer grantee, cest clerement void, &c.

ALSO if the Lord grant the Service of his Tenant to one Man, and after by his Deed bearing a later Date he grant the same Services to another, and the Tenant attorn to the second Grantee, now the said Grantee hath the Services; and albeit afterwards the Tenant will attorn to the first Grantee, this is clearly void, *&c.*

¶ Here is to be observed, that Littleton expresseth not what Estate is granted, and very materially; for if the former Grant were in Fee, and the later Grant were for Life, and the Tenant doth first attorn to the second Grantee, he cannot after attorn to the first Grantee, to make the Fee-simple pass, for that should not be according to the Grant; but in that Case the Attornment to the first is countermanded. And so it is if a Reversion expectant upon an Estate for Life be granted to another in Fee, and after the Grantor before Attornment confirm the Estate of the Lessee in Tail, the Attornment to the Grantee for the Fee-simple is void. 1 Co. 122. Cro. Car. 284.

In the same manner, if the Reversion upon an Estate for Years be granted in Fee, and the Lessor confirm the Estate of the Lessee for Life, he cannot afterward attorn.

11 H. 7. 19. 2 R. 2. ubi supra. P. 3. El. Bendloe.

If a Feme sole maketh a Lease for Life or Years, reserving a Rent, and granteth the Reversion in Fee, and taketh Husband, this is a Countermand of the Attornment.

Where our Author putteth his Case of the whole Reversion, if two Coparceners be of a Reversion, and one of them granteth the Moiety by Fine, the Conusee shall have a Quid juris clamat for the Moiety.

22 H. 7. 12.

If in the Case that our Author here putteth of several Grantees, if the Tenant attorn to both of them, the Attornment is void, because it is not according to the Grant. If a Reversion be granted for Life, and after it is granted to the same Grantee for Years, and the Lessee attorneth to both Grants, it is void for the Incertainty: A multo fortiori, if the Lord by one Deed grant his Seigniory to J. Bishop of London, and to his Heirs; and by another Deed, to J. Bishop of London, and to his Successors, and the Tenant attorn to both Grants, the Attornment is void; for albeit the Grantee be but one, yet he hath several Capacities, and the Grants are several, and the Attornment is not according to either of the Grants.

But if A. grant the Reversion of Black-Acre or White-acre, and the Lessee attorn to the Grant, and after the Grantee maketh his Election, this Attornment is good; for albeit the State was incertain, yet he attorned to the Grant in such sort, as it was made; and so note a Diversity between one Grant and several Grants; and observe in this Case an Attornment good in Expectation, and yet nothing passed at the Time of the Attornment, but by the Election subsequent.

Sect. 553.

Temps E. 2. Attornment, 48 E. 3. 15. 3 Co. 20. 1 Leon. 208.

THERE is to be observed, that when a Man maketh a Feoffment of a Manor, the Services do not pass, but remain in the Feoffor until the Freeholders do attorn; and when they do attorn, the Attornment shall have relation to some Purpose, and not to other. For albeit the Attornment be made many Years after the Feoffment, yet it shall have relation to make it pass out of the Feoffor ab initio, even by the Livery upon the Feoffment; but not to charge the Tenants with any mean Arrearages, or for Waste in the mean Time, or the like.

Plowd. 482. b. 483. a. 34 E. 3. Double Plea 24. 42 Ass. p. 6. 43 Ass. p. 20. 2 Cro. 636. 6 Co. 63. a. 8 Co. 82. b. Plowd. 259. a. Doc. pla. 239. 26 E. 3. Per quæ servitia. 8 H. 4. 1. b. 12 H. 4. 20 H. 6. 7. 35 H. 6. 9 E. 4. 33. 13 H. 7. 14. a. 1 H. 7. 31. 4 E. 6. Attornment, Br. 30.

If a Reversion of Land be granted to an Alien by Deed, and before Attornment the Alien is made Denizen, and then the Attornment is made, the King upon Office found shall have the Land: For as to the Estate between the Parties, it passeth by the Deed ab initio.

¶ Item si home soit seisie de un manor, quel Manor est parcel en demesne, & parcel en service, si il voile alener cel manor a un auter, il covient que per force del alienation, que touts les tenants que teignont del alienor, come de son Manor, attornerent al alienee, ou auterment les services demurront continualmẽt en l'alienor, forprise tenants a volunt, car il ne besoign̄ que Tenants a volunt atturnent sur tiel alienation.

ALso if a Man be seised of a Manor, which Manor is Parcel in Demesne, and Parcel in Service, if he will alien this Manor to another, it behoveth that by Force of the Alienation, all the Tenants which hold of the Alienor as of his Manor, do attorn to the Alienee, or otherwise the Services remain continually in the Alienor, saving the Tenants at Will; for it needeth not that Tenants at Will do attorn upon such Alienation, *&c.*

If a Man plead a Feoffment of a Manor, he need not plead an Attornment of the Tenants; but (if it be material) it must be denied or pleaded of the other Side.

And upon Consideration had of all the Books touching this Point, whether the Services of the Freeholders do pass, wherein there have been three several Opinions, viz. some have holden that the Services do pass in the Right by the Livery as Parcel of the Manor: But not to avow without Attornment, as in the Case of the Fine. And others have holden, that they both pass in Right and in Possession to distrain without Attornment. And the third Opinion is, that in this Case the said Services pass neither in Possession, nor in Right; but until Attornment remain

auter en le taile, rendant a moy & a mes heires un certain rent, &c. Si en ceſt caſe jeo ſue diſſeiſie de le Mañor, & touts les tenants attornont & payont lour rents al diſſeiſor, & aury le dit tenant en taile paya le rent per moy reſerve al Diſſeiſor, & puis le diſſeiſor moruſt ſeiſie, &c. & ſon heire entra, & eſt eins per diſcent, uncore en ceſt caſe jeo puiſſe bien diſtreigner le Tenant en le taile, & ſes heires, pur le rent per moy reſerve ſur le done, ſcil. auxibien pur le rent eſteant aderere devant le diſcent al heire le Diſſeiſor, & aury pur le rent q̃ happa deſtre aderere apres meſme le diſcent, nient obſtant tiel morant ſeiſie del diſſeiſor, &c. Et la cauſe eſt, pur ceo que quãt home dona tenements en le taile, ſavant le reverſion a luy, & il ſur le dit done reſerva a luy un Rent ou auters ſervices, tout le rent & les ſervices ſont incidents a la reverſion, & quant un home ad un reverſion, il ne puiſſoit eſtre ouſte de ſon reverſion per le fait dun eſtrange home, ſi non que le tenant ſoit ouſte de ſon eſtate & poſſeſſion, &c. car ſi longement que le Tenant en le Taile & ſes heires continuont lour poſſeſſion p force de mon done, ſi longement eſt le reverſion en moy & en mes heires, & entant que le rent & ſes ſervices reſerves ſur tiel done ſont incidẽts & dependants al reverſion, quecunque q̃ ad le reverſion avera meſm̃ le Rent & Services, &c.

another in Tail, yielding to me and to my Heirs a certain Rent, *&c.* if in this Caſe I be diſſeiſed of the Manor, and all the Tenants attorn and pay their Rents to the Diſſeiſor, and alſo the ſaid Tenant in Tail pay the Rent by me reſerved, to the Diſſeiſor, and after the Diſſeiſor dieth ſeiſed, *&c.* and his Heir enter and is in by Diſcent, yet in this Caſe I may well diſtrain the Tenant in Tail and his Heirs, for the Rent by me reſerved upon the Gift, *ſcil.* as well for the Rent being behind before the Diſcent to the Heir of the Diſſeiſor, as alſo for the Rent which happeneth to be behind after the ſame Diſcent, notwithſtanding ſuch dying ſeiſed of the Diſſeiſor, *&c.* And the Reaſon is, for that when a Man giveth Lands in Tail ſaving the Reverſion to himſelf, and he upon the ſaid Gift reſerveth to himſelf a Rent or other Services, all the Rent and Services are incident to the Reverſion; and when a Man hath a Reverſion he cannot be ouſted of his Reverſion by the Act of a Stranger, unleſs that the Tenant be ouſted of his Eſtate and Poſſeſſion, *&c.* For as long as the Tenant in Tail and his Heirs continue their Poſſeſſion by Force of my Gift, ſo long is the Reverſion in me and in my Heirs: And inaſmuch as the Rent and Services reſerved upon ſuch Gift, be incident and depending upon the Reverſion, whoſoever hath the Reverſion, ſhall have the ſame Rent and Services, *&c.* Dyer 94. b.

Sect.

Sect. 595.

¶ ENfeoffa un auter, *&c.* Here is implied, or make a Gift in Tail, or an Estate for Life. Here Littleton putteth a third Example of a Discontinuance made by Tenant in Tail, so as his Issue is put to his Formedon in the Descender, which is given to the Issue in Tail by the Statute of 13 E. 1. cap. 1. because he cannot enter.

Fleta, lib. 5. cap 34. F. N. B. 211, 212. Register. 4 Co. 3. b.

¶ ITem si tenant en taile de certaine terre ent enfeoffa un auter, &c. & ad issue & morust, son issue ne poit pas enter en la terre, coment q̃ il ad title & droit a ceo, mes est mis a son action q̃ est appel Formedon en le descender, &c.

ALso if Tenant in Tail of certain Land, thereof enfeoff another, *&c.* and hath Issue and dieth, his Issue may not enter into the Land, albeit he hath Title and Right to this, but is put to his Action, which is called a *Formedon en le descender, &c.*

¶ *Tenant en taile.* This extendeth as well to a Woman Tenant in Tail as to a Man, and was generally good Law when Littleton wrote, but now by the Statute of [a] 11 H. 7. if the Woman hath an Estate in Tail jointly with her Husband, or only to her self, or to her Use, in any Lands or Hereditaments of the Inheritance or Purchase of her Husband, or given to the Husband and Wife in Tail by any of the Ancestors of the Husband, or by any other Person seised to the Use of the Husband, or his Ancestors, and shall hereafter, being sole, or with any other after taken Husband, discontinue, &c. the same, every such Discontinuance shall be void; and that it shall be lawful for every Person to whom the Interest, Title, or Inheritance after the Decease of the said Woman should appertain, to enter, &c. So as if such a Feme Tenant in Tail do make any Discontinuance in Fee, in Tail, or for Life, although it be without Warranty, yet this doth not take away the Entry after her Death, either of the Issue, or of him in Reversion, or Remainder. This Statute hath been excellently expounded by divers Resolutions and Judgments [b] which I have quoted in the Margent, and are worthy of due Observation.

[a] 11 H. 7. ca. 20. 381. a. 1 Cro. 244. 1 Co. 102. 10 Co. 39. b. ‡ Bendl. 40. ‡ Jo. 31. ‡ Cro. El. 2.

[b] Dyer 3 & 4 Ph. & Mar. 146. Idem 8 El. 248. 17 El. 340. Idem 19 El. 354. 27 H. 8. 23. Lib. 5. fol. 79. Firzh. Case. Lib. 8. fol. 71, 72. F. N. B. 211. 8 Co. 88. F. N. B. 217.

If Lands were entailed to a Man and to his Wife, and to the Heirs of their two Bodies, and the Husband had made a Feoffment in Fee, and died, and then the Wife died, this had been a Discontinuance at the Common Law: For the Title of the Issue is as Heir of both their Bodies, and not as Heir to any one of them, and his Entry must ensue his Title or Action.

¶ *De Formedon.* De forma donationis, so called, because the Writ doth comprehend the Form of the Gift. And there be three Kinds of Writs of Formedon, viz. The first in the Descender to be brought by the Issue in Tail, which claim by Discent per formam doni. The Second is in the Reverter, which lieth for him in the Reversion, or his Heirs or Assigns after the State-tail be spent. The Third is in the Remainder, which the Law giveth to him in the Remainder, his Heirs or Assigns, after the Determination of the State-tail; of all which you may read in the Register, and F. N. B.

Here Littleton sheweth that the Issue in Tail shall have a Formedon in the Descender; what other Actions Tenant in Tail may have, and not have, is good to be seen.

[c] 4 E. 3. 38. 43 E. 3. 25. 4 E. 4. 25. F. N. B. 124.

[c] Tenant in Tail shall have a Quod permittat.

[d] 2 E. 2. Droit 28.

[d] Tenant in Tail shall have a Writ of Customs and Services in le debet & solet, but shall not have it in the Debet only.

In like Manner he shall have a Secta ad molendinum in le debet & solet, but not in the Debet tantum.

[e] 21 E. 3. 11. 5 E. 3. 23. 11 H. 4. 49.

[e] Tenant in Tail shall have a Writ of Entre in consimili casu, and an Admeasurement, and a Nativo habendo, Cessavit, Escheat, Waste, and the like.

[f] 2 E. 3. Droit 28. 13 H. 7. 24. 5 E. 4. 2. 20 E. 3. Avowry 131. F. N. B. 10. 46 E. 3. tit. Cui in vita 33.

[f] But Tenant in Tail shall not have a Writ of Right Sur disclaimer, nor a Quo jure, nor a Ne injuste vexes, nor a Nuper obiit, or Rationabili parte, nor a Mortdancestor, nor a Sur cui in vita; for these and the like, none but Tenant in Fee shall have: And the highest Writ that a Tenant in Tail can have is a Formedon.

Statute of W. 2. ca. 1. De donis conditionalibus, Quod non habeant illi quibus tenementum sic fuerit datum potestatem alienandi, &c. Upon these Words the Sages of the Law have construed the said Act according to the Rule and Reason of the Common Law, and that in divers and sundry variable Manners. For some Alienations of Tenant in Tail they have adjudged voidable by the Issue in Tail by Action only; some at the Election of the Issue in Tail to avoid it by Action, Entry or Claim; some are meerly void by the Death of the Tenant in Tail; which several Constructions were made upon the self same Words aforesaid.

18 E. 3. 12. 19 E. 3. Bre. 468. 24 E. 3. 28. 36 Ass. 8. 22 R. 2. Discon. 5 E. 4. 3. 4 H. 7. 17. 33 E. Formedon & 13. 7. Pl. Com. Smith and Stapleton's Case. 3 Co. 85.

As for Example; If Tenant in Tail make a Feoffment in Fee, this drives the Issue in Tail to his Action, which is called in Law a Discontinuance; and this Construction was made, for that at the Common Law the Feoffment of an Abbot or Bishop, or of the Husband seised in the Right of his Wife, did work a Discontinuance, and did drive the Successor and the Wife to their Action, and foreclosed them of their Entry: And as the Entry of the Issue was taken away, so consequently of them in Reversion and Remainder. Also if an Abbot, Bishop, or Husband in the Right of his Wife, seised of a Rent, or of any other Inheritance that lieth in Grant, had alened, it was in the Election of the Successor or Wife after the Death of her Husband to claim the Rent, &c. or to bring an Action; for that Alienation did not work a Discontinuance; and so it is by Construction in Case of Tenant in Tail. Lastly, If the Abbot, Bishop, or Husband, had granted a Rent newly created out of the Land, &c. to another in Fee, this had utterly ceased by their Death; and so it is also by Construction in Case of Tenant in Tail. So as these Words (Non habet potestatem alienandi) do work these Effects, viz. as to Lands, that a Feoffment barreth not the Issue, &c. of his Action, but worketh a Discontinuance to bar him of his Entry: As to Rents or any Thing in esse, that lie in Grant, that the said Words do take away his Power to make any Discontinuance; as to Rents, &c. newly created, that they take away his Power to make them to continue longer than during his Life.

Plowd. 437. a.

But there is a Diversity between an Alienation working a Discontinuance of an Estate which taketh away an Entry, and an Alienation working, devesting or displacing of Estates, which taketh away no Entry. As if there be Tenant for Life, the Remainder to A. in Tail, the Remainder to B. in Fee, if Tenant for Life doth alien in Fee, this doth devest and displace the Remainders, but worketh no Discontinuance. And therein it is to be observed, That to every Discontinuance there is necessary a Devesting, or Displacing of the Estate, and turning the same to a Right: For if it be not turned to a Right, they that have the Estate cannot be driven to an Action. And that is the Reason that such Inheritances, as lie in Grant, cannot by Grant be discontinued, because such a Grant devesteth no Estate, but passeth only that which he may lawfully grant; and so the Estate it self doth descend, revert, or remain, as shall be said hereafter in this Chapter.

A. maketh a Gift in Tail to B. who maketh a Gift in Tail to C. C. maketh a Feoffment in Fee, and dieth without Issue, B. hath Issue and dieth, the Issue of B. shall enter; for albeit the Feoffment of C. did discontinue the Reversion of the Fee-simple which B. had gained upon the Estate-tail made to C yet could it not discontinue the Right of the Intail which B. had, which was discontinued before; and therefore when C. died without Issue, then did the Discontinuance of the Estate-tail of B. which passed by his Livery, cease; and consequently the Entry of the Issue of B. lawful; which Case may open the Reason of many other Cases.

Also note, That a Discontinuance made by the Husband did take away the Entry only of the Wife and her Heirs by the Common Law, and not of any other which claimed by Title paramount above the Discontinuance. As if Lands had been given to the Husband and Wife, and to a third Person, and to their Heirs, and the Husband had made a Feoffment in Fee, this had been a Discontinuance of the one Moiety, and a Disseisin of the other Moiety: If the Husband had died, and then the Wife had died, the Survivor should have entred into the Whole, for he claimed not under the Discontinuance, but by Title paramount from the first Feoffor; and seeing the Right by Law doth survive, the Law doth give him a Remedy to take Advantage thereof by Entry; for other Remedy for that Moiety he could not have.

Ante 187. b. 188. a.

¶ *Fee, ou Fee taile.* And so it is of an Estate for Life.

Sect. 598, 599, 600.

¶ Item, si Tenant en Taile soit disseisie, & il relessa per

ALso, if Tenant in Tail be disseised, and he release by his

son

Sect. 623.

¶ CAR si terre soit done a un home & a ses heires males de son corps engendres, le quel ad issue deux fits, & leigne fits ad issue file & devie, & le tenant en taile fait un leas pur terme des ans, & devie, ore le reversion discendist a le fits puisne, pur ceo que le Reversion fuit forsque en le taile, & le fits puisne est Heire male, &c. Mes si le Tenant ust fait un leas pur terme de vie, &c. & puis morust, ore le Reversion discendist a le file de leigne fits, pur ceo que le reversion est en Fee simple, & la file est heire general, &c.

FOR if Land be given to a Man and to his Heirs Males of his Body engendred, who hath Issue two Sons, and the eldest Son hath Issue a Daughter and dieth, and the Tenant in Tail maketh a Lease for Years, and die; now the Reversion descendeth to the younger Son, for that the Reversion was but in the Tail, and the youngest Son is Heir Male, *&c.* But if the Tenant had made a Lease for Life, *&c.* and after died, now the Reversion descendeth to the Daughter of the elder Brother, for that the Reversion is in the Fee-simple, and the Daughter is Heir general, *&c.*

This is evident also, and needeth no Explanation.

Sect. 624.

¶ ITem si home soit seisie en taile de terres devisables per testament, &c. & il ceo devisa a un auter en fee, & morust, & lauter enter, &c. ceo nest pas discontinuance, pur ceo q̃ nul discontinuance fuit fait en la vie del tenant en le taile, &c.

ALso if a Man be seised in Tail of Lands devisable by Testament, *&c.* and he deviseth this to another in Fee, and dieth, and the other enter, *&c.* this is no Discontinuance, for that no Discontinuance was made in the Life of the Tenant in Tail, *&c.*

9 E. 4. 22. 20 H. 6. 14. Vide 18 E. 3. 8. Cro. Car. 405. Post 356. a.

¶ THis is manifest, and needeth no Explanation: Only this is to be observed, That no Discontinuance can be made by Tenant in Tail, but such as is made, and taketh Effect in his Life-time, which is here implied in the [&c.]

Sect. 625.

[a] 9 E. 4. 24. b.

AND of this Opinion is Littleton [a] in our Books, and saith that so it was adjudged.

Lib. 1. fol. 140. in Chudley's Case.

¶ *Enfeoffa le donor, &c.* This must be understood where the Reversion of the Donor is immediately ex-

¶ ITem si terre soit done en taile, savant le Reversion al Donor, & puis le tenant en taile per son fait enfeoffa le Donor

ALso if Land be given in Tail, saving the Reversion to the Donor, and after the Tenant in Tail by his Deed enfeoff the Do-

a aver

Sect. 630.

¶ ET nota, q̃ ascuns font Discontinuances pur ime de vie. Sicome Tenant en le taile fait un Lease p̃ terme de vie, savant le reversion a luy, ausy longement que le reversion est al Tenant en taile, ou a ses heires, ceo nest Discontinuance, forsq̃ durant la vie le Tenant a terme de vie, &c. Et si tiel Tenant en taile dona les Tenements a un auter en taile, savant le reversion, donques ceo est Discontinuance durant le second taile, &c.

AND note, that some make Discontinuances for Term of Life. As if Tenant in Tail make a Lease for Life, saving the Reversion to him, as long as the Reversion is to the Tenant in Tail or to his Heirs: This is no Discontinuance but during the Life of Tenant for Life, *&c.* And if such Tenant in Tail giveth the Lands to another in Tail, saving the Reversion, then this is a Discontinuance during the second Tail, *&c.*

THIS is manifest, and hath been handled before, and needeth no Explanation; only this is to be observed, where Littleton putteth hereafter Cases of Discontinuances by Feoffment, &c. he hath a double Intendment: First, By Feoffment or by any other Conveyance which may make a Discontinuance. Secondly, &c. implieth a Discontinuance by a Gift in Tail, or a Lease for Life, &c.

Sect. 631.

¶ MES lou le tenant en taile fait un leale p̃ terme dans, ou p̃ terme de vie, le remainder a un auter en fee, & deliver̃ livery de seisin accordant; ceo est Discontinuance en fee, p̃ ceo q̃ le Fee-simple passa per force de livery de seisin, &c.

BUT where the Tenant in Tail maketh a Lease for Years or for Life, the Remainder to another in Fee, and delivereth Livery of Seisin accordingly; this is a Discontinuance in Fee, for that the Fee-simple passeth by Force of the Livery of Seisin, *&c.*

This is evident also, and hereof sufficient hath been spoken before.

Sect. 632.

¶ ET est ascavoir, q̃ ascuns tiels Discontinuances sont fait sur condition, &c. & pur ceo que les conditions sont enfreints, &c. ou pur

AND it is to be understood, that some such Discontinuances are made upon Condition, *&c.* and for that the Conditions be broken, *&c.* or for

¶ *Discontinuances fait sur condition, &c.* Here is to be understood a Diversity between a Condition in Deed, whereof Littleton here speaketh, and a Condition in Law, whereof somewhat hath been said before in this Chapter, viz.

if the Time be devolved to the King; for the first Step or Beginning faileth: And in humane Things, Quod non habet principium, non habet finem. And all these Points were resolved * in a Writ of Error brought by Richard, Bishop of London, and John Lancaster against Anthony Lowe, upon a Judgment given against them in a Quare Impedit in the Common Pleas for the Church of Winbishe. But now let us hear what our Author will say unto us.

* Mich. 3 Jacobi. 2 Cro. 92.

Sect. 649.

¶ ITem si Tenant en taile ad issue & soit disseisie, & puis il relessa p son fait tout son droit a le disseisor, en cest case nul droit de taile poit estre en le Tenant en taile, pur ceo que il avoit releas tout son droit. Et nul droit poit estre en l'issue en le taile durant le vie son pere. Et tiel droit del enheritance en le taile nest pas tout ousterment expire p force de tiel releas, &c. Ergo, il covient q̃ tiel droit demurt en abeiance, ut supra, durant la vie le tenant en taile, q̃ relessa, &c. & apres s̃ decease donqz est tiel droit maintenant en son issue en fait, &c.

ALso if Tenant in Tail hath Issue and is disseised, and after he releaseth by his Deed all his Right to the Disseisor. In this Case no Right of Tail can be in the Tenant in Tail, because he hath released all his Right. And no Right can be in the Issue in Tail during the Life of his Father. And such Right of the Inheritance in the Tail is not altogether expired by Force of such Release, *&c. Ergo*, it must needs be that such Right remain in Abeyance, *ut supra*, during the Life of Tenant in Tail that releaseth, *&c.* and after his Decease such Right presently is in his Issue in Deed, *&c.*

¶ LIttleton having declared where a Fee is in Abeiance, and where a Freehold and Fee is in Abeyance by Act in Law; and where a Fee that is in Abeyance may be charged; here he putteth two Cases where a Right of an Estate-tail may be in Abeyance by the Act of the Party; which are so clear and evident, as there needs no further Proof or Argument than Littleton hath justly and artificially made, albeit some Objections of no Weight have been made against it. If Tenant in Tail of Lands holden of the King be attainted of Felony, and the King after Office seiseth the same, the Estate-tail is in Abeyance, there said to be in Suspence. Plowd. 556, 562. Plowd. 56. Hob. 338. Pl. Com. fol. 562, 563. in Walsingham's Case. 14 E. 3. Discont. 5. Cro. Car. 427, 8, 9. Ante 217. a. Dyer 71. a. Ante 263. b. 299. b. 331. a. 342. b.

¶ *Grant son estate, concedit statum suum.* State or Estate signifieth such Inheritance, Freehold, Term for Years, Tenancy by Statute-Merchant, Staple, Elegit, or the like, as any Man hath in Lands or Tenements, &c. And by the Grant of his Estate, &c. as much as he can grant shall pass, as here by Littleton's Case appeareth. Tenant for Life, the Remainder in Tail, the Remainder to the right Heirs of Tenant for Life; Tenant for Life grants totum statum suum to a Man and his Heirs; both Estates do pass. Vide Sect. 65, 524, 525, 526. 44 E. 3. 10. 43 Ass. 8. 5 H. 7. 30. 44 Ass. 28. 44 E. 3. 10.

¶ *Right.* Jus sive rectum (which Littleton often useth) signifieth properly, and specially in Writs and Pleadings, when an Estate is turned to a Right, as by Discontinuance, Disseisin, &c. where it shall be said, Quod jus descendit & non terra. But (Right) doth also include the Estate Plowd. 484. 20 H. 6. 9.

Sect. 650.

¶ EN mesme le manner est, lou Tenant en taile granta tout son Estate a un auter, en cest cas le Grantee nad estate forsque pur terme de

IN the same Manner it is where Tenant in Tail grants all his Estate to another; in this Case the Grantee hath no Estate but for Term of Life of the Te-

Estate in esse in Conveyances; and therefore if Tenant in Fee-simple make a Lease for Years, and release all his Right in the Land to the Lessee and his Heirs, the whole Estate in Fee-simple passeth.

Lib. 8. fol. 153. Altham's Case, 39 H. 6. 38.

1 Cro. 429.

And so commonly in Fines, the Right of the Land includeth and passeth the State of the Land, as A. cognovit tenementa prædicta esse jus ipsius B. &c. And the Statute [a] saith, Jus suum defendere, (which is) statum suum. And note that there is Jus recuperandi, jus intrandi, jus habendi, jus retinendi, jus percipiendi, jus possidendi.

[a] W. 2. cap. 3.

Title properly (as some say) is when a Man hath a lawful Cause of Entry into Lands whereof another is seised, for the which he can have no Action; as Title of Condition, Title of Mortmain, &c. But legally this word (Title) includeth a Right also, as you shall perceive in many Places in Littleton; and Title is the more general Word, for every Right is a Title, but every Title is not such a Right for which an Action lieth; and therefore Titulus est justa causa possidendi quod nostrum est, and signifieth the Means whereby a Man cometh to Land, as his Title is by Fine, or by Feoffment, &c. And when the Plaintiff in Assise maketh himself a Title, the Tenant may say, Veniat Assisa super titulum, which is as much as to say, as upon the Title which the Plaintiff hath made by that particular Conveyance; Et dicitur titulus à tuendo, because by it he holdeth and defendeth his Land; and as by a Release of Right a Title is released, so by Release of a Title a Right is released also. See more hereof in Fitzherbert and Brook's Abridgments, in the Title of Title.

Vide Sect. 429, 659, &c.

6 H. 7. 8. a.

¶ *Interest.* Interesse is vulgarly taken for a Term or Chattel real, and more particularly for a future Term; in which Case it is said in Pleading, that he is possessed De interesse termini. But ex vi termini, in legal Understanding, it extendeth to Estates, Rights and Titles, that a Man hath of, in, to, or out of Lands; for he is truly said to have an Interest in them: And by the Grant of totum interesse suum in such Lands, as well Reversions as Possessions in Fee-simple shall pass. And all these Words singularly spoken are nomina collectiva, for by the Grant of totum statum suum in Lands, all his Estates therein pass; Et sic de cæteris.

Pl. Com. f. 374. in Seignior Zouch's Case, & fol. 487, 448. in Nichol's Case.
23 H. 8. Taile Br. 32.
35 H. 8. Grant Br. 150.
Vide 16 El. Dyer 325. b. Titulum.

¶ *Ne unques avera briefe de waste, &c.* So it is if Tenant for Life be, the Remainder in Tail, and he in the Remainder release to the Tenant for Life, all his Right and State in the Land. Hereby it is said in our Books, that the Estate of the Lessee is not inlarged; but the Release serveth to this Purpose, to put the Estate-tail into Abeyance, so as after that he in the Remainder cannot have an Action of Waste; yet in that Case (saving Reformation) the Lessee for Life hath an Estate for the Life of Tenant in Tail expectant upon his own Life. But if Tenant in Fee release to his Tenant for Life all his Right; yet he shall have an Action of Waste. And if Tenant in Tail make a Lease for his own Life, he shall have an Action of Waste.

41 E. 3. tit. Waste 83.
11 H. 4. 67. 13 H. 7. 10.
Per Dyer 27 H. 8. 20.

42 E. 3. 23.
F. N. B. 60. H. 41 E. 3. Waste 83. 42 E. 3. 18.

vie del tenant en le taile, & le reversion de le taile nest pas en le tenant en taile, pur ceo q̄ il avoit grant tout son estate & son droit, &c. Et si le tenant a que le grant fuit fait fist waste, le tenant en le tail ne unque avera brief de waste, pur ceo que nul reversion est en luy. Mes le Reversion & le Inheritance de le taile, durant le vie le tenant en le taile, est en abeiance, cest ascavoir, tantsolement en le remembrance, consideration, & intelligence de la ley.

nant in Tail, and the Reversion of the Tail is not in the Tenant in Tail, because he hath granted all his Estate and his Right, &c. And if the Tenant to whom the Grant was made make Waste, the Tenant in Tail shall not have a Writ of Waste, for that no Reversion is in him: But the Reversion and Inheritance of the Tail, during the Life of the Tenant in Tail, is in Abeyance, that is to say, only in the Remembrance, Consideration, and Intelligence of the Law.

un common de Pa-ſture, ou ove un rent charge, & puis le te-nant en le taile mo-ruſt, ore il ſemble que le terre eſt diſcharge del common, & de le rent, pur ceo que le heire eſt eins de au-ter eſtate en la terre, que il fuit al temps de le charge fait, en-tant q̃ il eſt en ſon remitter per force de le taile, & iſſint l'e-ſtate, q̃ il avoit al temps de le charge, eſt ouſterment defeat, &c.

the ſame Land with a Common of Paſture, or with a Rent-charge, and after the Tenant in Tail dieth; now it ſeemeth that the Land is diſcharged of the Common, and of the Rent, for that the Heir is in of another Eſtate in the Land than he was at the Time of the Charge made, inaſ-much as he is in his Re-mitter by Force of the Tail, and ſo the Eſtate which he had at the Time of the Charge is utterly defeated, *&c.*

&c. The Reaſon is, becauſe the Grantor had not any Right of the Eſtate in Tail in him at the Time of the Grant, but only the Eſtate in Fee-ſimple gained by the Feoffment, which (as Littleton here ſaith) is wholly defeated. And the State of the Land out of which the Rent iſſued being defeated, the Rent is defeated alſo. 3 Co. 5. b. Hob. 45.

But if Tenant in Tail make a Leaſe for Life, where-by he gaineth a new Reverſion in Fee, ſo long as Tenant for Life liveth; and he granteth a Rent-charge out of the Rever-ſion, and after Tenant for Life dieth, whereby the Gran-tor becometh Tenant in Tail again, and the Reverſion in Fee defeated; yet becauſe the Grantor had a Right of the Entail in him, cloathed with a defeaſible Fee-ſimple, the Rent-charge remaineth good againſt him, but not againſt his Iſſue; which Diverſity is worthy of Obſervation, for it openeth the Reaſon of many Cases. 11 H. 7. 21. Edrich's Caſe. Mo. 319. Ante 345. a. 278. a.

If the Heir apparent of the Diſſeiſee diſſeiſe the Diſſeiſor, and grant a Rent-charge, and then the Diſſeiſee dieth, the Grantor ſhall hold it diſcharged; for there a new Right of En-try doth deſcend unto him, and therefore he is remitted.

So if the Father diſſeiſe the Grandfather, and granteth a Rent-charge, and dieth; now is the Entry of the Grandfather taken away; if after the Grandfather dieth, the Son is re-mitted, and he ſhall avoid the Charge. So as where our Author putteth his Example of a Fee-tail, it holdeth alſo in Caſe of a Fee-ſimple.

¶ *Un common de Paſture, ou un Rent charge, &c.* Here Littleton put-teth his Caſe of Things granted out of the Land. But what if the Iſſue at full Age by Deed indented, or Deed-poll, make a Leaſe for Years of the Land, and after by the Death of Te-nant in Tail he is remitted, whether ſhall he avoid the Leaſe, or no? And it is holden he ſhall not, becauſe it is made of the Land itſelf, and the Land is become by the Leaſe in an-other Plight than it is in a Caſe of a Grant of a Rent-charge, which I gather out of our Author's own Words in another Place. 33 H. 8. Dyer 51. b. 422. 278. a. Vide Sect. 289. Mo. 126.

¶ *La terre eſt diſcharge del Rent, &c.* Littleton doth add theſe two Words materially, becauſe the whole Grant is not thereby avoided, but the Land diſcharged of the Rent-charge; for the Grantee ſhall have notwithſtanding a Writ of Annuity, and charge the Perſon of the Grantor. Lib. 2. f. 36. b.

Sect. 661.

¶ Item un prin-cipal cauſe pur que tiel heire en les caſes avantdits, & autres caſes ſemblables, ſerra dit en ſon remitter, eſt pur ceo q̃ il ny ad aſcun perſon envers q̃ il poit ſuer ſõ briefe de

ALſo a principal Cauſe why ſuch Heir in the Caſes afore-ſaid, and other like Caſes, ſhall be ſaid in his Remitter, is for that there is not any Perſon againſt whom he may ſue his Writ of *Formedon*. For againſt

¶ *Un principal cauſe pur que, &c.* And of this Opinion is Littleton in our Books. [a] [a] 12 E. 4. 20. 41 E. 3. 18. 11 H. 4. 50.

¶ *Il nad aſcun perſon envers que, &c. ſi come il avoit loialment recover meſme la terre vers un auter, &c.* Here it is to be underſtood, that regularly a Man ſhall not be remitted to a 6 Co. 58. b.

26 E. 3. 64. 10 H. 6. 11. F. N. B. 121. 22 H. 6. 25.

But if the Arrearages had become due, or the Church had fallen void before the Marriage, there they were meerly in Action before the Marriage; and therefore the Husband should not have them by the Common Law, although he survived her. And so it is of Reliefs, Mutatis mutandis. [a] But now by the Statute of 32 H. 8. cap. 37. if the Husband survive the Wife, he shall have the Arrearages as well incurred before the Marriage, as after.

But the Marriage is an absolute Gift of all Chattels personal in Possession in her own Right, whether the Husband survive the Wife or no; but if they be in Action, as Debts by Obligation, Contract, or otherwise, the Husband shall not have them unless he and his Wife recover them. And of personal Goods en auter droit, as Executrix or Administratrix, &c. the Marriage is no Gift of them to the Husband, although he survive his Wife. [85]

[b] If any Estray happen within the Manor of the Wife, if the Husband die before Seisure the Wife shall have it, for that the Property was not in the Wife before Seisure.

But as to personal Goods there is a Diversity worthy of Observation, between a Property in personal Goods (as is aforesaid) and a bare Possession; for if personal Goods be bailed to a Feme, or if she finds Goods, or if Goods come to her Hand as Executrix to a Bailiff, and taketh a Husband, this bare Possession is not given to the Husband, but the Action of Detinue must be brought against the Husband and Wife.

But now let us hear Littleton.

[a] Li. 4. f. 51. in Ognel's Case, Hill. 17 El. Rot. 457. in Com. Banco. Sharp's Case. 21 E. 4. 4. 21 H. 7. 29. 11 H. 7. 4. 26 H. 8. 7. 43 E. 3. 10. 3 H. 6. 23, 37. 4 H. 6. 5. 14 E. 2. Det. 73. 5 E. 2. ib. 169 30 E. 3. 48 E. 3. 12. 12 R. 3. Br. 638, 639. 16 E. 4. 8. 16 H. 6. Br 939.

[b] 43 E. 3. 8. v. 10 H. 6. 11. 39 E. 3. 17.

Vide Sect. 87, &c.

¶ *Le quel serra inconvenient.* This Argument ab inconvenienti, our Author hath used in many Places.

Sect. 666.

¶ ITem, si Feme seisie de certaine terre en fee prent baron, le quel aliena mesme la terre a un auter en Fee, l'Alienee lessa mesme la terre al baron & sa Feme pur terme de lour deux vies, savant le Reversion al Lessor & a ses heires, en cest cas la Feme est eins en son Remitter, & el est seisie en Fait en son demesne come de Fee, sicome el fuit adevant, p ceo q̄ le repr̄isel del Estate serra adjudge en Ley le Fait le Baron, & nemy le Fait la feme, issint nul folly poit estre adjudge en la feme, que est covert en tiel case, & en cest case le Lessor nad rien en le reversion, p̄ ceo q̄ la Feme est seisie en Fee, &c.

Ante 350. b.

ALso, if a Woman seised of certain Land in Fee, taketh a Husband, who alieneth the same Land to another in Fee, the Alienee letteth the same Land to the Husband and Wife for Term of their two Lives, saving the Reversion to the Lessor and his Heirs: In this Case the Wife is in in her Remitter, and she is seised in Deed in her Demesne as of Fee, as she was before, because the taking back of the Estate shall be adjudged in Law the Fact of the Husband, and not the Fact of the Wife; so no Folly can be adjudged in the Wife, which is Covert, in such Case. And in this Case the Lessor hath nothing in the Reversion, for that the Wife is seised in Fee, *&c.*

¶ *A feme est en son Remitter.* By this it appeareth, That albeit there be no Moieties between Husband and Wife, yet this is a Remitter presently, and standeth not upon the Survivor of the Wife, as some have thought; for if the Estate gained by Intermarriage, be a sufficient Estate to work a Remitter, a fortiori an Estate made to the Husband and Wife shall work a Remitter in the Wife. And so it is if Tenant in Tail infeoff his Issue, being within Age, and his Wife in Fee, and dieth, this is a Remitter to the Issue presently, by the Death of Tenant in Tail, though some have thought the contrary.

21 E. 3. 26. 29 E. 3. 43. 41 E. 3. Remit. 11. 19 E. 3. Remit. 14. 35. Ass. 12. 38 E. 3. 24. 39 E. 3. 29, 30. 41 E. 3. 17. 46 E. 3. 20. B. 26. E. 3. 69. Vid. Sect. 676. 11 R. 2. Remit. 12. 44 E. 3. 17.

Here

[a] 21 E. 4. 4. 23 Ass. 14. 17 H. 6. Estop. 273. 18 E. 3. 30. 7 H. 7. 6, & 16.
[b] 45 E. 3. 33. 29 Ass. 38. Pl. Com. 398.
[c] 35 H. 6. 33. 49 E. 3. 14. 45 Ass. 5. 5 E. Dyer 196. 11 El. ib. 280. 9 H. 6. 60.
[d] 5 E. 4. 7. 8 E. 4. 19. 10 E. 4. 12. 22 E. 4. 38. 32 Ass. 9. 35 H. 6. 20.
[e] 33 H. 6. 16. 4 E. 3. 22. 6 H. 4. 7. 31 E. 1. Gard. 155. F. N. B. 142. E.
[f] 12 H. 7. 4. 20 H. 6. 29. 3 H. 4. 9. 41 E. 3. 4. 11 H. 4. 30.
[g] 2 R. 3. 14. 2 R. 2. Estoppel 20. 40 E. 3. 21. 12 E. 4. 13. 18 E. 3. 31, 35. 44 E. 3. 45. 17 Ass. 27. 45 E. 3. 3. a 21 H. 7. 24. 5 E. 4. 7. 7 E. 4. 19. 3 E. 4. 11. 4 E. 3. 54. 7 E. 6. Br. Estop. 162. 11 H. 4. 30. 30 E. 3. 21. 31 Ass. 14.
[h] 38 H. 6. 12. 5 El. Dyer 222.
[i] 7 El. Dyer 244.
[k] Bract. f. 420. 26 Ass. 64. 39 Ass. 10. 11 H. 4. 84. 7 H. 6. 7. 33 Ass. 5. 11 E. 3. Estop. 229. 21 E. 3. 39. 19 E. 3. Estop. 282. 3 E. 3. ib. 23. 33 E. 3. Estop. Stath. L'estat. de 9 H. 6. cap. 11. 30 H. 6. 2. 34 H. 6. 39. 18 E. 4. 1. b. 10 E. 4. 16.

[a] Secondly, That every Estoppel, because it concludeth a Man to alledge the Truth, must be certain to every Intent, and not to be taken by Argument or Inference.

[b] Thirdly, Every Estoppel ought to be a precise Affirmation of that which maketh the Estoppel, and not be spoken impersonally; as if it be said, Ut dicitur, quia impersonalitas non concludit nec ligat: impersonalis dicitur, quia sine persona. [c] Neither doth a Recital conclude, because it is no direct Affirmation.

[d] Fourthly, A Matter alledged, that is neither traversable nor material, shall not estop.

[e] Fifthly, Regularly a Man shall not be concluded by Acceptance, or the like, before his Title accrued.

[f] Sixthly, Estoppel against Estoppel doth put the Matter at large.

[g] Seventhly, Matters alledged by way of Supposal in Counts shall not conclude after Nonsuit; otherwise it is after Judgment given; and after Nonsuit, albeit the Supposal in the Count shall not conclude, yet the Bar, Title, Replication, or other Pleading of either Party which is precisely alledged, shall conclude after Nonsuit; and hereby are the Books reconciled.

Eighthly, Where the Verity is apparent in the same Record, there the adverse Party shall not be estopped to take Advantage of the Truth; for he cannot be estopped to alledge the Truth, when the Truth appeareth of Record. [h] If a Fine be levied without any Original, it is voidable, but not void; but if an Original be brought, and a Retraxit entred, and after that a Concord is made, or a Fine levied, this is void, in respect the Verity appeareth of Record. [i] An Impropriation is made after the Death of an Incumbent, to a Bishop and his Successors, the Bishop by Indenture demiseth the Parsonage for forty Years, to begin after the Death of the Incumbent, the Dean and Chapter confirmeth it, the Incumbent dieth, this Demise shall not conclude, for that it appeareth that he had nothing in the Impropriation till after the Death of the Incumbent.

[k] Ninthly, Where the Record of the Estoppel doth run to the Disability or Legitimation of the Person, there Strangers shall take Benefit of that Record, as Outlawry, Excommengement, Profession, Attainder of Præmunire, of Felony, &c. Bastardy, Mulierty, and shall conclude the Party, though they be Strangers to the Record. Vide Littleton in cap. Villenage, Sect. 196, 197, &c. But of a Record concerning the Name of the Person, Quality or Addition, no Estranger shall take Advantage, because he shall not be bound by it. But Nota, Reader, That in Case of the Mulierty, prima facie, an Estranger shall take Benefit of it, &c. But yet because he may be a Mulier by the Ecclesiastical Law, and a Bastard by the Common Law; therefore against such Certificate pleaded, the adverse Party may alledge the special Matter, and confess the Certificate of the Bishop according to the Ecclesiastical Law, and alledge further the special Matter according to the Common Law, whereunto the adverse Party must answer; and so are the Books, that treat of this Matter, to be reconciled. But now let us return to Littleton.

Sect. 668.

¶ *A Feme prie d'estre resceive & soit resceive.* Receipt, Receptio, cometh of the Latin Verb Recipere, so called, because the Wife upon the Default of her Husband, is received as a Feme-sole alone, without her Husband, to defend her Right; and it is also called Defensio juris; and in this Case the Wife may be received by the [l] Statute; and yet [m] ancient Authors who wrote before the Statute, do speak of a Kind of Receipt at the Commoa Law. The Civilians call Resceit, Admissionem tertii pro suo interesse, which more properly is resembled to the Receit of him in the Reversion or Remainder, that is no Party to the Writ.

Post 355. a.

20 E. 1. Defensio juris.

[l] W. 2. cap. 3.
[m] Bract. f. 393. Mir. Lib. 3. cap. Exceptions.

¶ MES si en action de Waste le baron fait default a le grand distress, & la feme pria destre receive & soit receive, el monstra biē tout le matter, & coment el est en ſ̄ Remitter, & el barrera le Lessor de son Action, &c.

BUT if in the Action of Waste the Husband make Default at the Grand Distress, and the Wife pray to be received, and is received, she may well shew the whole Matter, and how she is in her Remitter, and she shall bar the Lessor of his Action, *&c.*

rantie collateral, & garrantie q̄ coñence p̄ disseisin. Et est ascavoir, q̄ devant le estatute de Glouc̄, touts garranties queux discendont a eux q̄ sōt heires a eux q̄ sesoyēt les garranties, fuerōt barres a mesmes les heires a demander ascuns terres ou tenements encounter les Garranties, forepris les Garranties q̄ commencerent p̄ disseisin, car tiel Garrantie ne fuit unq̄ barr̄ al heire, pur ceo q̄ le garranty commence per tort, s̄. per disseisin.

teral, and Warranty that commences by Disseisin. And it is to be understood, that before the Statute of *Glouc'* all Warranties which descended to them which are Heirs to those who made the Warranties, were Bars to the same Heirs to demand any Lands or Tenements against the Warranties, except the Warranties which commenced by Disseisin. For such Warranty was no Bar to the Heir, for that the Warranty commenced by Wrong, *viz.* by Disseisin.

recedendum: And again, Minime mutanda sunt quæ certam habuerunt interpretationem. 1 Co. 1.

Here our Author beginneth this Chapter with an exact Division of Warranties. A Warranty is a Covenant real annexed to Lands or Tenements, whereby a Man and his Heirs are bound to warrant the same, and either upon Voucher, or by Judgment in a Writ of Warrantia chartæ to yield other Lands and Tenements (which in old Books is called in Excambio) to the Value of those that shall be evicted by a former Title, or else may be used by Way of Rebutter. Bract. l. 2. f. 37. l. 5, 380, 381, &c. Glanvil lib. 3. c. 1, 2, 3. li. 7. cap. f. 1. 2, 3. lib. 9. cap. 4. F. N. B. 134. d. Brit. cap. 105. f. 249, 250, &c. fol. 88. 106. b. 196, 197. Fleta, lib. 5. cap. 15. lib. 6. c. 23. Mirr. cap. 2. Sect. 17. 38 E. 3. 21. 45 E. 3. 18. Ante 303. b. 2 Roll. 775, 776.

¶ *Rebouter* is a French Word, and is in Latin repellere, to repel or bar, that is, in the Understanding of the Common Law, the Action of the Heir by the Warranty of his Ancestor; and this is called to Rebut or Repel.

[a] Britton saith, Garranter en un sence signifie defender son Tenant en sa seisin; & en auter sence signifie que si il ne defende que le garrant luy soit tenue a eschanges, & de faire son gree a la vaillaunce. [b] Bracton saith, Warrantizare nihil aliud est quam defendere & acquietare tenentem qui Warrantum vocavit in seisina sua. [c] Fleta saith, Warrantizare nihil aliud est quam possidentem vocantem defendere & acquietare in sua seisina vel possessione erga petentem, &c. & tenens de re Warranti excambium habebit ad valentiam.

[a] Britton, fol. 197. b.

[b] Bract. lib. 5. fo. 380.

[c] Fleta, lib. 3. cap. 15.

It is to be observed that there be two Kinds of Warranties, that is to say, Warrantia expressa & tacita, vulgarly said Warranty in Deed, because they be expressed; and Warranty in Law, because the Law doth tacitly imply them. And this Division of Warranties that Littleton here speaketh of, he intendeth of Warranties in Deed. And of Warranties in Law more shall be said hereafter in this Chapter. As for Promises or Contracts annexed to Chattels real or personal, they are not intended by our Author in his said Division, but only Warranties concerning Freeholds and Inheritances.

Lib. 4. f. 81. Noke's Case. F. N. B. 134. h. Vi. Sect. 733. 2 Roll. 738. Vide Sidert. 178. Cro. Jac. 4. Ante 101. b. Post 384. a. ‡ See 1 Roll. Rep. 316. ‡ Cro. Jac. 386. ‡ 3 Bul. 95. ‡ Pop. 143. ‡ Bridg. 128. ‡ Ow. 60. ‡ 3 Mod. 261. ‡ S. C. Show. 68.

¶ *Devant le Statute de Glouc'.* This Statute was made at a Parliament holden at Gloucester in the sixth Year of the Reign of King E. 1. and therefore it is called the Statute of Gloucester. Glouc. cap. 3. Vide Sect. 724, 725, 727, &c. 2 Inst. 293.

¶ *Sont barrs a mesmes les heires a demander ascuns terres, &c.* For the Statute, as hath been said, being made in 6 E. 1. was before the Statute of Donis conditionalibus, which was enacted 13 Edw. 1. when all States of Inheritance were Fee-simple. But after the Statute of 13 Edw. 1. the Heir in Tail is not barred by the Warranty of his Ancestor, unless there be Assets, as shall be said hereafter more largely in this Chapter. Bract. lib. 4. fol. 321. b. Fleta, lib. 5. cap. 34. 7 E. 3. Gar. 47.

By this Statute of Gloucester four Things are enacted,

First, That if a Tenant by the Curtesy alien with Warranty and dieth, that this shall be no Bar to the Heir in a Writ of Mortdancestor without Assets in Fee-simple. And if Lands or Tenements descend to the Heir from the Father, he shall be barred, having regard to the Value thereof. 8 Co. 52, 53.

Secondly, That if the Heir, for want of Assets at that Time descended, doth recover the Lands of his Mother by Force of this Act, and afterwards Assets descend to the Heir from the Father, then the Tenant shall recover against the Heir the Inheritance of the Mother by a Writ of false Judgment, which shall issue out of the Record, to resummon him that ought to warrant, as hath been done in other Cases, where the Heir being vouched cometh into the Court, and pleadeth that he hath nothing by Discent.

Thirdly, That the Issue of the Son shall recover by a Writ of Cosinage, Aiel and Besaiel.

And lastly, That the Heir of the Wife after the Death of the Father and Mother shall be barred of his Action to demand the Heritage of the Mother by Writ of Entry, which his Father aliened in the Time of his Mother, whereof no Fine was levied in the King's Court.

Ante 54. b. [a] 11 E. 2. tit. Gar. 83. 4 E. 3. Gar. 63. 18 E. 3. 51. Pl. Com. 110. 7 E. 3. 53 Temps E. 1. Gar. 87. 27 E. 3. 89. 14 E. 4.

Concerning the First, there be two Points in Law to be observed:

First, Albeit the Statute in this Article name a Writ of Mordancestor, and after Writs of Cosinage, Aiel and Besaiel, [a] yet a Writ of Right, a Formedon, a Writ of Entry Ad Communem Legem, and all other like Actions, are within the Purview of this Statute, for those Actions are put but for Examples.

Gar. 5. Dyer 4 Mariæ 148. a. 22 Ass. 9, & 37. Temps E. 1. Gar. 86.

Secondly, Where it is said in the said Act, (if the Tenant by the Curtesy alien) yet this Release with Warranty to a Disseisor, &c. is within the Purview of the Statute, for that it is in equal Mischief; and if that Evasion might take Place, the Statute should have been made in vain.

If Tenant by the Curtesy be of a Seigniory, and the Tenancy escheat unto him, and after he alieneth with Warranty, this shall not bind the Issue, unless Assets descend, for it is in equal Mischief. But notwithstanding this Statute, if Feme Tenant in Dower had aliened in Fee with Warranty, and died, the Warranty had bound the Heir until the Statute * of 11 H. 7. since our Author wrote; by which Statute the Heir may enter notwithstanding such Warranty.

* 11 H. 7. cap. 20. Post 380. a. 381. a.

But note, There is a Diversity between a Warranty on the Part of the Mother, and an Estoppel. For an Estoppel, of the Part of the Mother, shall not bind the Heir, when he claimeth from the Father. As if Lands be given to the Husband and Wife, and to the Heirs of the Husband, the Husband make a Gift in Tail, and died, the Wife recovereth in a Cui in vita against the Donee, supposing that she had Fee-simple, and maketh a Feoffment, and dieth, the Donee dieth without Issue, the Issue of the Husband and Wife bring a Formedon in the Reverter against the Feoffee; and notwithstanding that he was Heir to the Estoppel, and the Mother was estopped; yet for that he claimed the Land as Heir to his Father, he was not estopped. Note; That Warranties are favoured in Law, being Part of a Man's Assurance, but Estoppels are odious.

18 E. 3. 9. Ante 352. a. Hob. 31. 8 Co. 54. a.

If a Feme, Heir of a Disseisor, infeoffeth me with Warranty, and marrieth with the Disseisee, if after the Disseisee bring a Præcipe against me, I shall rebut him, in respect of the Warranty of his Wife, and yet he demandeth the Land in another's Right. And so if the Husband and Wife demand the Right of the Wife, a Warranty of the collateral Ancestor of the Husband shall bar.

21 R. 2. Judgment 263. 2 Roll. 776. 8 Co. 53. b. Ante 326. b. Post 38. a. Dr. and Stud. 44. b. 1 Leon. 261. 11 H. 7. cap. 20. Vide Sect. 595. See this Statute of 11 H. 7. c. 20. well expounded, Lib. 1. f. 176. in Sir Anthony Mildmay's Case, 3 & 4 Ph. & Mar. Dyer 146. Lib. 3. f. 59, 60, 61, 62. Lincoln Col. Case, Pl. Com. fol. 56. 20 El. Dyer 362. Doct. & Stud. 55. 8 El. Dyer 248. 19 El. Dyer 354. 21 El. lb. 362. lib. 3. fo. 50, 51. Sir George Brown's Case, lib. 5. f. 79. Fitzh. Case. 27 H. 8. 23.

If a Woman had been Tenant for Life, the Remainder or Reversion to her next Heir, and the Woman had aliened in Fee, and died, this Warranty had barred her Heir in Remainder or Reversion; but it is partly holpen by the said Act of 11 H. 7. viz. where the Woman hath any Estate for Life, of the Inheritance or Purchase of her Husband, or given to her by any of the Ancestors of the Husband, or by any other Person seised to the Use of her Husband, or of any of his Ancestors, there her Alienation, Release or Confirmation with Warranty shall not bind the Heir.

[b] Mich. 13 Jac. inter Harley & West, in Ejectione firmæ in Communi Banco. Lincoln. 2 Cro. 174. 2 Cro. 475. 4 Co. 10. Ante 360. a. 115. a. Post 369. a. 381. a. Siderf. 24. Plowd. 105. a. Dyer 64. b. ‡ Jo. 31. ‡ Hob. 332. ‡ Cro. El. 2. ‡ 2 Cro. 475. ‡ Ben. 40. ‡ 2 Inst. 681. ‡ W. Jo. 13 & 254. ‡ Pal. 21, 32, 216. ‡ Cro. Car. 244. pl. 464.

To the Authorities quoted in the Margent, which may serve as Commentaries upon the said Statute, I will only add two Cases, the one was: [b] A Man seised of Lands in Fee, levied a Fine to the Use of himself for Life, and after to the Use of his Wife, and of the Heirs Males of her Body by him begotten, for her Jointure, and had Issue Male, and after he and his Wife levied a Fine, and suffered a Common Recovery, the Husband and Wife died, and the Issue Male entred by Force of the said Stat. of 11 H. 7. And it was holden by the Justices of Assise (the Case coming down to be tried by Nisi prius) that the Entry of the Issue Male was lawful; and yet this Case is out of the Letter of the Statute, for she neither levied the Fine, &c. being sole, or with any after-taken Husband, but is by her self with her Husband, that made the Jointure. Sed qui hæret in litera hæret in cortice; and this Case being in the same Mischief is therefore within the Remedy of the Statute by the Intendment of the Makers of the same, to avoid the Disherison of Heirs, who were provided for by the said Jointure, and especially by the Husband himself that made the Jointure, which (as it was said) is a stronger Case than the Example set down in the Statute. The other

Plea or Suit; and this Maintenance is twofold, general Maintenance, and special Maintenance; whereof you shall read at large in our Books, which were too long here to be inserted.

30 Ass 5. 19 E. 4. 3. 20 H. 6. 12. 34 H. 6. 2. 11 H. 6. 11. 8 H. 5. 8 10 E. 4. 19. W. 1. ca. 28. W. 2. c. 49. Artic. super Chart. cap. 11. F. N. B. 171, 172. Mirror, cap. 1. sect. 5. Mo. 6. Ante 157. Hob. 294.

The Third is when [a] one laboureth the Jury, if it be but to appear, or if he instruct them, or put them in fear, or the like, he is a Maintainer, and he is in Law called an Embracer, and an Action of Maintenance lieth against him, and if he take Money, a Decies tantum may be brought against him. And whether the Jury pass for his Side, or no, or whether the Jury give any Verdict at all, yet shall he be punished as a Maintainer or Embracer, either at the Suit of the King or Party.

[a] 13 H. 4. 16. b. F. N. B. 171. 11 H. 6. 10. 37 H. 6. 31.

Here in this Case that Littleton putteth, the Feoffment is void by the Statute [b] of 1 R. 2. for thereby it is enacted, That Feoffments made for Maintenance shall be holden for none, and of no Value; so as Littleton putteth his Case at the Common Law; for he seemeth to allow the Feoffment, where he saith, tiel feoffment fuit le cause, &c. but some have said that the Feoffment is not void between the Feoffor and Feoffee, but to him that Right hath.

[b] 1 R. 2. cap. 9. Vide 27 H. 8. fol. 23.

Now since Littleton wrote, there is a notable Statute [c] made in Suppression of the Causes of unlawful Maintenance (which is the most dangerous Enemy that Justice hath) the Effect of which Statute is:

[c] 32 H. 8. cap. 9. Plowd. 79. a.

First, That no Person shall bargain, buy, or sell, or obtain any pretenced Rights or Titles.

2 Roll. 113, 114. Hob. 115.

Secondly, Or take, promise, grant, or covenant to have any Right, or Title of any Person, in or to any Lands, Tenements, or Hereditaments; but if such Person who so shall bargain, &c. their Ancestors, or they by whom he or they claim the same have been in Possession of the same, or of the Reversion or Remainder thereof, or taken the Rents or Profits thereof by the Space of one whole Year, &c. upon Pain to forfeit the whole Value of the Lands, and the Buyer or Taker knowing the same, to forfeit also the Value.

1 Leon. 167, 208. Plowd. 89. a.

Thirdly, Provided, that it shall be lawful for any Person being in lawful Possession, by taking of the yearly Farm-rents or Profits, to obtain, and get the pretenced Right or Title, &c. of any Lands, whereof he or they shall be in lawful Possession.

For the better Understanding of which Statute, you must observe, that Title or Right may be pretenced two Manner of Ways:

First, When it is meerly in Pretence or Supposition, and nothing in Verity.

1 Cro. 232, 233.

Secondly, When it is a good Right or Title in Verity, and made pretenced by the Act of the Party, and both these are within the said Statute; for Example, If A. be lawful Owner of Land, and is in Possession, B. that hath no Right thereunto, granteth to, or contracteth for the Land with another; the Grantor and the Grantee, (albeit the Grant be meerly void) are within the Danger of the Statute: For B. hath no Right at all, but only in Pretence. If A. be disseised in this Case, A. hath a good lawful Right, yet if A. being out of Possession granteth to, or contracteth for the Land with another, he hath now made his good Right of Entry pretenced within the Statute, and both the Grantor and Grantee within the Danger thereof. A fortiori, of a Right in Action, Quod nota.

Pl. Com. fo. 80, &c. Partridge's Case.

It is further to be known, that a Right or Title may be considered three Manner of Ways. First, As it is naked and without Possession. Secondly, When the absolute Right cometh, by Release, or otherwise, to a wrongful Possession, and no third Person hath either Jus proprietatis, or Jus possessionis. The Third, when he hath a good Right, and a wrongful Possession. As to the first, somewhat hath been said, and more shall be said hereafter. As to the second, taking the former Example, if A. be disseised, and the Disseisee release unto him, he may presently sell, grant, or contract for the Land, and need not tarry for a Year; for it is a Rule upon this Statute, that whosoever hath the absolute Ownership of any Lands, Tenements, or Hereditaments (as in this Case the Disseisor hath) there such Owner may at his Pleasure bargain, grant, or contract for the Land, for no Person can thereby be prejudiced or grieved. And so if a Man mortgage his Land, and after redeem the same, or if a Man recover Land upon a former Title, or be remitted to an ancient Right, he may at any Time bargain, grant, or contract for the Land, for the Reason aforesaid. As to the Third, if in the Case aforesaid the Disseisor dieth seised, and A. the Disseisee entreth, and disseise the Heir of the Disseisor, albeit he hath an ancient Right, yet seeing the Possession is unlawful, if he bargain or contract for the Land, before he hath been in Possession by the Space of a Year, he is within the Danger of the Statute, because the Heir of the Disseisor hath Right to the Possession, and he is thereby grieved; & sic de similibus; and albeit he that hath a pretenced Right (and none in Verity) getteth the Possession wrongfully, yet the Statute extendeth unto him as well as where he is out of Possession.

Pl. Com. Partridge's Case ubi sup. 6 E. 6. Brook tit. Maintenance 38. Cro. Car. 388. Plowd. 89. a.

Note; The Words of the Statute be (any pretenced Right) therefore a Lease for Years is within the Statute; for the Statute saith not (the Right, but any Right) and the Offender shall forfeit the whole Value of the Land. And where the Statute speaketh of Rights in the plural Number, yet any one Right is within the Statute. [d] But yet if a Man make a Lease for Years to another, to the Intent to try the Title in an Ejectione firmæ, that is out of the Sta-

23 Eliz. Dyer 374. Pl. Com. Partridge's Case, fol. 87. [d] Mich. 30 & 31 Eliz. 2811. inter Finch & Cockham in Com. Banc. Mo. 266.

made to the Tenant of the Land, a Warranty may be made, albeit he that makes the Release or Confirmation, hath no Right to the Land, &c. But some do hold, That by Release or Confirmation, where there is no Estate created, or Transmutation of Possession, a Warranty cannot be made to the Assignee.

que per meane del Pier.

shew how he is Heir to the Grandfather, but by means of the Father.

Post 385. a.

Sect. 707.

ITem, si home ad issue deux fits & est disseisie, & leigne fits relessa al disseisor p̄ son fait ove Garranty, &c. & mor̄ust sans issue, & apr̄es ceo le pier mor̄ust, ceo est un lineal Garrantie al puisne fits, p̄ ceo q̄ coment q̄ leigne fits mor̄ust en la vie le Pier, uncor̄e p̄ ceo q̄ p̄ possibility il puissoit estre q̄ il puissoit conveyer a luy le title del terre p̄ son eigne frere, si nul tiel Garrantie fuissoit. Car il puissoit estre q̄ apr̄es la mor̄t le pier, l'eigne frere entroit en les Tenements, & morust sans issue, & donc̄ le puisne fits conveyera a luy le title p̄ leigne fits. Mes en tiel cas, si le puisne fits relesse ove Garrantie a le Disseisor̄, & mor̄ust sans issue, ceo est un collateral Garrantie al eigne fits, p̄ ceo q̄ de tiel terre que fuit al pier, leigne per nul possibilitie poit conveyer a luy le title per meane de le puisne fits.

ALso, if a Man hath Issue two Sons, and is disseised, and the eldest Son release to the Disseisor by his Deed with Warranty, &c. and dies without Issue, and afterwards the Father dieth, this is a lineal Warranty to the younger Son, albeit the eldest Son died in the Life of the Father, yet by Possibility it might have been, that he might convey to him the Title of the Land by his elder Brother, if no such Warranty had been. For it might be, that after the Death of the Father the elder Brother entred into the Tenements and died without Issue, and then the younger Son shall convey to him the Title by the elder Son. But in this Case, if the younger Son releaseth with Warranty to the Disseisor, and dies without Issue, this is a collateral Warranty to the elder Son, because that of such Land as was the Father's, the Elder by no Possibility can convey to him the Title by means of the younger Son.

35 E. 3. Gar. 73. 11 H. 4. 33. 1 Co. 66.

HEre Littleton putteth an Example, where the Heir that is to be barred by the Warranty, is not to make his Discent by him that made the Warranty, as in the Case before; and yet because by Possibility he might have claimed by the eldest Son, if he had survived the Father, and died without Issue, and so the younger Brother might by Possibility have been Heir to him, the Warranty is lineal.

And here it is to be noted, that the Warranty of the eldest Son descended before the Right descended, whereof more shall be said hereafter, Sect. 741. and the Opinion of Littleton in this Case is holden for Law against the Opinions in 35 E. 3. Garr. 73.

9 E. 3. 16. 38 E. 3. 21. 46 E. 3. 26. 8 R. 2. Gar. 101. 2 Roll. 773.

Mes en tiel case le puisne fits release ove Garrantie, &c. This Warranty in this Case is collateral to the eldest Son, and to the Issues of his Body; but if the eldest Son dieth without Issue of his Body, then the Warranty is lineal to the Issues of the Body of the youngest; and so the Warranty that was collateral to some Persons may become lineal to others.

donque le puisne frere puissoit conveyer son title de descent p le mulnes.

Brother, and the youngest Brother might convey his Title of Discent by the middle Brother.

without Issue, this shall bar the second Son; for the Remainder descended to the eldest.

Ante 120. b. 9 Co. 104. Plowd. 374. a. 375. a. Cro. El. 896. Noy 46. Dyer 3. b. 133. a.

If Tenant in Tail be disseised, or have Right of Action, and the Tenant of the Land leby a Fine with Proclamations, and five Years pass, the Right of the Estate-tail is barred.

[a] 26 H. 8. cap 13. 33 H. 8. ca. 20. 5 E. 6. cap 11. Staundf. Pl. Coron. 18.

[a] If Tenant in Tail in Possession, or that hath a Right of Entry, be attainted of High Treason, the Estate-tail is barred, and the Land is forfeited to the King; and none of these were Bars when Littleton wrote. A lineal Warranty and Assets was a Bar to the Estate-tail when Littleton wrote, whereof more shall be said hereafter.

[b] 12 E. 4. 19. Talrarum's Case.

[b] A Common Recovery with a Voucher over, and a Judgment to recover in Value, was a Bar of the Estate-tail when Littleton wrote. [c] And of Common Recoveries there be two Sorts, viz one with a single Voucher, and another with a double Voucher, and that is more common and more safe; there may be more Vouchers over.

[c] Vide devant, Sect. 690. Vide l. 3. fol. 5. Cuppledick's Case & fo. 94, 97, 106. Li. 1. f. 62. Capel's Case, li. 2. fo. 16, 52, 74, 77. Lib. 6. fo. 41, 42. li. 10. fo. 37. Mary Portington's Case.

[d] 38 H. 8. Taile Br. 41. Pl. Com. fol. 555. 29 H. 8. Dyer 52.

[d] If the King had made a Gift in Tail, and the Donee had suffered a Common Recovery, this should have barred the Estate-tail in Littleton's Time, but not the Reversion or Remainder in the King. And so if such Donee had levied a Fine with Proclamations after the Statute of 4 H. 7. this had barred the Estate-tail, although the Reversion was in the King.

[e] 34 H. 8. cap 10.

[e] But since Littleton wrote, a Common Recovery had against Tenant in Tail of the King's Gift, or such a Fine levied by him, the Reversion continuing in the Crown, is no Bar to the Estate-tail by the Statute of 34 H. 8. And where the Words of the Statute be (whereof the Reversion or Remainder, at the Time of such Recovery had, shall be in the King,) these ten Things are to be observed upon the Construction of that Act.

First, That the Estate-tail must be created by a King, and not by any Subject, albeit the King be his Heir to the Reversion; for the Preamble speaks of Gifts made to Subjects, and none can have Subjects but the King; and also in the Preamble it is said (for Service done to the Kings of the Realm) and the Body of the Act referreth to the Preamble. [f] And therefore if the Duke of Lancaster had made a Gift in Tail, and the Reversion descended to the King, yet was not the Estate-tail restrained by that Statute; and so of the like.

[f] Trin. 23 Eliz. inter Dively & Ashton resolved in the Court of Wards. Lib. 2. fol. 15, & 16. in Wiseman's Case. Lib. 8. fol. 77, 78. the Lord Stafford's Case.

Secondly, If the King grant over the Reversion, then a Recovery suffered will bar the Estate-tail, because the King had no Reversion at the Time of the Recovery.

Thirdly, If the King make a Gift in Tail, the Remainder in Tail, or grant the Reversion in Tail, keeping the Reversion in the Crown, a Recovery against Tenant in Tail in Possession, shall neither bar the Estate-tail in Possession by the express Purview of the Statute, nor by Consequence the Estate in Remainder or Reversion; for that the Reversion or Remainder cannot be barred, but where the Estate-tail in Possession is barred.

Lib. 2. fo. 15, 16. Wiseman's Case, li. 2. fo. 52. Cholmley's Case.

Fourthly, If a Subject make a Gift in Tail, the Remainder to the King in Fee, albeit the Words of the Statute be (whereof the Reversion or Remainder of the same, &c.) yet seeing the Estate in Tail was not created by a King, as hath been said, the Estate-tail may be barred by a Common Recovery.

Mo. 115. 2 Co. 15. b. 1 Cro. 430.

Fifthly, If Prince Henry, Son of Henry the Seventh, had made a Gift in Tail, the Remainder to Henry the Seventh in Fee, which Remainder by the Death of Henry the Seventh had descended to Henry the Eighth, so as he had the Remainder by Discent; yet might Tenant in Tail, for the Cause aforesaid, bar the Estate-tail by a Common Recovery.

Lib. 2. fo. 16. Wiseman's Case.

Sixthly, The Word (Remainder) in the Statute is no vain Word, for the Words of the Preamble be, The King hath given or granted, or otherwise provided to his Servants and Subjects. The Word (Reversion) in the Body of the Act, hath reference to these Words (given or granted;) and (Remainder) hath reference to these Words (otherwise provided.) As if the King in Consideration of Money, or of Assurance of Land, or for other Consideration by Way of Provision, procure a Subject by Deed indented and inrolled, to make a Gift in Tail to one of his Servants and Subjects for Recompence of Service, or other Consideration, the Remainder to the King in Fee, and all this appear of Record; this is a good Provision within the Statute, and the Tenant in Tail cannot by a Common Recovery bar the Estate-tail. So it is if the Remainder be limited to the King in Tail; but if the Remainder be limited to the King for Years or for Life, that is no such Remainder as is intended by the Statute, because it is of no Remainder of Continuance, as it ought to be, as it appeareth by the Preamble, and it ought to have some Affinity with a Reversion, wherewith it is joined.

Seventhly, Where a Common Recovery cannot bar the Estate-tail by Force of the said Statute, there a Fine levied in Fee, in Tail, for Lives, or Years, with Proclamations according to the Statutes, shall not bar the Estate-tail, or the Issue in Tail, where the Reversion or Remainder

donee en le taile fait feoffment en fee oves-qz Garrantie accoz-dant, & ad issue fits & file & mozust, cel Garrantie nest foz-sque lineal Garran-tie a le fits a demaun-der p brief de For-medon en le descen-der, & aury il nest foz-sque lineal a le file, a demãder mesme la terre per brefe de Formedon en le re-mainder, si son frere deviast sans issue male, pur ceo q̃ el claime come heire fe-male de le cozps son pere engendzes. Mes en cest cas, si son frere en sa vie releasast al Discontinuee, &c. ove Garrantie, &c. & puis mozust sans issue, ceo est un collateral Gar-rantie a le file, pur ceo que el ne poit con-veyer a luy le dzoit que el ad per force de le remainder per ascun mean de di-scent per son frere pur ceo que le frere est collateral a le title sa soer, & pur ceo son Garrantie est colla-teral, &c.

Donee in Tail maketh a Feoffment in Fee, with Warranty accordingly, and hath Issue a Son and a Daughter, and dieth, this Warranty is but a lineal Warranty to the Son to demand by a Writ of *Formedon* in the Discender; and also it is but lineal to the Daughter to demand the same Land by Writ of *Formedon* in the Re-mainder, if her Brother dieth without Issue male, because she claimeth as Heir female of the Body of her Father in-gendred. But in this Case, if her Brother in his Life release to the Discontinuee, *&c.* with Warranty, *&c.* and af-ter dieth without Issue, this is a collateral War-ranty to the Daughter, because she cannot con-vey to her the Right which she hath by Force of the Remainder by any Means of Discent by her Brothers for that the Brother is collate-ral to the Title of his Sister, and therefore his Warranty is collateral, *&c.*

known, that for Learning sake, and to find out the Reason of the Law, these Limitations to the Heirs Males of the Body, and af-ter to the Heirs Females of the Body may be put; but it is dangerous to use them in Conveyances, for great Inconveniences may arise thereupon; for if such a Te-nant in Tail hath Issue di-vers Sons, and they have Issue divers Daughters, and likewise if Tenant in Tail hath Issue divers Daugh-ters, and each of them hath Issue Sons, none of the Daughters of the Sons, nor the Sons of the Daugh-ters shall ever inherit to either of the said Estates-tail: And so it is of the Issues of the Issues, for that (as hath been said) the Issues inheritable must make their Claim either only by Males, or only by Females, so as the Females of the Males, or Males of the Fe-males are wholly excluded to be inheritable to either of the said Estates-tail: But where the first Limitation is to the Heirs Males, let the Limitation be, for De-fault of such Issue to the Heirs of the Body of the Donee, and then all the Is-sues, be they Females of Males, or Males of Fe-males, are inheritable.

1 H. 6. 4. 11 H. 13, 14. 23 H. 6. Devise 18. Sta-tham. Devise Pl. Com. 414. 20 H. 6. 43. Vide Litt. c. Taile. Sect. 24. 37 H. 8. Br. Done & rem. 61. & tit. Nosme 1. & 40.
Ante 25. a. b.

Vaugh. 368. g. 376.
Ante 374. a.

If a Man give Lands to a Man, To have and to hold to him and the Heirs Males of his Body, and to him and to the Heirs Fe-males of his Body, the Es-tate to the Heirs Females is in Remainder, and the Daughters shall not inherit any Part, so long as there is Issue Male, or the Es-tate to the Heirs Males is first limited, and shall be first served; and it is as much as to say, and after to the Heirs Females, and Males in Con-struction of Law are to be preferred.

41 E. 3. fol.

Vide Sect. 446.

10 Co. 95.

is but ſuſpended, and is revived by the Death of the eldeſt Son without Iſſue, and deſcendeth to the youngeſt Son. Thirdly, That the Feoffment made in the Life of the Father, cannot give away a Condition that is collateral, as it may do a Right. Fourthly, That a Warranty cannot bind a Title of Entry for a Condition broken, (as hath been ſaid) but if the Diſcontinuance had been made after the Death of the Father, it had extinguiſhed the Condition: Which Caſe is put to open the Reaſon of our Author's Opinion.

Plowd. 413. Ante 282. b.

In the laſt three Sections our Author hath taught us an excellent Point of Learning, That when any Innovation or new Invention ſtarts up, to try it with the Rules of the Common Law, (as our Author here hath done) for theſe be true Touchſtones to ſever the pure Gold from the Drols and Sophiſtications of Novelties and new Inventions. And by this Example you may perceive, That the Rule of the old Common Law being ſoundly (as our Author hath done) applied to ſuch Novelties, it doth utterly cruſh them and bring them to nothing; and commonly a new Invention doth offend againſt many Rules and Reaſons (as here it appeareth) of the Common Law, and the ancient Judges and Sages of the Law have ever (as it appeareth * in our Books) ſuppreſſed Innovations and Novelties in the Beginning, as ſoon as they have offered to creep up, leſt the Quiet of the Common Law might be diſturbed: And ſo have [a] Acts of Parliament done the like, whereof by the Authorities quoted in the Margent, you may inſtead of many others, upon this Occaſion take a little Taſte. But our excellent Author in all his three Books hath ſaid nothing, but Ex veterum ſapientium ore & more.

* 31 E. 3. Gager deliverance 5. 22 Aſſ. 12. 38 E. 3. 1. 2 H. 4. 18, &c.
[a] 1 E. 3. c. 15. Stat. 3. 18 E. 3. cap. 1, & 6. 4 H. 4. c. 2. 11 H. 6. c. 23. 12 E. 4. cap. 8, &c.

Sect. 724.

22 Inſt. 293. cap. 3.

¶ Item, a le Comon Ley devant l'eſtatute de Glouceſter, ſi Tenant per le Curteſie uſt alien en fee ovesque Garrantie, apres ſon deceaſe ceo fuit un bar al heire, ſicome appiert per les parols de meſme l'eſtatute: Mes il eſt remedy per meſme l'eſtatute q̄ le Garrantie de le Tenant per le Curteſie ne ſer̄ my bar al heire; ſinon que il y ad aſſets per diſcent per le Tenant per le Curteſie, car devant le dit ſtatute, ceo fuit un Collateral Garrantie al heire, pur ceo que il ne puiſſoit conveyer aſcun title de Diſcent a les tenements per le Tenant p̄ le Curteſie, mes tantſolement per ſa mere ou auters de ſes Anceſtors, & ceo eſt le cauſe pur que il fuit Collateral Garrantie.

ALſo, at the Common Law before the Statute of *Glouceſter*, if Tenant by the Curteſy had aliened in Fee with Warranty, after his Deceaſe this was a Bar to the Heir, as it appeareth by the Words of the ſame Statute; but it is remedied by the ſame Statute, That the Warranty of the Tenant by the Courteſy ſhall be no Bar to the Heir, unleſs that he hath Aſſets by Diſcent by the Tenant by the Curteſy; for before the ſaid Statute this was a collateral Warranty to the Heir, for that he could not convey any Title of Diſcent to the Tenements by the Tenant by the Courteſy, but only by his Mother, or other of his Anceſtors; and this is the Cauſe why it was a collateral Warranty.

Sect. 725.

¶ Mes ſi hom̄ inherit̄ p̄nt Feme, les queux ont fits enter eux, & le pier devie, & le

BUT if a Man inheritor taketh Wife, who have Iſſue a Son between them, and the Father die,

2 E. 2. Age 132. and others, which Books do not prove that the Ceſſavit doth not lie in that Caſe, but the contrary, that he ſhall have his Age, to the End he may at his full Age certainly know what to plead, or what Arrearages to tender; for the Land was originally charged with the Seigniory and Services.

Sect. 727.

¶ MES ore p leſſtatute fait 11 H. 7. cap. 10. il eſt ordeine, ſi aſcun feme diſcontinue, alien, releaſe, ou confirme ove Garrantie aſcun terres ou tenements que el tient en Dower pur terme de vie ou en taile del done ſa primer baron, ou de ſes Anceſtors, ou del done d'aſcun auter ſeiſie al uſe le primer baron, ou de ſes Anceſtors, que touts tiels Garranties, &c. ſerront voides, & que bien lirroit a ceſtuy que avoit ceux terres ou tenements apres la mort de meſme la feme d'enter.

BUT now by the Statute made 11 *H.*7. *cap.*10. it is ordained, if any Woman diſcontinue, alien, releaſe or confirm with Warranty any Lands or Tenements which ſhe holdeth in Dower for Term of Life, or in Tail of the Gift of her firſt Husband, or of his Anceſtors, or of the Gift of any other ſeiſed to the Uſe of the firſt Husband, or of his Anceſtors, that all ſuch Warranties, *&c.* ſhall be void, and that it ſhall be lawful for him which hath theſe Lands or Tenements after the Death of the ſame Woman to enter. Ante 325. 52. b.

¶ This is an Addition to Littleton, and therefore to be paſſed over. And hereof ſufficient hath been ſaid before, Sect. 697.

Sect. 728.

¶ Item il eſt park' en le fin de le dit eſtatute de Glouc' q parle de le aliena-tion oveſq Garran-tie fait p le tenant p le Curteſie en ceſt form. Enſement, en meſme le manner ne ſoit l'heir la fem aps la mort l' pe & l' mer bar d'action, ſil dema-da l'herit ou l' mar-riage ſa mere per Brief Dentre q ſon per aliena en temps ſa mer, dont nul fine eſt levy en la Court l'

ALſo it is ſpoken in the End of the ſaid Statute of *Glouc'* which ſpeaketh of the Alienation with Warranty made by the Tenant by the Courteſy in this Form. Alſo, in the ſame Manner, the Heir of the Woman after the Death of the Father and Mother ſhall not be barred of Action, if he demandeth the Heritage or the Marriage of his Mother by Writ of Entry, that his Father aliened in his Mother's Time,

¶ *Dont nul fine eſt levy en le Court le Roy, &c.* Here are three Things worthy of Obſervation concerning the Conſtruction of Statutes. Firſt, That [a] it is the moſt natural and genuine Expoſition of a Statute to conſtrue one Part of the Statute by another Part of the ſame Statute, for that beſt expreſſeth the Meaning of the Makers. As here the Queſtion upon the general Words of the Statute is, whether a Fine levied only by a Husband ſeiſed in the Right of his Wife with Warranty ſhall bar the Heir without Aſſets? And it is well expounded by the former Part of the Act, whereby it is enacted, that Alienation made by Tenant by the Courteſy with Warranty ſhall not bar the Heir, unleſs Aſſets deſcend, Ante 360. a. 365. b. 115. a. 369. a.

[a] Pl. Com. fo. 75. 7 E. 3. 89. 3 Co. 31, 59. 4 Co. 50. b. 58, 76. Vide Bract. li. 4. f. 321. Fleta, lib. 5. cap. 34. 6 Co. Gregory's Caſe. 5 Co. 60. 7 Co. 37. 8 Co. 20. 118, 138. Plowd. 204, 205, 206. a. 465, 487. a. 11 Co. 62. b.

diſcontinuee entra en la terr̃, adonq̃ avera l'iſſue en taile ſon recovery per briefe de Formedon, pur ceo q̃ le collateral garranty eſt defeat. Et iſſint ſi aſcun tiel collateral garranty ſoit pleð envers l'iſſue en le taile, en ſon action de Formedon, il poit mẽer le matter com̃ eſt avantdit, coment le Garrantie eſt defeat, &c. & iſſint il poit bien maintener ſon action, &c.

Diſcontinuee enter into the Land, then ſhall the Iſſue in Tail have his Recovery by Writ of *Formedon*, becauſe the collateral Warranty is defeated. And ſo if any ſuch collateral Warranty be pleaded againſt the Iſſue in Tail in his Action of *Formed'*, he may ſhew the Matter as is aforeſaid, how the Warranty is defeated, *&c.* and ſo he may well maintain his Action, *&c.*

10 Co. 95. ¶ HEre Littleton putteth another Caſe upon the ſame Ground and Reaſon, viz. where the State, whereunto the Warranty is annexed, is defeated, there the Warranty it ſelf is defeated alſo, which is one of the Maxims of the Common Law.

Sect. 743.

¶ ITem ſi tenant en taile fait un feoffment a ſon Uncle, & puis le Uncle fait un feoffment en fee oveſq̃ Garrantie, &c. a un auter, & puis le feoffee del Uncle enfeoffa areremaine le Uncle en fee, & puis le Uncle enfeoffa un eſtrãge en fee ſans Garrantie, & moruſt ſans iſſue, & le tenãt en taile moruſt, ſi le iſſue en l'taile voile porter sõ br̃ de Formed' envers le ſtrange q̃ fuit le darrein feoffee, & ceo per le Uncle, le iſſue ne ſerra unqs̃ bar per le Garrantie que fuit fait p le Uncle al dit primer feoffee de ſon Uncle, pur ceo que le dit Garrantie fuit defeat & anient, pur ceo que le Uncle a luy repriſt cy grand eſtate de ſon primer feoffee a que le Garrantie fuit fait, ſicome meſme le feoffee avoit de luy. Et la cauſe pur que le Garrantie eſt anient en ceo cas, eſt ceo, ſcil. que ſi le Garrantie eſtoieroit en ſa force, donqs̃ le Uncle garranter̃ a luy meſme, que ne poit eſtre.

ALſo if Tenant in Tail make a Feoffment to his Uncle, and after the Uncle make a Feoffment in Fee with Warranty, *&c.* to another, and after the Feoffee of the Uncle doth re-enfeoff again the Uncle in Fee, and after the Uncle enfeoffeth a Stranger in Fee without Warranty, and dieth without Iſſue, and the Tenant in Tail dieth, if the Iſſue in Tail will bring his Writ of *Formedon* againſt the Stranger that was the laſt Feoffee, and that by the Uncle, the Iſſue ſhall not be barred by the Warranty that was made by the Uncle to the firſt Feoffee of his Uncle, for that the ſaid Warranty was defeated and taken away, becauſe the Uncle took back to him as great an Eſtate from his firſt Feoffee, to whom the Warranty was made, as the ſame Feoffee had from him. And the Cauſe why the Warranty is defeated, is this, *viz.* that if the Warranty ſhould ſtand in its Force, then the Uncle ſhould warrant to himſelf, which cannot be.

¶ Here

Recreancy, or upon the Outlawry, or Abjuration, then is he said to be attaint. And thus is the Law taken at this Day, notwithstanding [a] some Diversity of Opinions in our Books.

If a Felon be convicted by Verdict, Confession, or Recreancy, he doth forfeit his Goods and Chattels, &c. presently, [b] For where a Reason hath been yielded in our Books, that the Praying of his Clergy, was a Refusal of the Judgment of the Law, and a Flight in Law, and for that Cause he forfeited his Goods and Chattels, that doth not hold; for if a Man be convict of Petit Treason, or Murder, or any other Crime, for which he cannot have his Clergy, yet by the very Conviction he forfeiteth his Goods and Chattels before Attainder. And [c] Staundford (speaking of a Felon convict by Verdict) saith, that he shall forfeit his Goods which he had at the Time of the Verdict given, which is the Conviction in that Case; and by the Statute of 1 R. 3. cap. 3. no Sheriff, Bailiff, &c. shall seise the Goods of a Felon, before he be convicted of Felony, whereby it appeareth that the Goods may be seised as forfeit after Conviction. And the [d] old Statute is worthy of noting. Provisum est in curia nostra coram justiciariis nostris, quod de cætero nullus homo captus pro morte hominis vel alia felonia pro qua debet imprisonari, disseisietur de terris & tenementis vel catallis suis quousque convictus fuerit. So as by a Conviction of a Felon, his Goods and Chattels are forfeited, but by Attainder, that is, by Judgment given, his Lands and Tenements are forfeited, and his Blood corrupted, and not before.

[a] 40 E. 3. 12. 3 E. 3. Coron. 365. 8 E. 2. ib. 293. 21 H. 7.

[b] Dame Hale's Case, Ubi supra 8 H. 4. 2. 12 Co. 121. 9 Co. 129.

[c] Staun. Pl. Cor. f. 191. Lib. 5. fol. 110. Foxley's Case. Vide 7 H. 4. 41. 1 R. 3. cap. 3. 3 Inst. 228.

[d] Statute de catallis felonum, ver. Magna Charta, fo. 66. 2 part.

[e] If the Party upon his Arraignment refuse to answer according to Law, or say nothing, he shall not be adjudged to be hanged, but for his Contempt, to peine fort & dure, which work no Attainder for the Felony, nor Forfeiture of his Lands, or Corruption of Blood. But in Case of High Treason, if the Party refuse to answer according to Law, or say nothing, he shall have such Judgment by Attainder, as if he had been convicted by Verdict or Confession.

[e] Staundf. Pl. Cor. 139, 185.

¶ *Felony* (*) Ex vi termini significat quodlibet capitale crimen felleo animo perpetratum, in which Sense Murder is said to be done per feloniam, and is so appropriated by Law, as felonice cannot be expressed by any other Word. [f] And in ancient Times this Word (Felonice) was of so large an Extent as it included High Treason; and therefore in our ancient Books, by the Pardon of all Felonies, High Treason, or Counterfeiting of the Great Seal, and of the King's Coin, &c. was pardoned. [g] But afterwards it was resolved, That in the King's Pardon or Charter, this Word (Felony) should only extend to common Felonies, and that High Treason should not be comprehended under the same, and therefore ought to be specially named, and yet that a Pardon of all Felonies should extend to Petit Treason; wherefore by the Law at this Day under the Word (Felony) in Commissions, &c. is included Petit Treason, Murder, Homicide, Burning of Houses, Burglary, Robbery, Rape, &c. Chancemedly, se defendendo, and Petit Larceny. [h] For such of these Crimes for the which any shall have this Judgment, To be hanged by the Neck till he be dead, he shall forfeit all his Lands in Fee-simple, and his Goods and Chattels: For Felony by Chancemedly, or se defendendo, or Petit Larceny, he shall forfeit his Goods and Chattels, and no Lands of any Estate of Freehold or Inheritance. And all Felonies punishable according to the Course of the Common Law, are either by the Common Law, or by Statute. There is also a Felony punishable by the Civil Law, because it is done upon the High Sea, as Piracy, Robbery or Murder, whereof the Common Law did take no Notice, because it could not be tried by twelve Men. If this Piracy be tried before the Lord Admiral in the Court of the Admiralty, according to the Civil Law, and the Delinquents there attainted, yet shall it work no Corruption of Blood, nor Forfeiture of his Lands; otherwise it is if he be attainted before Commissioners by Force of the Statute of [i] 28 H. 8. By the express Purview of that Statute about the End of the Reign of Queen Elizabeth, certain English Pirates, that had robbed on the Sea Merchants of Venice, in Amity with the Queen, being not known, obtained a Coronation Pardon, whereby amongst other Things, the King pardoned them all Felonies. It was [k] resolved by all the Judges of England upon Conference and Advisement, That this did not pardon the Piracy, for seeing it was no Felony whereof the Common Law took Conusance, and the Statute of 28 H. 8. did not alter the Offence, but ordain a Trial, and inflict Punishment, therefore it ought to be pardoned especially, or by Words which tantamount, and not by the general Name of Felony; and according to this Resolution the Delinquents were attainted and executed.

(*) Glanv. lib. 14. c. 25. Marlbr ca. 25. W. 1. c. 15.

[f] 3 E. 4. 14. 18 E. 4. 10. 23 Ass. 49. 1 E. 3. 13. Staundf. Pl. Cor. 102. E. 8 H. 4. 2. 4 Co. 44. 3 Inst. 47. 4 Co. 40, 41, 42.

[g] 22 Ass. 49.

[h] Staun. Prær. 45. b. 16 E. 3. Coron. 116. & 3 E. 3. Coron. 302. 5 Co. 120. 9 Co. 65.

‡ Vide ante 74.

[i] 28 H. 8. cap. 15. 3 Inst. 112.

[k] Hill. 2 Jac. Regis. Vide Mich. 7 & 8 Eliz. Dyer 241. 14 Eliz. Dyer 308. 4 Co. 43.

Pirate cometh from the Word πειράτης, which signifies a Rover at Sea. Attainder of Heresy, or Præmunire, worketh no Corruption of Blood; nor Heresy, Forfeiture of Lands, but in Case of Præmunire, Forfeiture of Lands in Fee-simple, but not of Lands in Tail, as formerly hath been said. [l] By some Statutes it is said, Sur forfeiture de corps & de avoire, or Sub forisfactura omnium quæ in potestate sua obtinet, or to be at the King's Will, Body, Lands and Goods, and the like, these are not extended to the Loss of Life or Member, but to Imprisonment, Lands and Goods. [m] But if an Act of Parliament saith, Eit judgment de vie & member, or subeat judicium vitæ vel membrorum, in that Case Judgment of Death shall

[l] Statute de Magna moneta tempore E. 1. 35 E. 1. de Carlisle. 20 E. 3. cap. 4. Dr. & Stud. 115.

[m] W. 2. c. 34. Rot. Parl. 25 E. 1. 1 E. 2. de frang. prisonam. 14 E. 3. ca. 10. Staun. Pl. Cor. 30, 31. 3 E. 3. Cor. 153. Brook, tit. Coron. 203. 9 E. 4. 26. 11 Co. 2. 23 H 8. 25 H. 8. 48 H. 6. by 18 Eliz. 25 Edw. 3.

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