

Lib. 3. fo. 6. 3. in Lin-
coln College's Case.

6 Co. 16.

[a] Litt. lib. 3. c. de Attor.
Sect. 5, 8, 6.

4 E. 6. Estates Br. 78.
Temps H. 8. tit. Con-
science, 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] Lib. 1. f. 100. Shel-
ley's Case. Pl. Com.
248.

[e] Litt. lib. 2. c. Te-
nant 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.

[h] 39 Aff. 12.
2 Leon. 27.

[i] Vide Sect. 17.

[k] Finch 124.

[l] Pl. Com. Lo. Berk-
ley'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.

[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.

Thirdly, Not 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 Seignior, Rent, &c. are extinguished for ever, without these Words [Heirs] 3. [g] When a bare Right is released, as when the Disseisor 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. Not to a Recovery; A. seised of Land suffered B. to recover the Land against him by a common Recovery, where the Judgment is quod predictus B. recuperet versus præd. A. tenementa prædicta cum pertin', yet B. recovereth a Fee-simple without this Word [Heirs] for regularly every Recovery recovereth a Fee-simple. 5. Not 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 Bromfere, who in 27 H. 6. was called to Parliament by the Name of the Lord Veseye, &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.

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 infeoff 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]