

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 ferra fealtie a le Seignior, pur ceo que il ne poist tener de son S^r en frankalmoigne. Car si le Seignior ne doit aver de luy fealtie, donne que il avera nul maner de service, que serroit inconvenient ou il est S^r, & le tenement est tenu 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.

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 Seignior 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.

This Case is worthy of great Observation, for hereby it appeareth, that albeit the Aliens held not by Fealty, nor any other tenure Service, but only by spiritual Services, and those uncertain; yet the Aliens 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 Aliens, 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 remembered, 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

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 Aff. 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, ceur parolr (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-

B b 2

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 Parlamento suo, &c. ad instantiam magnatum Regni sui concessit, providit, & statuit. But