

¶ *Ne ferra 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.

¶ *La 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 here- in the Partition differ- eth from the Exchange, where in the Exchange the Estates must be equal.

4 Co. 121.

Ante 51. a.

But yet this Parti- tion by Matter subse- quent may become void- able, (as Littleton here puts the Case) the eldest Coparcener hath, by the Partition and the Mat- ter subsequent, barred her self of the Right in the Fee-simple Lands, inso much as when the youngest Sister alieneth the Fee-simple Lands, and dieth, and her Is- sue entreth into Half the Lands entailed; yet shall not the eldest en- ter into Half of the Lands in Fee-simple upon the Alienee; for by the Alienation the Privity of the Estate is destroyed.

¶ *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 eur, 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 par- tition fait, la puisne file alienast la terre en fee simple a un auter en fee, & ad issue fits ou file & devie, lissue poit bien enter en les Tene- ments tailes & eur tener & occuper en purparty ovesque son Aunt. Et ceo est pur deux causes: un est, pur ceo que lissue ne poit aver aucun re- medie de la terre alien p la mere, pur ceo que la terre fuit a luy en fee simple, & pur tant que il est un de les heirs en taile, & nad my aucun recompence de ceo que a luy assiert de les Te- nements tailes, il est*

Also if Lands or Te- nements be given to a Man in Tail, who hath as much Land in Fee-sim- ple, 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 Al- lowance for the Lands and Tenements in Tail allotted to the elder Daughter; if after such Partition made, the young- er Daughter alieneth her Land in Fee-simple to an- other 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 Mo- ther, because the Land was to her in Fee-simple, and in- asmuch 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