

Lib. III. Cap. IX. Of Confirmation. Sect. 541.

case l'Abbe avera un brief de mesne, si soit distreine en son default per force de le dit confirmation, lou p case il ne puisoit aver un brief 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 Authoz having seen the former Books putterh his Case, that the Mesne maketh the Confirmation to hold in Frankalmoigne, and not the Lord 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 Seignior. 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 Gross; for a Man may be put out of Possession of the Custody of his Ward, but not of his Villein in Gross, no more than a Man can be of his Prisoner which he hath taken in War.

Post 323. a.
Brook, tit. Property 28.

Sect. 589, 590, 591.

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.

Also of Things that are in Grant, as Rents, Commons, and the like, it is at the Election of the Party whether he will be disseised of them or no, as shall be said after in its proper Place. But of a Villein in Gross 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.

And materially doth Littleton put his Case of a Villein in Gross, for of a Villein regardant to a Manor, the Lord may be put out of Possession; for by putting him out of Possession of the Manor which is the Principal, he may likewise be put out of Possession of the Villein regardant which is but accessory. And by the Recovery of the Manor the Villein is recovered. But if another doth take away my Villein in Gross or regardant, he gaineth no Possession of him. And this doth well appear by the Writ of Nativus habendo, for that Writ is not brought against any Person in Certain (because no Man

Item si jeo sue seissie d'un Villein come de Villein en gross, & un autre luy prent hors de ma possession, enclainant luy d'estre son Villein la ou il navoit aucun droit d'aver luy come son Villein, & puis jeo confirma a luy l'estate q il ad en mon Villein, cest confirmation semble void, p ceo q nul poit aver possession de un home come de Villein en grosse, si non celui que ad droit de luy aver come son Villein en grosse. Et si tant entant q celui a que le confirmation fuit fait, ne fuit seissie 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.