

rantie collateral, & garrantie q̄ comence p̄ disseisin. Et est ascavoir, q̄ devant le estatute de Glouc, tous garranties queux descendent a eux q̄ s̄ont heires a eux q̄ seoyēt les garranties, fuerōt barres a mesmes les heires a demander ascuns terres ou tenements encounter les Garranties, forpise les Garranties q̄ comenceroient p̄ disseisin, car t̄el Garrantie ne fuit unq̄ barē al heire, pur ceo q̄ le garranty comence 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.

Here our Authoz 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 charta to yield other Lands and Tenements (which in old Books is called in Excambio) to the Value of those that shall be exhibited by a former Title, or else may be used by Way of Rebutter.

Bract. 1. 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 [a] Britton, fol. 197. b.

un fence signifie defender son Tenant en sa seisin; & en autre fence 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 seiscina sua. [c] Fleta saith, Warrantizare nihil aliud est quam possidentem vocantem defendere & acquietare in sua seiscina vel possessione erga petentem, &c. & tenens de re Warranti excambium habebit ad valentiam.

[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, Warranty 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 Authoz 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 Siderf. 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. Glouc. cap. 3. Vide Sect. 724, 725, 727, &c. 2 Inlt. 293.

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.

Sont barres 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 Writs, 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 Writs 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.