

Post 385. a.

made to the Tenant of the Land, a Warranty may be made, albeit he that makes the Release or Confirmation, hath no Right to the Land, &c. But some do hold, That by Release or Confirmation, where there is no Estate created, or Transmutation of Possession, a Warranty cannot be made to the Assignee.

que per meane del Pier.

shew how he is Heir to the Grandfather, but by means of the Father.

Sect. 707.

Item, si home ad issue deux fits & est disseise, & leigne fits releffa al disseisor p son fait ove Garrantie, &c. & mozt sans issue, & apres ceo le pier mozt, ceo est un lineal Garrantie al puisne fits, p ceo q coment q leigne fits mozt en la vie le Pier, uncore p ceo q p possibility il puissoit estre q il puissoit conveyer a luy le title del terre p son eigne frere, si nul tiel Garrantie fuissoit. Car il puissoit estre q apres la mozt le pier, l'eigne frere entroit en les Tenements, & mozt sans issue, & donq le puisne fits conveyera a luy le title p leigne fits. Mes en tiel cas, si le puisne fits releffe ove Garrantie a le Disseisor, & mozt sans issue, ceo est un collateral Garrantie al eigne fits, p ceo q de tiel terre que fuit al pier, leigne per nul possibility poit conveyer a luy le title per meane de le puisne fits.

Also, if a Man hath Issue two Sons, and is disseised, and the eldest Son release to the Disseisor by his Deed with Warranty, &c. and dies without Issue, and afterwards the Father dieth, this is a lineal Warranty to the younger Son, albeit the eldest Son died in the Life of the Father, yet by Possibility it might have been, that he might convey to him the Title of the Land by his elder Brother, if no such Warranty had been. For it might be, that after the Death of the Father the elder Brother entred into the Tenements and died without Issue, and then the younger Son shall convey to him the Title by the elder Son. But in this Case, if the younger Son releaseth with Warranty to the Disseisor, and dies without Issue, this is a collateral Warranty to the elder Son, because that of such Land as was the Father's, the Elder by no Possibility can convey to him the Title by means of the younger Son.

35 E. 3. Gar. 73.
11 H. 4. 33.
1 Co. 66.

Here Littleton putteth an Example, where the Heir that is to be barred by the Warranty, is not to make his Discent by him that made the Warranty, as in the Case before; and yet because by Possibility he might have claimed by the eldest Son, if he had survived the Father, and died without Issue, and so the younger Brother might by Possibility have been Heir to him, the Warranty is lineal.

And here it is to be noted, that the Warranty of the eldest Son descended before the Right descended, whereof more shall be said hereafter, Sect. 741. and the Opinion of Littleton in this Case is holden for Law against the Opinions in 35 E. 3. Gar. 73.

9 E. 3. 16. 38 E. 3. 21.
46 E. 3. 26. 8 R. 2.
Gar. 101.
2 Roll. 773.

Mes en tiel case le puisne fits releffe ove Garrantie, &c. This Warranty in this Case is collateral to the eldest Son, and to the Issues of his Body; but if the eldest Son dieth without Issue of his Body, then the Warranty is lineal to the Issues of the Body of the youngest; and so the Warranty that was collateral to some Persons may become lineal to others.