THE FIRST PART OF THE INSTITVTES OF THE LAWES OF ENGLAND.

OR,

A COMMENTARIE vpon LITTLETON, not the name of a Lawyer onely, but of the Law it selfe.

MARTIAL.

Quid te vana iuuant miseræ ludibria Cartæ,
Hoclege, quod possis dicere iure meum est.

CICERO.

Maior hæreditas venit vnicuiq; nostrum a Iure, & Legibus, quam a Parentibus.

Hæc ego grandæuus posui tibi candide lector.

Authore EDW. COKE *Milite.*

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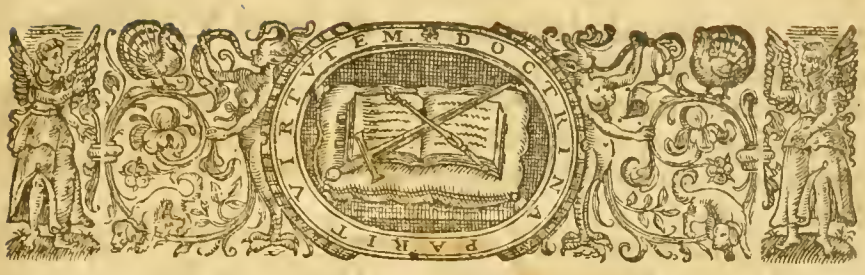


DEO,
PATRIÆ,
TIBI.

Proœmium.

OVR Author, a gentleman of an antient and faire descended Familie *de Littleton*, tooke his name of a Towne so called, as that famous chiefe Iustice Sir *Iohn de Markham*, and diuers of our profession and others haue done.

The name and degree of our Author.

Thomas de Littleton Lord of Frankley, had issue *Elizabeth* his only childe, and did beare the Armes of his Ancestours, *viz.* Argent, a Cheuron betweene three Escalop shelles Sable. The bearing hereof is verie antient and honourable, for the Senators of Rome did weare bracelets of Escalop shelles about their armes, and the knights of the honourable Order of Saint *Michaell* in France doe were a coller of gold in the forme of Escalop shelles at this day. Hereof much more might be said, but it belongs vnto others.

His Armes.

Instituted by *Lewis* the eleuenth, King of France, 9. *E.* 4. 1469.

With this *Elizabeth* married *Thomas Westcote* Esquire, the Kings seruant in Court, a Gentleman antiently descended, who bare Argent, a Bend betweene two Cotisses Sable, a Bordure engrayled Gules, Bezantie.

Thomas Westcote.

But she beeing faire and of a noble spirit, and hauing large possessions and inheritance from her Ancestors *de Littleton*, and from her Mother the daughter & heire of *Richard de Quatermains*, and other her ancestors (ready meanes in time to worke her owne desire) resolued to continue the honor of her name (as did the daughter and heire of *Charleton* with one of the sons of *Knightley*, and diuers others) And therfore prudently, whilest it was in her owne power, prouided by *Westcotes* assent before marriage, that her issue inheritable should be called by the name of *de*

Littleton. These two had issue foure sonnes, *Thomas*, *Nicholas*, *Edmund*, and *Guy*, and foure daughters.

Our Author bare his Mothers surname.

Thomas the eldest was our Auhor, who bare his fathers Christian name *Thomas*, and his mothers surname, *de Littleton*, and the armes *de Littleton* also; and so doth his posteritie beare both name and armes to this day.

Camden.

Camden in his Britania saith thus, *Thomas Littleton* alias *Westcote* the famous Lawyer, to whose treatise of Tenures the Students of the Common Law are no lesse beholding, than the Ciuilians to *Iustinians* Institutes.

Psalm. 92. 12. The iust shall flourish like the Palme tree, and spread abroad like the Cedars in Libanus.

The dignitie of this faire descended Familie *de Littleton*, hath grown vp together, and spred it selfe abroad by matches with many other antient and honourable Families, to many worthy and fruitfull branches, whose posteritie flourish at this day, and quartereth many faire Coates, * and enioyeth fruitfull and opulent inheritances thereby.

* The best kind of quartering of Armes.

Of the Inner Temple.

His Reading.

Seriant.

He was of the Inner Temple, and read learnedly vpon the Statute of *W.* 2. *De donis conditionalibus*, which we haue. He was afterward called *Ad statum & gradum Seruientis ad legem*, and was Steward of the Court of the Marshalsey of the Kings household, and for his worthinesse was made by King *H.* 6. his Seriant, and rode Iustice of Assise the Northerne Circuit, which places he held vnder King *E.* 4. vntil he in the sixt yeare of his raigne constituted him one of the Iudges of the Court of Common Pleas, and then he rode Northamtonshire Circuit, The same King in the 15. yeare of his raigne, with the Prince, & other Nobles and Gent. of antient blood, honored him with Knighthood of the Bath.

Kings Seriant *Rot. Pat.* 33. *H.* 6. *Parte* 1. *M.* 16. *Mich.* 34. *H.* 6. *fo.* 3. *a.*

Iudge of the Common Pleas, *Rot. Pat.* 6. *E.* 4. *Parte* 1. *M.* 15.

Knight of the Bath 15. *E.* 4.

He compiled this Booke when hee was Iudge, after the fourteenth yeare of the raigne of King *E.* 4. but the certaine time we cannot yet attaine vnto, but (as we conceiue) it was not long before his death, because it wanted his last hand, for that Tenant by Elegit, Statute Merchant, and Staple, were in the table of the first printed Booke, and yet hee neuer wrote of them.

When he wrote this Booke, 14. *E.* 4. *tit. Garranty.* 5. *Lit. Sect.* 692, 729. & 730.

Our Author in composing this worke had great furtherance, in that hee flourished in the time of many famous and expert Sages of the Law. (a) Sir *Richard Newton*, (b) Sir *Iohn Prisot*, (c) Sir *Robert Danby*, (d) Sir *Thomas Brian*, (e) Sir *Pierce Arderne*, (f) Sir *Richard Choke*, (g) *Walter Moyle*, (h) *William Paston*, (i) *Robert Danuers*, (k) *William Ascough*, and other Iustices of the Court of Common pleas. And of the Kings Bench, (l) Sir *Iohn Iune*, (m) Sir *Iohn Hody*, (n) Sir *Iohn Forteseue*, (o) Sir *Iohn Markham*, (p) Sir *Thomas Billing*: and other excellent men flourished in his time.

The deceases of his Contemporanes.
(a) He died 27. *H.* 6.
(b) He died 39. *H.* 6.
(c) Died 11. *E.* 4.
(d) Died 16. *H.* 7.
(e) Died 7. *E.* 4.
(f) Ouerliued our Author.
(g) Suruiued him also.
(h) Died. 23. *H.* 6.
(i) Suruiued our Author.
(k) Died 33. *H.* 6.
(l) Died 18. *H.* 6.
(m) Died 20. *H.* 6.
(n) Remoued 1. *E.* 4.
(o) Remoued 8. *E.* 4.
(p) Died 28. *E.* 4.

And of worldly blessings I account it not the least, that in the beginning of my study of the Lawes of this Realme, the Courts of Iustice, both of Equitie and of Law, were furnished with men of excellent Iudgement, Grauitie, and Wisedome; As in the Chancerie Sir *Nicholas Bacon*,

Bacon, and after him Sir *Thomas Bromley*. In the Exchequer Chamber the Lord *Burghley*, Lord high Treasurer of England, and Sir *Walter Mildemay* Chancellour of the Exchequer. In the Kings Bench, Sir *Christopher Wray*, and after him Sir *Iohn Popham*. In the Common Pleas Sir *Iames Dyer*, and after him Sir *Edmund Anderson*. In the Court of Exchequer, Sir *Edward Saunders*, after him Sir *Iohn Iefferey*, and after him Sir *Roger Manwoode*, men famous (amongst many others) in their seuerall places, and flourished, and were all honoured and preferred by that thrice noble and vertuous Queene *Elizabeth* of euer blessed memorie. Queene *Elizabeth*.
Of these reuerend Iudges, and others their associates, I must ingeniously confesse, that in her raigne I learned many things, which in these Institutes I haue published; And of this Queene I may say, that as the Rose is the queene of flowers, and smelleth more sweetely when it is pluckt from the branch: so I may say and iustifie, that shee by iust desert was the Queene of Queens, and of Kings also, for Religion, Pietie, Magnanimitie, and Iustice; who now by rememberance thereof, since Almightie God gathered her to himselfe, is of greater honour and renowne, than when shee was liuing in this World. You cannot question what Rose I meane: For take the Red or the White, shee was not onely by royall descent, and inherent Birthright, but by Rosial Beautie also, heire to both.

And though we wish by our labours (which are but *Cunabula Legis*, the cradles of the Law) Delight and Profit to all the Students of the Law, in their beginning of their studie (to whome the first part of the Institutes is intended) yet principally to my louing friends, the Students of the honourable and worthie Societies of the Inner Temple, and Cliffords Inne, and of Lyons Inne also, where I was sometime Reader. And yet of them more particularly to such as haue bin of that famous Vniuersitie of Cambridge, *alma mea matre*. And to my much honoured and beloued Allies and Friends of the Counties of Norffolke, my deare and natiue Countrie; and of Suffolke, where I passed my middle age; and of Buckinghamshire, where in my old age I liue. In which Counties, we out of former Collections compiled these Institutes. But now returne we againe to our Author. Inner Temple, Cliffords Inne, Lyons Inne.

He married with *Iohan* one of the daughters and coheires of *William Burley* of Broomescroft Castle in the County of Salop, a Gentleman of antient descent, and bare the Armes of his Family, Argent, a Fesse Checkie Or and Azure, vpon a Lyon Rampant Sable, armed Gules. And by her had three sonnes, Sir *William*, *Richard* the Lawyer, and *Thomas*. His marriage. His Issue.

In his life time, he, as a louing Father & a wise man, prouided matches for these three sonnes, in vertuous and antient Families (that is to say) for his sonne Sir *William*, *Ellen* Daughter and Coheire of *Thomas Welsh* Esquire, who by her had issue *Iohan* his onely childe, married to Sir *Iohn* The establishment of his posteritie, by the matches of his three sonnes, with Vertue, and good Blood.

Iohn Allen of Tixall Knight: And for the second wife of Sir *William*, *Mary* the Daughter of *William Whittington* Esquire, whose posteritie in Worcestershire flourish to this day. For *Richard Littleton* his second sonne (to whome he gaue good possessions of inheritance) *Alice* daughter & heire of *William Winsbury* of Pilleton-hall in the County of Stafford, Esquire, whose posterity prosper in Staffordshire to this day. And for *Thomas* his third sonne (to whom he gaue good possessions of inheritance) *Anne* daughter and heire of *Iohn Botreaux* Esquire, whose posteritie in Shropshire continue prosperously to this day. Thus aduanced he his posteritie, and his posteritie by imitation of his Vertues haue honoured him.

He gaue possessions of inheritance to his yonger sonnes for their better aduancement.

His last Will.

His Executors.

His Superuisor.

Hee made his last Will and Testament the two and twentieth day of Auguſt in the one and twentieth yeare of the raigne of King *Edward* the fourth, whereof he made his three Sonnes, a Parson, a Viccar, and a Seruant of his executors, & constituted superuisor thereof, his true and faithfull friend *Iohn Alcocke* Doctor of Law, of the famous Vniuersitie of Cambridge, then Bishop of Worcester (a man of singular Pietie, Deuotion, Chastitie, Temperance, and holinesse of life) who amongst other of his pious and charitable workes, founded Iesus Colledge in Cambridge, a fit and fast friend to our honourable and Vertuous Iudge.

His Age.
His Departure.

He left this life in his great and good age, on the three and twentieth day of the month of Auguſt, in the sayd one & twentieth yere of the raigne of King *Edward* the fourth; For it is obserued for a speciall blessing of Almightie God, that few or none of that profession dye *Intestatus & improles*, Without Will and without Childe; which last Will was proued the Eight of Nouember following in the Prerogatiue Court of Canturburie, for that he had *Bona notabilia* in diuers Dioceſſes. But yet our Author liueth still in *ore omnium iuris prudentium*.

1.*H*.7. *fol*.27.
21.*H*.7. *fol*.32.*b*.

Littleton is named in 1.*H*.7. and in 21.*H*.7. Some doe hold, that it is no error either in the Reporter or Printer; but that it was *Richard* the sonne of our Author, who in those daies professed the Law, & had read vpon the Statute of *W*.2. *quia multi per malitiam*, and * vnto whom his Father dedicated his Booke; And this *Richard* died at Pilleton-hall in Staffordshire, in 9.*H*.8.

W.2.2.*cap*.12.
* See *Littleton Sect*. 749.

His Sepulchre.

The bodie of our Author is honourably interred in the Cathedrall Church of Worceſter, vnder a faire Tombe of Marble, with his statue or portrature vpon it, together with his owne match, and the matches of some of his Ancestors, and with a memoriall of his principall Titles; and out of the mouth of his statue proceedeth this prayer, *Fili Dei miserere mei*, which he himselfe caused to be made and finished in his life time, and remaineth to this day. His wife *Iohan* Lady *Littleton* suruiued him, and left a great inheritance of her Father, and *Ellen* her Mother (Daughter and heire of *Iohn Grendon* Esquire) and other her

Ance-

Anceſtors to Sir *William Littleton* her ſonne.

This worke was not publiſhed in Print, either by our Author himſelfe, or *Richard* his ſonne, or any other, vntill after the deceaſes both of our Author, and of *Richard* his ſonne. For I find it not cited in any Booke or Report, before Sir *Anthony Fitzherbert* cited him in his *Natura breuium*; who publiſhed that Booke of his *Natura Breuium* in 26.*H*.8. Which worke of our Author in reſpect of the excellencie thereof (by all probabilitie) ſhould haue bin cited in the Reports of the raignes of *E*.5. *R*.3.*H*.7. or *H*.8. or by S. *Iermyn* in his booke of the Doctor and Studient (which he publiſhed in the three & twentieth yere of *H*.8.) if in thoſe dayes our Authors Booke had bin printed. And yet you ſhall obſerue, that time doth euer giue greater authoritie to Workes and Writings, that are of great and profound learning, than at the firſt they had. The firſt impreſſion that I find of our Authors Booke was at Roane in France, by *William le Tailier* (for that it was written in French) *Ad inſtantiam Richardi Pinſon*, at the inſtance of *Richard Pinſon* the Printer of King *H*. 8. before the ſaid Booke of *Natura Breuium* was publiſhed; & therefore vpon theſe and other things, that we haue ſeen, we are of opinion, that it was firſt printed about the foure and twentieth yeare of the raigne of King *H*.8. ſince which time he hath beene commonly cited, and (as he deſerues) more and more highly eſteemed.

When this Worke was publiſhed.

F.N.B. 222.*c.*

Nota.

When this Worke was firſt imprinted.

Hee that is deſirous to ſee his picture, may in the Churches of Frankley & Hales Owen ſee the graue and reuerend countenance of our Author, the outward man, but hee hath left this Booke, as a figure of that higher and nobler part (that is) of the excellent and rare endowments of his minde, eſpecially in the profound knowledge of the fundamentall Laws of this Realm. He that diligently reads this his excellent Worke, ſhall behold the child & figure of his mind, which the more often he beholds in the viſiall line, and well obſerues him, the more ſhall he iuſtly admire the iudgement of our Author, and increaſe his owne. This only is deſired, that he had written of other parts of the Law, and ſpecially of the rules of good pleading (the heart-ſtring of the Common Law) wherein he excelled, for of him might the ſaying of our Engliſh Poet be verified:

His Picture.

The figure of his Mind.

Chaucer.

There to he could indite and maken a thing,
There was no Wight could pinch at his writing.

So farre from exception, as none could pinch at it. This skill of

¶ ¶ good

Good Pleading.

good pleading he highly in this Worke commended to his ſonne, and vnder his name to all other Studients ſons of his Law. He was learned alſo in that Art, which is ſo neceſſary to a compleat Lawyer (I mean) Logicke, as you ſhal perceiue by reading of theſe Inſtitutes, wherein are obſerued his Sillogiſmes, Inductions, and other arguments; & his Definitions, Deſcriptions, Diuiſions, Etymologies, Deriuations, Significations, & the like. Certain it is that when a great learned man (who is long in making) dyeth, much learning dyeth with him.

Logicke.

Seneca.

The commendation of his Worke. *Lib. 2. fo. 67. Epiſt. 10. li. 10.*

That which we haue formerly written, that this Booke is the ornament of the Common Law, and the moſt perfect and abſolute Worke that euer was written in any humane Science: and in another place, that which I affirmed and tooke vpon mee to maintaine againſt all oppoſites whatſoeuer, that it is a Worke of as abſolute perfection in his kind, and as free from errour, as any Booke that I haue knowne to be written of any humane learning, ſhall to the diligent and obſeruing Reader of theſe Inſtitutes, be made manifeſt, and we by them (which is but a Commentary vpon him) bee deemed to haue fully ſatisfied that, which wee in former times haue ſo confidently affirmed and aſſumed. His greateſt commendation, becauſe it is of greateſt profit to vs, is, that by this excellent Worke, which hee had ſtudiouſly learned of others, he faithfully taught all the profeſſors of the Law in ſucceeding ages. The Victory is not great to ouerthrow his oppoſites, for there was neuer any learned man in the Law, that vnderſtood our Author, but concurred with me in his commendation.

Cicero.

Habet enim iuſtam venerationem quicquid excellit, For whatſoeuer excelleth hath iuſt honour due to it. Such, as in words haue endeauoured to offer him diſgrace, neuer vnderſtood him, and therfore wee lea ue them in their ignorance, and wiſh that by theſe our Labours, they may know the truth and be conuerted. But herein wee will proceede no further. For

Ariſtotle.

Stultum eſt abſurdas opiniones accuratius refellere, It is meere folly to confute abſurd opinions with too much curioſitie.

And albeit, our Author in his three Bookes cites not many Authorities, yet he holderh no opinion in any of them, but is proued and approoued by theſe two faithfull witneſſes in matter of Law, Authority, and Reaſon. Certaine it is, when he raiſeth any queſtion, and ſheweth the reaſon on both ſides, the latter opinion is his owne, and is conſonant to Law. Wee haue knowne many of his

his caſes drawne in queſtion, but neuer could find any iudgement giuen againſt any of them, which wee cannot affirme of any other Booke or Edition of our law. In the raigne of our late Soueraign Lord King *Iames* of famous and euer bleſſed memory, It came in queſtiō vpon a demurrer in Law, whether the releas to one treſpaſſer ſhould be auaileable or no, to his companion. Sir *Henrie Hobart* that honourable Iudge, and great Sage of the Law, and thoſe reuerend and learned Iudges *Warburton*, *Wynch*, and *Nichols* his companions, gaue iudgement according to the opinion of our Author, and openly ſayd, That they owed ſo great reuerence to *Littleton*, as they would not haue his Caſe diſputed or queſtioned, and the like you ſhall find in this part of the Inſtitutes. Thus much (though not ſo much as is due) haue we ſpoken of him, both to ſet out his life, becauſe he is our Author, and for the imitation of him by others of our profeſſion.

Nota.

Mich. 13. Iac. in Communi Banc inter Cock & Ilnours.

We haue in theſe Inſtitutes endeauoured to open the true ſence of euery of his particular caſes, & the extent of euery of the ſame either in expreſſe words, or by implication, and where any of them are altered by any latter Act of Parliament, to obſerue the ſame, and wherein the alteration conſiſteth: Certaine it is that there is neuer a period nor (for the moſt part) a word, nor an (&c.) but affordeth excellent matter of learning. But the module of a Preface cannot expreſſe the obſeruations, that are made in this worke, of the deepe Iudgement and notable Inuention of our Author. Wee haue by compariſon of the late and moderne impreſſions with the originall print, vindicated our Author from two iniuries; firſt from diuers corruptions in the late and moderne prints, and reſtored our Author to his owne. Secondly, From all additions, and incroachments vpon him, that nothing might appeare in his worke but his owne.

What is indeauoured by theſe Inſtitutes.

Our hope is, that the yong Student, who heretofore meeting at the firſt, and wraſtling with as difficult termes and matter, as in many yeares after, was at the firſt diſcouraged (as many haue bin) may by reading theſe Inſtitutes, haue the difficultie and darkeneſſe both of the Matter and of the Termes and Words of Art in the beginnings of his Studie facilitated, and explained vnto him, to the end hee may proceed in his Studie cheerefully, and with delight; and therefore I haue tearmed them Inſtitutes, becauſe my deſire is, they ſhould inſtitute, and inſtruct the ſtudious, and guid him in a readie way to the knowledge of the nationall Lawes of England.

The benefit of theſe Inſtitutes.

Wherefore called Inſtitutes.

Wherefore publiſhed in Engliſh.

This part wee haue (and not without preſident) publiſhed in Engliſh, for that they are an introduction to the knowledge of the nationall Lawes of the Realme; a worke neceſſarie, and yet heeretofore not vndertaken by any, albeit in all other profeſſions there are the like. We haue left our Author to ſpeake his owne language, and haue tranſlated him into Engliſh, to the end that any of the Nobilitie, or Gentrie of this Realme, or of any other eſtate, or profeſſion whatſoeuer, that will be pleaſed to read him and theſe Inſtitutes, may vnderſtand the language wherein they are written.

I cannot coniecture that the generall communicating of theſe Lawes in the Engliſh tongue can worke any inconuenience, but introduce great profit, ſeeing that *Ignorantia iuris non excuſat*, Ignorance of the Law excuſeth not.

Regula.

And heerein I am iuſtified by the Wiſedome of a Parliament the words whereof be, *That the Lawes and Cuſtomes of this Realme the rather ſhould bee reaſonably perceiued and knowne, and better vnderſtood by the tongue vſed in this Realme, and by ſo much euery man might the better gouerne himſelfe without offending of the Law, and the better keepe, ſaue, and defend his heritage and poſſeſſions. And in diuers Regions and Countries where the King, the Nobles, and other of the ſayd Realme haue beene, good gouernance and full right is done to euerie man, becauſe that the Lawes and Cuſtomes bee learned and vſed in the Tongue of the Countrey*: as more at large by the ſaid Act, and the peruiew thereof may appeare, *Et neminem oportet eſſe ſapientiorem Legibus*, No man ought to bee wiſer than the Law.

36.E.3.cap.15.

Regula.

Our Authours kind of French.

And true it is that our Bookes of Reports and ſtatutes in auntient times were written in ſuch French, as in thoſe times was commonly ſpoken and written by the French themſelues. But this kind of French that our Author haue vſed is moſt commonly written and read, and very rarely ſpoken, and therefore cannot be either pure, or well pronounced. Yet the change thereof (hauing beene ſo long accuſtomed) ſhould bee without any profit, but not without great danger and difficultie: For ſo many antient Termes and Words drawne from that legall French, are growne to bee *Vocabula artis*, Vocables of Art, ſo apt and ſignificant to expreſſe the true ſence of the Laws, and are ſo wouen into the Laws themſelues, as it is in a manner impoſſible to change them, neither ought legall Termes to be changed.

36.E.3. vbi ſupra.

In Schoole Diuinitie, and amongſt the Gloſſographers and Inter-

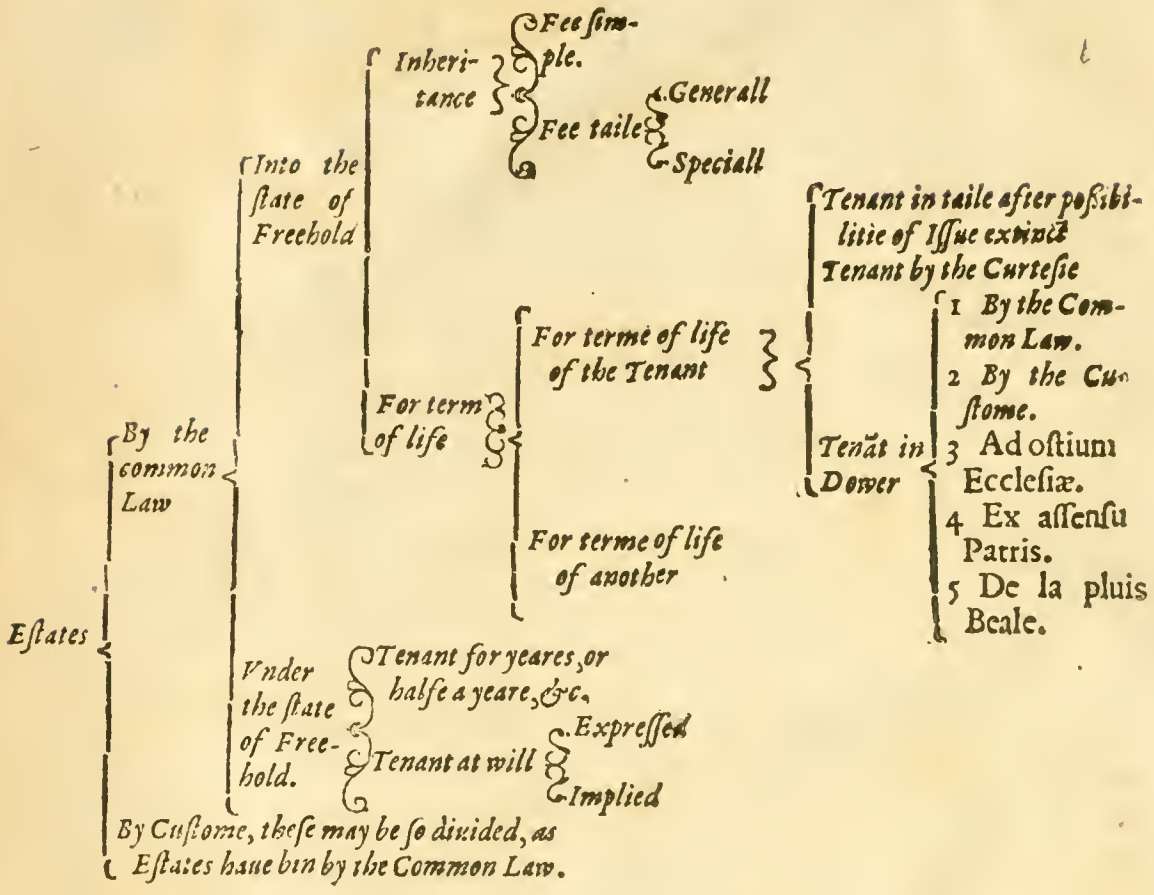
Interpreters of the Ciuile and Cannon Lawes, in Logicke and in other liberall Sciences, you ſhall meet with a whole Armie of words, which cannot defend themſelues *in Bello Grammaticali*, in the Grammaticall Warre, and yet are more ſignificant, compendious, and effectuall to expreſſe the true ſence of the matter, than if they were expreſſed in pure Latine.

This Worke we haue called The firſt part of the Inſtitutes, for two cauſes: Firſt, For that our Author is the firſt Booke that our Studient taketh in hand. Secondly, For that there are ſome other parts of Inſtitutes not yet publiſhed, (*viz.*) The ſecond part being a Commentary vpon the Stat. of *Magna Carta*, *Weſtm.* 1. and other old Statutes. The third part treateth of Criminall cauſes and Pleas of the Crowne: which three parts we haue by the goodneſſe of Almightie God alreadie finiſhed. The fourth part we haue purpoſed to be of the Iuriſdiction of Courts; but hereof wee haue onely collected ſome materialls towards the raiſing of ſo great and honourable a Building. Wee haue by the goodneſſe and aſſiſtance of Almightie God brought this twelfth Worke to an end: In the eleuen Bookes of our *Reports* we haue related the opinions and iudgements of others; but herein wee haue ſet downe our owne. Wherefore called the firſt part.

Before I entred into any of theſe parts of our Inſtitutes, I acknowledging myne owne weakeneſſe and want of iudgement to vndertake ſo great Workes, directed my humble Suite and Prayer to the Authour of all Goodneſſe and Wiſedome, out of the Booke of *Wiſedome*; *Pater & Deus Miſericordiæ, Da mihi ſedium tuarum aſſiſtricem ſapientiam, mitte eam de Cœlis ſanctis tuis & a ſede magnitudinis tuæ, vt mecum ſit, & mecum laboret, vt ſciam quid acceptum ſit apud te*; Oh Father and God of Mercie, giue mee Wiſedome, the Aſſiſtant of thy Seates; Oh, ſend her out of thy holy Heauens, and from the Seate of thy Greatneſſe, that ſhee may bee preſent with mee, and labour with mee, that I may know what is pleaſing vnto thee, *Amen*. Li. Sap. ca. 9. vers. 4. 10.

Our Authour hath diuided his whole Worke into three Bookes: In his firſt hee hath diuided Eſtates in Lands and Tenements, in this manner; For, *Res per diuiſionem melius aperiuntur*. Bracton.

A Figure of the diuiſion of *Poſſeſſions.*



Our Authour dealt onely with the Eſtates and termes aboue ſayd; Somewhat Wee ſhall ſpeake of Eſtates by force of certaine Statutes, as of Statute Merchant, Statute Staple, and *Elegit*, (whereof our Authour intended to haue written) and likewiſe to Executours to whome lands are deuiſed for payment of Debts, and the like.

And

And when the Reader ſhall in any part of this Worke finde no perfect ſence, or the Caſe apparantly againſt Law, or miſquotations, or incongrue Latyne, or falſe Orthographie, or the like; I ſhall deſire of him three things:

Firſt, Before hee enter (vpon the firſt apprehenſion thereof) into any euill conceit, That hee would aduiſedly peruſe ouer the *Errata* in the end of this Booke, & correct his booke accordingly, and then I am perſuaded he ſhall in many things receiue ſatisfaction.

Secondly, That he will impute no more or greater faults to the Printer, than he deſerues, in reſpect I was in the Countrey during all the time of the impreſſion hereof, and for that hee might eaſily miſtake my hand writing, beeing in many places not eaſie to be read but by him that was well acquainted therewith: and the rather, becauſe the *Errata* be not ſuch, (ſauing a verie few) but that the iudicious Reader vpon the Context and other parts of this Worke, will eaſily vnderſtand my meaning.

Thirdly, That the learned Reader will not conceiue any opinion againſt any part of this painefull and large Volume, vntill he ſhal haue aduiſedly read ouer the whole, and diligently ſearched out and well conſidered of the ſeuerall Authorities, Proofes, and Reaſons which wee haue cited and ſet downe for warrant and confirmation of our opinions throughout this whole Worke.

Regula.
Inciuile eſt parte vna perſpecta, tota re non cognita, de ea iudicare.

Myne aduice to the Studient is, That before hee read any part of our Commentaries vpon any Section, that firſt hee read againe and againe our Authour himſelfe in that Section, and doe his beſt endeauours, firſt of himſelfe, and then by conference with others, (which is the life of Studie) to vnderſtand it, and then to read our Commentarie thereupon, and no more at any one time, than hee is able with delight to beare away, and after to meditate thereon, which is the life of reading. But of this Argument we haue for the better direction of our Studient in his Studie, ſpoken in our Epiſtle to our firſt Booke of *Reports*.

And albeit the Reader ſhall not at any one day (doe what he can) reach to the meaning of our Author, or of our Commentaries,

taries, yet let him no way diſcourage himſelfe, but proceed; for on ſome other day, in ſome other place, that doubt will bee cleared. Our Laboures herein are drawne out to this great Volume, for that our Author is twice repeated, once in French, and againe in Engliſh.

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ciarios ad placita foreſtarum quas idem Frater noſter habet ex dono domini Regis Henrici patris noſtri ſecundum aſſiſ'. foreſtæ tenend, &c. In this caſe the grantee and his heires had a perſonall inheritance in making of a requeſt to haue Letters patents of Commiſſion to haue Iuſtices aſſigned to him to heare and determine, of the pleas of the foreſts, and concerneth neither lands or tenements. And ſo it is if an Annuity be granted to a man and his heires, It is a fee ſimple perſonall, & ſic de ſimilibus. And laſtly hereditaments mixt both of the realty and perſonalty. As the Abbot of Whitbye in the County of Yorke hauing a foreſt of the gift of William of Percye founder of that Abby, and by the Charters of king Iohn and of other his progenitors, king Henry the third did graunt Abbati & conuentui de Whitbye quod ipſi & eorum ſucceſſores imperpetuũ habeant viridarios ſuos proprios de libertate ſua de Whitbye eligend de cetero in pleno com̃ Eborum prout moris eſt ad reſponſiones & preſentationes, faciend de tranſgreſſionibus quas amodo fieri continget de venatione infra metas foreſtæ ſuæ de Whitbye quam habent ex donatione Willi. de Percey & Alani de Percey, filij eius & redditione & conceſſione domini Iohanis quondam regis Angliæ patris noſtri, & confirmatione noſtra coram Iuſticiarijs noſtris itinerantibus ad placita foreſtæ in partibus illis & non alibi ſicut viridarij foreſtæ noſtræ huiuſmodi reſponſiones & preſentationes facere debent & conſueuerunt. Et ſi contingat aliquos forinſicos qui non ſunt de libertate predictorum Abbatis & conuentus tranſgreſſionem facere de venatione infra metas foreſtæ predictæ quos predicti viridarij attachiare non poſſunt. Volumus & cõcedimus pro nobis & heredibus noſtris quod huiuſmodi tranſgreſſores, per Iuſticiarios foreſtæ noſtræ vltra Trentam attachientur ad preſentationem viridariorũ predict ad reſpondend ũ inde coram Iuſticiarijs noſtris itinerantibus ad placita foreſtæ noſtræ in partibus illis cum ibid. ad placitandum venerint prout ſecundum aſſiſam & conſuitudinem foreſtæ noſtræ fuer faciend. Which Charter was pleaded vpon the Clayme made by the Abbot of Whitbye before Willoughby, Hungerford, and Hanbury, Iuſtices in Eire in the forreſt of Pickering, which Eire began Anno 8. E. 3. And theſe before them were allowed. And when the king createth an Earle of ſuch a County or other place, To hold that Dignity to him and his heires, This Dignity is perſonall, and alſo concerneth lands and tenements. But of this matter more ſhalbe ſaid in the next Chapter, Sect. 14. & 15.

Ro. Pas. an. 47. H. 3. Iuſtic. Pickering. 8. E. 3. Ro. 42.

¶ *Et eſt appel en Latine feodum ſimplex quia feodũ idem eſt, quod hereditas.* Here Littleton himſelfe teacheth the ſignification of feodum, according to that which hath beene ſaid, which only is to be applied to fee ſimple pure and abſolute And this and all his other interpretations of words and Etymologies throughout all his three bookes (whereun the ſtudious reader will obſerue many) are perſpicuous, and euer per notiora & nunquam ignotum per ignotius, and are moſt neceſſary, for ignoratis terminis ignoratur & ars.

Bract. lib. 4. cap. 9. fo. 263. Britt. ca. 32. & 79. For interpretation of words and Etimologies. Vid. Sect. 9. 18. 95. 116. 119. 135. 154. 164. 174. 184. 186. 194. 204. 234. 267. 258. 332. 337. 424. 520. 592. 645. 689. 73[illegible].

¶ *Simplex idem eſt quod legittimum vel purũ,* hereof he treateth only in this place. And Litt: ſaith well, that Simplex idem eſt quod purum. Simplex enim dicitur quia ſine plicis & purũ dicitur, quod eſt merũ & ſolum ſine additione. Simplex donatio & pura eſt vbi nulla addita eſt conditio ſive modus, ſimplex enim datur quod nullo additamento datur.

Bract. lib. 2. ca. 39. fo. 92. 62. b. lib. 4. ca. 28. Fleta. lib. 3. ca. 8. Bract. lib. 2. ca. 5. & c. Britt. ca. 34.

¶ *Hereditas legitima vel hereditas pura.* And therefore it is wel ſaid, quod donationũ alia ſimplex & pura, quæ nullo iure civili vel naturali cogente, nullo precedente metu vel interueniente ex mera gratiuitaque libertate donantis procedit, & vbi nullo caſu velit donator ad ſe reuerti quod dedit, alia ſub modo conditione vel ob cauſam, in quibus caſibus non proprie ſit, donatio, cum donator id ad ſe reuerti velit, ſed quedam potius feodalis dimiſſio, alia abſoluta & larga, alia ſtricta, & coarctata, ſicut certis heredibus quibuſdam a ſucceſſoribus excluſis, &c. And therefore ſeeing Fee ſimple is hereditas legitima vel pura, it plainly confirmeth, that the diuiſion of Fee is by his Authority rather to be diuided as is afore ſaid then fee ſimple. And he ſaith wel in the diſiunctiue legitima vel pura, for euery fee ſimple is not legitimum. For a diſſeiſor, abator, intruder, vſurper, &c. haue a fee ſimple, but it is not a lawfull fee. So as euery man that hath a fee ſimple, hath it either by right or by wrong. If by right, then he hath it either by purchaſe, or diſcent. If by wrong, then either by diſſeiſin, intruſion, abatement, vſurpation, &c. In this Chapter he treateth only of a lawfull fee ſimple, and deuideth the ſame as is afore ſaid.

Fleta. lib. 3. ca. 2.

¶ *Car ſi home purchaſe.* Perſons capable of purchaſe are of two ſorts. perſons naturall created of God, as I. S. I. N. &c. and perſons incorporate or politique created by the policie of man (and therefore they are called bodies politique) and theſe be of two ſorts, viz either ſole, or aggregate of many: againe aggregate of many, either of all perſons capable, or of one perſon capable, and the reſt incapable or dead in law, as in the chapter of Diſcontinuance, Sect. 57. ſhall be ſhewed. Some men haue capacitie to purchaſe but not ability to hold. Some capacitie to purchaſe and abilitie to hold or not to hold, at the election of them or others. Some capacitie to take and to hold. Some neither capacitie to take nor to hold. And ſome ſpecially diſabled to take ſome particular thing.

Vid. Sect. 57. Who haue abilitie to grant. Perſons capable of purchaſe.

If an alien Chriſtian or infidell purchaſe houſes, Lands, tenements, or hereditaments to him and

11. Eliz. Dier. 283. 11. H. 4. 22. & 26. 7. E. 4. 29.

and his heires, albeit he can haue no heires, yet he is of capacitie to take a fee ſimple but not to hold. For vpon an office found, the king ſhall haue it by his prerogatiue of whom ſoeuer the land is holden. And ſo it is if the alien doth purchaſe land and die, the law doth caſt the freehold, and inheritance vpon the King. If an alien purchaſe any eſtate of freehold in houſes, lands, tenements, or hereditaments, the King vpon office found ſhall haue them. If an alien be made Denizen and purchaſe lands, and die without iſſue, the lord of the fee ſhall haue the eſcheat, and not the King. But as to a leaſe for yeares, there is a diuerſitie betweene a leaſe for yeares of a houſe for the habitation of a merchant ſtranger being an alien, whoſe King is in league with ours, and a leaſe for yeares of lands, meadowes, paſtures, woods, and the like. For if he take a leaſe for yeares of lands, meadowes, &c. vpon office found, the King ſhall haue it. But of a houſe for habitation he may take a leaſe for yeares as incident to Commercery, for without habitation he cannot merchandize or trade. But if he depart or relinquiſh the realme, the King ſhall haue the leaſe. So it is if he die poſſeſſed thereof, neither his Executor or Adminiſtrators ſhall haue it but the King, for he had it only for habitation as neceſſary to his trade or traffique, and not for the benefit of his Executor or adminiſtrator. But if the alien be no merchant, then the King ſhall haue the leaſe for yeares, albeit it were for his habitation, and ſo it is if he be an alien enemie. And all this was ſo reſolued by the Iudges aſſembled together for that purpoſe in the caſe of Sir Iames Croft, Paſch. 29, of the raigne of Queene Elizabeth. Alſo if a man commit felonye, and after purchaſe lands, and after is attainted, he had capacity to purchaſe, but not to hold it, for in that caſe the Lord of the fee ſhall haue the Eſcheat. And if a man be attainted of felony, yet he hath capacitie to purchaſe to him and to his heires, albeit he can haue no heire, but he cannot hold it, for in that caſe the King ſhall haue it by his prerogatiue, and not the Lord of the fee, for a man attainted hath no capacitie to purchaſe (being a man ciuiliter mortuus) but only for the benefit of the King, no more then the alien nee hath. If any ſole Corporation or aggregate of many, either Eccleſiaſticall or temporall (for the words of the ſtatute be Si quis religioſus vel alius) purchaſe Lands or Tenements in fee, they haue capacity to take but not to retayne, (vnleſſe they haue a ſufficient Licence in that behalfe) for within the yeare after the alienation, the next Lord of the fee may enter, and if he doe not, then the next immediate lord from time to time to haue halfe a yeare, and for default of all the meine Lords, then the King to haue the land ſo aliened for euer, which is to be vnderſtood of ſuch inheritance as may be holden. But of ſuch inheritances as are not holden as Villeins, rents-charges, commons, and the like, the King ſhall haue them preſently by a fauourable interpretation of the ſtatute. An Annuity graunted to them is not mortmaine, becauſe it chargeth the perſon only. Some haue ſaid that it is called mortmaine Manus mortua, quia poſſeſſio eorum eſt immortalis, manus pro poſſeſſione, & mortua pro immortali, and the rather for that by the lawes and ſtatutes of the realme, all Eccleſiaſticall perſons are reſtrained to alien. Others ſay it is called manus mortua per Antiphraſin, becauſe bodies politique and corporate neuer die. Others ſay that it is called Mortmaine by reſemblance to the holding of a mans hand that is ready to die, for that he then holderh he letteth not goe till he be dead. Theſe and ſuch others are framed out of wit and inuention, but the true cauſe of the name, and the meaning thereof, was taken from the effects, as it is expreſſed in the ſtatute it ſelfe, per quod quæ ſeruitia ex huiuſmodi feodis debentur, & quæ ad defenſionem regni ab initio prouiſa fuerunt indebite ſubtrahuntur & capitales domini eſchetas ſuas amittunt; ſo as the lands were ſaid to come to dead hands as to the Lords, for that by alienation in Mortmaine, they loſt wholly their eſcheats, and in effect their knights ſeruices for the defence of the Realme, Wards, Marriages, Reliefes, and the like, and therefore was called a dead hand, for that a dead hand yeeldeth no ſeruice.

I paſſe ouer Villeins or Bondmen, who haue power to purchaſe lands, but not to retayne them againſt their Lords, becauſe you ſhall reade at large of them in their proper place in the Chapter of Villenage.

An infant or minor (whom we call any that is vnder the age of 21. yeares) haue without conſent of any other, capacitie to purchaſe, for it is intended for his benefit, and at his full age, he may either agree thereunto, and perfect it, or without any cauſe to be alleaged, waiue or diſagree to the purchaſe, and ſo may his heires after him, if he agreed not thereunto after his full age.

A man of non ſane memory may without the conſent of any other purchaſe lands, but hee himſelfe cannot waiue it, but if he die in his madneſſe, or after his memorie recouered without agreement thereunto, his heire may waiue and diſagree to the ſtate, without any cauſe ſhewed, and ſo of an Ideot. But if the man of non ſane memory recouer his memory, and agree vnto it, it is vnauoydable.

If an Abbot purchaſe lands to him and his ſucceſſors without the conſent of his Conuent, he himſelfe cannot waiue it, but his ſucceſſor may vpon iuſt cauſe ſhewed, as if a greater rent were reſerued thereupon then the value of the land, or the like, but he cannot waiue it vnleſſe it be vpon iuſt cauſe, & ſic de ſimilibus prælatus Eccleſiæ ſuæ cõditionẽ meliorare poteſt, deteriorare nequit. And in another place he ſaith, Eſt enim Eccleſia eiuſdem conditionis, quæ fungitur vice minoris.

32. *H.* 6. 23. *Pl. Com.* 483.

5. *Mar. Br. tit. Denizen* 22.

Paſch. 29. *Eliz. in Sir Iames Croftes caſe.*

49. *Aſſ. pl.* 2. 49. *E.* 3. 11.

Magna Carta. ca. 36.
7. *E.* 1. *de religioſis.*
W. 2. 13. *E.* 1. *ca.* 33.
15. *R.* 2. *ca.* 5. 23. *H.* 8. *ca.* 10
39. *Eliz. ca.* 5.
23. *H.* 3. *Aſſ.* 436.
29. *Aſſ. p.* 17. *Brit. f.* 132.
Fleta. lib. 3. *cap.* 4. & 5.
19. *E.* 2. *tit. Vil.* 34.
29. *E.* 3. *Ibid.* 13. 21. *E.* 3. 5.
4. *H* 6. 9 19 *H.* 6. 63 65.
3. *E* 4 14 19. *E.* 3 *Mortm.* 8
34. *H.* 6. 37. 19. *H.* 6. 63.
7. *E.* 4. 14.
Pl. Com. 193. *an Wrotteſleyes caſe.*

Le ſtatut. de Religioſis. 7. *E.* 1.

43. *Aſſ. p.* 23.

Bract. lib. 2. *fo.* 12. & 32.

But no ſimile holds in euery thing, according to the antient saying, Nullum ſimile quatuor pedibus currit. An Hermephzadite may purchaſe according to that Sexe which preuaileth. A feme Couert cannot take any thing of the gift of her husband, but is of capacitie to purchaſe of others without the conſent of her husband. And of this opinion was Littleton in our bookes, and in this booke Sect.677. but her husband may diſagree thereunto, and deueſt the whole eſtate, but if he neither agree nor diſagree, the Purchaſe is good, but after his death, albeit her husband agreed thereunto, yet ſhe may without any cauſe to be alleaged waiue the ſame, and ſo may her heires alſo, if after the deceaſe of her husband ſhe her ſelfe agreed not thereunto. 1.H.7.16.7.H.4.17. 18.H.6.8.39.E.3.30. 15.E.4.fol.1.b.27.H.8.24

A name of purchaſe.

A wife, (Vxor) is a good name of Purchaſe without a Chriſtian name, and ſo it is, if a Chriſtian name be added and miſtaken, as Em for Emelyn, &c for vtile per inutile non vitiatur. But the Queene, the conſort of the King of England, is an exempt perſon from the king by the Common law, and is of ability, and capacitie to Purchaſe and grant without the King. Of which ſee more at large, Sect.206. 2.H.4.25. 1.H.5.8. 46.E.3.22. 12. Aſſ.16. 30.E.3.18.1.Aſſ.11. 11.H.4.33.9.E.4.49. 13.E.3. Eſtoppel.231. F.N.B.97.A.

The Pariſhioners or Inhabitants, or probi homines of Dale, or the Churchwardens, are not capable to Purchaſe landes, but goods they are, vnleſſe it were in ancient time when ſuch grants were allowed. 12.H.7.28.37.H.6.30. 10.H.4.3.b.

An ancient grant by the Lord to the Commoners in ſuch a waſte, that a way leading to their common ſhould not be ſtreightened, was good, but otherwiſe it is of ſuch a grant at this day. And ſo in ancient time a grant made to a Lord, & hominibus ſuis tam liberis quam nativis or the like was good, but they are not of capacitie to Purchaſe by ſuch a name at this day. But yet at this day if the King grant to a man to haue the goods and chattels de hominibus ſuis, or de tenentibus ſuis, or de reſidentibus infra feodum, &c it is good, for there they are not named as purchaſers or takers, but for another mans benefit, who hath capacitie to purchaſe or take. And regularly it is requiſite that the Purchaſer be named by the name of Baptiſme and his ſurname, and that ſpeciall heed be taken to the name of Baptiſme, for that a man cannot haue two names of Baptiſme as he may haue diuers ſurnames. And it is not ſafe in writs, pleadings, grants, &c. to tranſlate ſurnames into Latine. As if the ſurname of one be Fitzwilliam, or Williamſon, if he tranſlate him to filius Willi. if in truth his father had any other Chriſtian name then William, the writ, &c. ſhall abate, for Fitzwilliam or Williamſon is his ſurname whatſoeuer Chriſtian name his father had, therefore the Lawyer neuer tranſlates ſurnames. And yet in ſome caſes, though the name of Baptiſme be miſtaken, (as in the caſe before put of the wife) the grant is good. 32.E.3.*Iarre* 261. 33.E.3.*grant* 83. 18.E.3.50.12.Aſſ.35. 14.H.6.12.34.Aſſ.p.11. 40.Aſſ.p.21. *Bract.lib.*4.*tract.*1.*ca.*20. *Britton fol.*121.122. 3.E.3.78.25.E.3.43. 26.Aſſ.61.30.Aſſ.16. 46.E.3.22.39.E.3.17. 3.H.6.25.19.H.6.2. 30.H.6.1.34.H.6.19. 11.H.4.27.9.E.4.29. 5.E.4.46.65.14.H.7.11. 20.*Liber D er.*259. 8.E.3.436.29.E.3.25. 1.H.4. 3.H.6.26. 19.H.6.2. 34.H.6.19.5.E.4.55. 27.H.8.11.1.H.5.5. 18.E.3.32.27.E.3.85. 8.E.3.437.7.H.6.29. 9.H.5.9.

So it is if Lands be giuen to Robert Earle of Pembroke where his name is Henry, to George Biſhop of Norwich, where his name is Iohn, and ſo of an Abbot, &c. for in theſe and the like caſes there can be but one of that Dignity or name, And therefore ſuch a grant is good, albeit the name of Baptiſme be miſtaken. If by Licence lands be giuen to the Deane and Chapter of the holy and indiuided Trinitie of Norwich, this is good, although the Deane be not named by his proper name, if there were a Deane at the time of the grant, but in pleading he muſt ſhew his proper name. And ſo on the other ſide, If the Deane and Chapter make a Leaſe without naming the Deane by his proper name the Leaſe is good, if there were a Deane at the time of the Leaſe, but in pleading, the proper name of the Deane muſt be ſhewed, and ſo is the Booke of 18.E.4. to be intended, for the ſame Iudges in 13.E.4 held the grant good to a Maior, Aldermen, and Commonaltie, albeit the Maior was not named by his proper name, but in pleading it muſt be ſhewed, as it is there alſo holden. If a man bee baptized by the name of Thomas, and after at his Confirmation by the Biſhop he is named Iohn, hee may purchaſe by the name of his Confirmation. And this was the caſe of Sir Francis Gawdye, late chiefe Iuſtice of the Court of Common-pleas, whoſe name of baptiſme was Thomas, and his name of Confirmation Francis, and that name of Francis by the aduice of all the Iudges in Anno 36. H 8. he did beare, and after vſed in all his purchaſes and grants. And this doth agree with our antient bookes, where it is holden that a man may haue diuers names at diuers times, but not diuers Chriſtian names. And the Court ſaid, that it may be that a woman was baptized by the name of Anable, and 40. yeares after ſhee was Confirmed by the name of Douce, and then her name was changed, and after ſhe was to be named Douce, and that all purchaſes, &c. made by her by the name of Baptiſme before her Confirmation remaine good, a matter not much in vſe, nor requiſite to be put in vſe, but yet neceſſary to be knowne. But Purchaſes are good in many caſes by a knowne name, or by a certaine deſcription of the perſon without either Surname, or name of Baptiſme, as Vxori I.S as hath beene ſaid, or primogenito filio, or ſecundo genito filio, &c, or filio natu minimo I. S. or ſeniori puero, or omnibus filijs or filiabus I.S. or omnibus liberis ſeu exitibus of I.S. or to the right heires of I.S. 21.R.2.*brē.*936. 12.R.2.*ſeffments* 58. 9.E.3.14.46.E.3.22. 3.H.6.26.34.H.6.19. 1.H.7.29.5.E.2.*brē.*741. 14.H.7.11. 17.E.3.39.18.E.3.59. 30.E.3.18.11.H.4.84. *Pl.Com.*515.21.R.2.*deuiſe.* 41.E.3.19.15.E.3.*Counter-Plea de vouch.*43.35.Aſſ.13. 37.H.6.30.11.E.4.2. 7.H.4.5.40.E.3.9. 37.H.8.*Name* 40.B. 15.H.7.14.

But if a man doe infranchiſe a Villeine, cum tota ſequela ſua, that is not ſufficient to infranchiſe his children borne before, for the incertaintie of the word ſequela. But regularly in writs, the demandant or tenant is to be named by his Chriſtian Name and Surname, vnleſſe it bee in caſes of ſome Corporations or bodies politique. 8.E.3.437.29.E.3.44. 19.E.4.11.21.E.4.19. 7.H.6.29.

39.E.3.11.24.17.E.3.42. 35.Aſſ.13.41.E.3.19.

A Baſtard hauing getten a name by reputation may purchaſe by his reputed or knowne name to him and his heires, although he can haue no heire. A man make a Leaſe to B. for life, remainder to the eldeſt iſſue male of B. and the heires males of his body. B. hath iſſue a baſtard ſonne, he ſhall not take the remainder, becauſe in law he is not his iſſue, for qui ex damnato coitu nascuntur inter liberos non computentur. And as Littleton ſaith, A baſtard is quaſi nullius filius and can haue no name of reputation as ſoone as he is borne. So it is if a man make a Leaſe for life to B the remainder to the eldeſt iſſue male of B to be begotten of the body of Iane S. whether the ſame iſſue be legitimate, or illegitimate. B. hath iſſue a baſtard on the body of Iane S. this ſonne or iſſue ſhall not take the remainder, for (as it hath beene ſaid) by the name of iſſue, if there had beene no other words he could not take, and (as it hath beene alſo ſaid) a Baſtard cannot take, but after he hath gained a name by reputation, that he is the ſonne of B. &c. And therefore he can take no remainder limitted before he be borne, but after he be borne, and that he hath gained by time a reputation to be knowne by the name of a ſonne, then a remainder limitted to him by the name of the ſonne of his reputed father is good. But if he cannot take the remainder by the name of iſſue at the time when he is borne he ſhall neuer take it. And ſo it ſeemeth, and for the ſame cauſe, if after the birth of the iſſue B had married Iane S. ſo as he became Baſtard eigne, and had a poſſibilitie to inherit, yet he ſhall not take the remainder.

Vid. Sect.188. So it was reſolued. M.38.& 39.Eliz. in Bre. de errore. ſur Land in Portington in com. Salop.

39.E.3.11.24.35.Aſſ.13. 41.E.3.19.17.E.3.42.

Perſons deformed hauing humane ſhape, ideots, mad men, leapers, baſtards, deafe, dumbe, and blinde, minors, and all other reaſonable creatures haue power to purchaſe and receyue Lands or Tenements. But the Common law doth diſable ſome men to take any eſtate in ſome particular things. As if an office either of the grant of the King or Subiect which concerne the adminiſtration, proceeding, or execution of Iuſtice, or the Kings Reuenue, or the Common-wealth, or the intereſt, benefit, or ſafetie of the ſubiect, or the like; if theſe, or any of them bee granted to a man that is vnexpert, and hath no ſkill and ſcience to exerciſe or execute the ſame, the grant is meerely voyde, and the partie diſabled by law, and incapable to take the ſame, pro commodo regis & populi; for only men of ſkill, knowledge, and abilitie to exerciſe the ſame are capable of the ſame to ſerue the King and his people. An infant or minor is not capable of an office of Stewardſhip of the Court of a Chancor either in poſſeſſion or reuerſion. No man though neuer ſo ſkilfull and expert, is capable of a iudiciall office in reuerſion, but muſt expect vntill it fall in poſſeſſion. And ſee Sect 378. where bargaining or giuing of monye or any manner of reward, &c. for offices there mentioned, ſhall make ſuch a purchaſer incapable thereof, which is worthy to be knowne, but more worthy to be put in due execution.

5.E.4.tit. offic. & officer. B.48.Vintors caſe. 5.Mar.Dier.fo.150. Scroggs caſe.

M.40.& 41.Eliz.in the Kings bench betweene Scamler and Walters. Lib.11.fo.2. in Auditor Curles caſe Vid.Sect.378. 1.H.7.31. Brack.lib.5.fo.421. 415.Britt..c.22.39. Flet.lib.2.ca.41. 1.E.3.9.44.E.3.4. 3.H.6.24.21.R.2.iudgement 263 7.H.4 2.14.H.8.16. Dett.& Stam.141.

Some are capable of certaine things for ſome ſpeciall purpoſe, but not to vſe or exerciſe ſuch things themſelues. As the King is capable of an office, not to vſe but to grant, &c.

A monſter borne within lawfull matrimonie, that hath not humane ſhape cannot purchaſe, much leſſe reteine any thing. The ſame law is de profeſſis & monachis ſeculo, for they are ciuiliter mortui, whereof you ſhall reade at large in his proper place, Sect.200.

Pl.com.fo.47.Brit.ca.33.

¶ *Purchaſe.* **In Latin** perquiſitum **of the verbe** perquirere, Littleton deſcribeth it in the end of this chapter in this manner, Item, purchaſe eſt appelle poſſeſſion de terres ou tenements que home ad per ſon fait, ou per ſon agreement, a quel poſſeſſion il ne auient per title de diſcent de nul de ſes anceſters, ou de ſes cotens per ſon fait dem. So as I take it, a purchaſe is to be taken, when one commeth to lands by conueyance or title, and that diſſeiſons, abatements, intruſions, vſurpations, and ſuch like eſtates gained by wrong, are not ſaid, in law purchaſes, but oppreſſions and iniuries.

27.Eliz.ca 4. 13.Eliz.c.5. Lib.3.fo.80.82.83 Twines. Caſe Lib.5 f.60.Gerchet caſe. lib.6.fo.72. Burrels caſe. lib.11.fo.74. Taſch.32.Eli.Inter.Iouet.p'. and Sir Rich.Grobham def. in eiectio c ſime in euidence al Iuſtic.

Note that purchaſers of lands, tenements, leaſes, and hereditaments for good and valuable conſideration, ſhall auoide all former fraudulent and couinous conueyances, eſtates, grants charges and limitations of vſes, of or out of the ſame, by a Statute made ſince Litt. wrote, whereof you may plainely and plentifully reade in my reports, to which I will adde this caſe, I C. had a Leaſe of certaine lands for 60. yeares if he liued ſo long, and forged a leaſe for 90. yeares abſolutely, and he by Indenture reciting the forged Leaſe for valuable conſideration bargained, and ſold the forged Leaſe and all his intereſt in the Land to R G. It ſeemed to me that R.G. was no purchaſer within the ſtatute of 27 Eliz for he contracted not for the true and lawfull intereſt, for that was not knowne to him, for then perhaps he would not haue dealt for it, and the diſable and knowne tearme was forged, and although by generall words the true intereſt paſſed, notwithſtanding he gaue no valuable conſideration nor contracted for it. And of this opinion were all the Iudges in Seriants Inne in Fleetſtreete.

Hil. 38.E.3.coram Rege in theſaur. 37.H.8.cap.6. 13.Eliz.ca.8.lib 5. fo.69.Burtons caſe. eodem. lib.fo.7.Clayſons caſe.

In Ancient time when a man made a fraudulent feffement it was ſaid, quod poſuit tenam illam in brugam, where brugam doth ſignifie wrangle, contention, or intricacy, for fraud is the mother of them all. And on the other ſide, purchaſes, eſtates, and contracts may bee auoyded ſince Littleton wrote by certaine Acts of Parliament againſt Vſurie aboue ten in the hundred, in ſuch manner and forme as by thoſe Acts it is prouided. Which ſtatutes are well expounded in my bookes of reports which may be read there. To them that lend money my cauiat is, that neither

neither directly nor indirectly, by art, or cunning invention, they take above Ten in the hundred, for they that ſeeke by ſleight to creepe out of theſe Statutes, will deceiue themſelues, and repent in the end.

¶ *Purchaſe terres.* Littlet. **here and in many other places putteth** *Lands and other things to be purchaſed.*
Lands but for an example, for his rule extendeth to ſeignories, rents, aduowſons, commons, eſtouers, and other hereditaments of what kind or nature ſoeuer.

¶ *Terre.* Terra, **Land, in the legall ſignification comprehendeth** *Pl.Com.168.b.& 170.a.*
any ground, ſoile or earth whatſoeuer, as meadowes, paſtures, woods, moores, waters, mariſhes, *& 151.*
furſes and heath, terra eſt nomen generaliſſimũ, & comprehendit omnes ſpecies terre, but pro- *Lib.4.87.b.Lutterels caſe.*
perly terra dicitur a terendo, quia vomere teritur, & anciently it was written with a ſingle r. and *4.E.3.161.& 6.E.3.283.*
in that ſenſe it includeth whatſoeuer may be plowed, and is all one with arvũ ab arando. It le- *8.E.3.377.*
gally includeth alſo all caſtles, houſes, & other buildings: for caſtles, houſes, &c. conſiſt vpon two *Temps.E.1.Bre.811.*
things, viz. land or ground, as the foundation and ſtructure thereupon, ſo as paſſing the land or *28.H.8.Dier 47.*
ground, the ſtructure or building thereupon paſſeth therewith. Land is anciently called Fleth, but *Tr.7.E.3.coram Rege*
land builded is more worthy then other land, becauſe it is for the habitation of man, and in that *Northampt.in theſaur.*
reſpect hath the precedence to be demanded in the firſt place in a præcipe, as hereafter ſhall be ſaid. And therefore this element of the earth is preferred before the other elements; firſt and principally, becauſe it is for the habitation and reſting place of man, for man cannot reſt in any of the other elements, neither in the water, ayre or fire. For as the heauens are the habitation of Almightie God, ſo the earth hath he appointed as the ſubburbs of heauen to be the habitation of man; Cœlum cœli domino, terram autem dedit filijs hominum. All the whole heauens are *Pſal.115.16.*
the Lords, the earth hath he giuen to the children of men. Beſides, euery thing as it ſerueth more immediatly or more meerely for the food and vſe of man (as ſhall be ſaid hereafter) hath the precedent dignitie before any other. And this doth the earth, for out of the earth commeth mans foode, and bread that ſtrengthens mans heart, Confirmat cor hominis, and wine that *Pſal.104.15.*
gladdeth the heart of man, and oyle that makes him a cheerefull countenance. And therefore terra olim ops mater dicta eſt quia omnia hac opus habeant ad viuendum. And the Diuine agreeth herewith, for he ſaith, Patriam tibi & nutricem, & matrem, & menſam, & domum po- *Chriſoſt.hom.30.*
ſuit terram deus, ſed & ſepulchrum tibi hanc eándem dedit. Alſo the waters that yeild fiſh for the foode and ſuſtenance of man are not by that name demaundable in a Precipe, but the land whereupon the water floweth or ſtandeth is demandable (as for example) viginti acr' tre aqua cooperẽ, and beſides the earth doth furniſh man with many other neceſſaries for his vſe, as it is repleniſhed with hidden treaſures, namely, with gold, ſiuer, braſſe, Iron, tynne, leade, and other mettals, and alſo with great varietie of pretious ſtones, and many other things for profit, ornament and pleaſure. And laſtly, the earth hath in law a great extent vpwards, not only of water as hath beene ſaid, but of ayre and all other things euen vp to heauen, for cuius eſt ſolum eius eſt vſque ad cœlum, as it is holden, 14 H.8.fo.12. 22.H.6.59.10.E.4.14. Regiſtr.originall, and in other bookes.

And albeit land whereof our Author here ſpeaketh, bee the moſt firme and fixed inheritance, and therefore is called ſolum, quia eſt ſolidum, and fee ſimple the moſt higheſt and abſolute eſtate *Vid.Sect.59.where in this caſe linery ſhall be made.*
that a man can haue, yet may the ſame at ſeuerall times be moueable, ſometime in one perſon, and alternis vicibus in another, nay ſometime in one place, and ſometime in another. As for example, if there be 80. acres of meadow which haue beene vſed time out of minde of man, to be deuided betweene certaine perſons, and that a certaine number of acres appertaine to euery of theſe perſons, as for example, to A. 13. acres to be yearely aſſigned and lotted out, ſo as ſome- *Vid.Sect.648.*
time the 13. acres lie in one place, and ſometime in another, and ſo of the reſt. A. hath a moueable *How theſe 13. acres may be charged.*
fee ſimple in 13. acres, and may be parcell of his mannor, albeit they haue no certaine place, but yearely ſet out in ſeuerall places, ſo as the number only is certaine, and the particular acres or place wherein they lie after the yeare incertaine. And ſo was it adiudged in the Kings Bench *Hill:34.Eliz.rot.489. in trin. inter Welden & Bridgewater in banco Regis.*
vpon an eſpeciall verdict.

If a partition be made betweene two coparceners of one and the ſelfe-ſame land, that the *Temps.E.1.tit. partition 21.F.N.B.62.I.*
one ſhall haue the land from Eaſter vntill Lammas and to her heires, and the other ſhall haue it from Lammas till Eaſter to her and her heires, or the one ſhall haue it the firſt yeare, and the other the ſecond yeare alternis vicibus, &c. there it is one ſelfe-ſame land wherein two perſons haue ſeuerall inheritances at ſeuerall times. So it is if two coparceners haue two ſeuerall *F.N.B.62.K.*
mannors by diſcent and they make partition, that the one ſhall haue the one mannor for a yeare, and the other the other mannor for the ſame yeare, and after that yeare, then ſhe that had the one mannor ſhall haue the other, & ſic alternis vicibus for euer, and albeit the mannors be ſeuerall, yet are they certaine, and therefore ſtronger then Bridgewaters caſe, ſo as this doth make a diuiſion of ſtates of inheritances of lands, viz. Certaine or vnmoueable whereof Littleton here *Vid.Sect.184. where anom-ſons, &c. may be appendans and in gros.*
ſpeaketh, and incertaine and moueable, whereof theſe three caſes for examples haue beene put. wherein it is to be noted, that the poſſeſſion is not only ſeuerall, but the inheritance alſo.

It

By what names & c. lands, &c. ſhall paſſe.
Vid. Sect.279.
14.H.8.6.4.H.7.3.
10.H.7.24.11.H.7.21.
14.H.7.4.6. 21.H.7.36.37.
9.H.6.52.37.H.6.35.
22.E.4. barre.116.
11.H.4.90.18.E.3.execution 56.4.E.3.48. 8.E.3.13.
9.Aſſ.p.12.38.E.3.24.
Bract. fo.232.
17.E.3.73.39.H.6.38.
11.Eliz. Dier.285.
Paſch.12.Ia.Inter Dockwray & Temp. in evidence al' Jury in Banco le Roy.
Vid.Sect.279.
Bract.fo.208.
40.E.3.45. Pl.com.154.
10.H.7.24.28.7.H.7.13.
18.H.6.29.34.H.6.43.
20.H.6.4.18.E.4.4.
4.E.3.48.1.E.3.4.32.E.3.
Scir.fac.100.
22.E.4.barre.116.
12.H.3.Aſſ.427.34.Aſſ 11
13.E.3.1st.entrie.57.
20.E.3.Bre.685.W.2.ca.24
Ir.11.R.2.in trans.vient imprimeene abridge 11.H.7.4.
3.E.3.342.5.Aſſ.9.10.
7.Aſſ.9.
45.E.3.tit.ſeffments & fuits.90.14.H.8.6.
Pl.com.541.b.F.N.b.fo.8.
22.E.3.D.wer.90.
9.Aſſ.p.12.9.E.3.443.466.
Domeſday.
7.R.1.int.finis in Theſaur.
Int.inquiſit. apud Launceaſt. anno.6.E.1.in theſaur.
Mich.1.H.5.coram Rege rott.3.in theſaur.
Tr.7.Eliz.in banco regis lib.5 fol.11.Iues caſe.
14.H.8.1.46.E.3.22.
28.H.8.Dier.19.
32.H.8.Br.reſeruat.39.
7.E.6.Dier.79.
* *Glanvil.lib.8.cap.3.*
Domeſday Regiſtr.F.N.B.2.
8.E.2.Waſt.111.
7.Aſſ.18.11.Aſſ.p.13.
41.E.3.Waſt.82.
* *Hill.14.E.3.coram Rege Lanc.in theſaur.*
* *Inter inquiſit.apud Lanc. in com. cumbie coram Iuſtic. And.anno 6.E.1.in theſaur.*
the 8.of Exceſters caſe.
Domeſday.
Camden.462.151.
Paſch.44.E.3.coram Rege in Theſaur.
Hill.13.E.2.Lanc.coram Rege in Theſaur.
Camden Brit.247.
rot.parl.18.E.1.8.
Eueſque de Carliles caſe.
Pl.com.169.a.
4.E.2.Bre.792.793.
3.E.3.86.4.E.4.1.
27.H.8.12.
20.Aſſ.pl.9.
Pl.com.169.a.13.E.3.
Bre.341.33.E.3. Entrie 80.
Domeſday.F.N.B.2.Regiſt.

It is alſo neceſſary to be ſeene by what names lands ſhal paſſe. If a man hath 20. acres of land, and by deede granteth to another and his heires veſturam terræ, & maketh liuery of ſeiſin ſecundum formam cartæ, the land it ſelfe ſhall not paſſe, becauſe he hath a particular right in the land, for thereby he ſhall not haue the houſes, timber-trees, mines, and other reall things parcell of the inheritance, but he ſhall haue the veſture of the land, (that is) the corne, graſſe, vnderwood, ſwepage, and the like, and he ſhall haue an action of treſpaſſe, quare clauſum fregit. The ſame Law, if a man grant herbagium terræ, he hath a like particular right in the land, and ſhall haue an action quarum clauſum fregit, but by grant thereof and liuery made, the ſoile ſhall not paſſe as is afore ſaid. If a man lett to B. the herbage of his woods, and after grant all his lands in the tenure, poſſeſſion, or occupation of B. the woods ſhall paſſe, for B. hath a particular poſſeſſion and occupation, which is ſufficient in this caſe, and ſo it was reſolued. So if a man be ſeiſed of a Riuer, and by deed doe grant ſeperalem piſcariam in the ſame, and maketh liuery of ſeiſin ſecundum formam cartæ, the ſoile doth not paſſe nor the water, for the grantor may take water there, and if the riuer become dry, he may take the benefit of the ſoile, for there paſſed to the grantee but a particular right, and the liuery being made ſecundum formam cartæ, cannot enlarge the grant. For the ſame reaſon, if a man grant aquam ſuam, the ſoile ſhall not paſſe, but the piſcharie within the water paſſeth therewith. And land couered with water ſhall be demaunded by the name of ſo many acres aqua coopert, whereby it appeareth that they are diſtinct things. So if a man grant, to another to dig turues in his land, and to carry them at his will and pleaſure, the land ſhall not paſſe, becauſe but part of the profit is giuen, for trees, mines, &c. ſhall not paſſe. But if a man ſeiſed of lands in fee by his deed granteth to another the profits of thoſe lands, to haue and to hold to him and his heires, and maketh liuery ſecundum formam cartæ, the whole land it ſelfe doth paſſe, for what is the land, but the profits thereof, for thereby Veſture, herbage, trees, mines, and all whatſoeuer parcell of that land doth paſſe.

By the grant of the Boiliury of Salt, it is ſaid that the ſoile ſhall paſſe, for it is the whole profit of the ſoile. And this is called Saliua of the French word ſalure for a ſalt pit, and you may reade de Saliua in Domeſday, and Selda, ſignifieth the ſame thing: and where you ſhall reade in Records de lacerta in profunditate aque ſalie, there lacerta ſignifieth a fathom. A man ſeiſed of diuers acres of wood, grants to another omnes boſcos ſuos, all his woods, not only the woods growing vpon the land paſſe, but the land it ſelfe, and by the ſame name ſhalbe recouered in a præcipe, for boſcus doth not only include the trees, but the land alſo whereupon they grow.

The ſame law if a man in that caſe grant omnes boſcos ſuos creſcentes, &c. yet the land it ſelfe ſhall paſſe, as it hath beene adiudged *raſſetum ſignifieth a wood, or ground that is woodie. If a man hath a wood of Elder trees containing 10. acres, and granteth to another 20. acras Alneti (with an N not a V) the wood of Elders, and the ſoile thereof ſhall paſſe, but no other kinde of woods ſhall paſſe by that name. Alnetum eſt vbi alni arbores creſcunt, * And ſullings are taken for elders. Salicetũ doth ſignifie a wood of willowes, vbi ſalices creſcunt, theſe trees in our bookes are called Sawces. Selda, is a wood of ſallowes, willowes or withies. A braklie ground is called filecetum, vbi filices creſcunt. A wood of Aſhes is called fraxinetũ, vbi fraxini creſcunt, and paſſeth by that name, and lupulicetum where hoppes growe, and Arundinetum where reeds growe. Some ſay that Dene or Denne, whereof Dena commeth, is properly a valley or dale. Dena ſiluæ, and the like, as drofden, or drufden, or druden, ſignifieth a thicket of wood in a valley, for druf, or dru, ſignifieth a thicket of wood, and is often mentioned in Domeſday. And ſometime Dena or Denna ſignifieth, as villa and denue, a towne.

Cope ſignifieth a hill, and ſo doth Lawe, as Stanlawe is ſaxeus collis. Howe alſo ſignifieth a hill. And hope combe, and Stow are valleyes, and ſo doth clough. And Dunum or Duna, ſignifieth a hill or higher ground, and therefore commonly the townes that end in Dun, haue hills of higher grounds in them, which we call Downs. It commeth of the old French word Dun.

In our Latin a wood is called boſcus. Graua ſignifieth a little wood, in old deeds, and Hirſt or Hurſt a wood, and ſo doth Holt and Shawe. Twaite ſignifieth a wood grubbed vp, and turned to errable. Stethe or Stede, betokeneth properly a banke of a riuer, and many times a place, as Stowe doth, and Wic, a place vpon the Sea ſhore, or vpon a Riuer. Lea or Ley ſignifieth paſture.

If a man doth grant all his paſtures, paſturas, the land it ſelfe imployed to the feeding of beaſts doth paſſe, and alſo ſuch paſtures or feedings, as he hath in another mans ſoile. Leiwes or Leſues is a Saxon word, and ſignifieth paſtures. Betweene paſtura and paſcuum, the legall difference is that paſtura in one ſignification containeth, the ground it ſelfe called paſture, and by that name is to be demanded. Paſcuũ feeding, is whereſoeuer cattell are fed, of what nature ſoeuer the ground is, and cannot be demanded in a præcipe by that name.

If a man grant omnia prata ſua, all his meadowes, the land it ſelfe of that kinde paſſe, & dicitur pratum quaſi paratum, becauſe it groweth ſponte without manurance. A man grant omnes brueras ſuas, the ſoile where heath doth grow paſſeth, and may be demanded by that name

in

in a præcipe, it is deriued from bruyer a French word for heath, and it is called Ros in the Britiſh tongue.

Roncaria or Runcaria, ſignifieth land full of brambles and briers, and is deriued of Roucier the French word, which ſignifieth the ſame, and as much as ſenticetum. By the grant of omnes Iuncarias or Joncarias, the ſoile where rushes doe grow, doth paſſe for Ionc in French is a Rush, whereof Ioncaria commeth. If man grant omnes Ruſcarias ſuas, the ſoile where ruſci.1. bnc-holme, or butchers pricks or broome doe grow, ſhall paſſe, and ſo in the verſe in the Regiſter it is called, but in F.N.B. fol.2 in the verſe Piſcharia, is put in ſtead of Ruſcaria. And Iampna commeth (of Ionc, and power) a watериſh place, and is all one in effect with Ioncaria, He that granteth omnes mariſcos ſuos, all his fennes or mariſh grounds doe paſſe. Mariſcus is deriued of the French word mares or marets; the Latyn word for it, is palus or locus paludoſus. Mora is deriued of the Engliſh word Moore, and ſignifieth a moze barren and vnprofitable ground then marſhes, dangerous for any cattell to goe there, in reſpect of myre and moriſh ſoile, neyther ſerues it for getting of turues there: you ſhall reade in Record, that ſuch a man perquiſiuit treſcent. acr. maretti, &c. this word marettum is deriued of mare the ſea, and tego, and properly ſignifieth a moriſh and grauelly ground, which the ſea doth couer and ouerflow at a full ſea, and lyeth betweene the high water marke and the lowe water marke, infra fluxum & refluxum maris. By grant of theſe particular kindes, the lands of theſe particular kindes only doe paſſe, but as hath beene ſaid by the grant of land generall, all theſe particular kindes and ſome others doe paſſe. Non mihi ſi centũ linguæ ſint oraq; centum, omnia terrarum percurrere nomina poſſem. And therefore let vs turne our eye to generall words, which doe include lands of ſeuerall ſort and qualities. By the name of an honor, which a ſubiect may haue, diuers mannors, and lands may paſſe. So by the name of an Iſle Inſula, many mannors, lands and tenements may paſſe.

Holme, or Hulmus ſignifieth an Iſle or fenny ground. * A Commote is a great Segniorie, and may include one or diuers mannors; By the name of a caſtle, one or more mannors may be conueyed, & è conuerſo. by the name of a mannor, &c. a caſtle may paſſe. In Domeſday I reade, Comes Alanus haber in ſuo caſtellatu 209. maneria, &c. præter caſtellariam habet 43. maneria, and in that booke a caſtle is called caſtellum, and caſtrum, and domus defenſibilis, and manſus muralis. But note by the way, that no ſubiect can build a caſtle or houſe of ſtrength imbattelled, &c. or other fortreſſe defenſible, called in Law by the names aforeſaid, and ſometimes domus kernellatæ, or Carnellatæ, imbattellatæ, tenellatæ, machecollatæ, meſe carnelet, &c. without the licence of the King for the danger which might enſue, if euery man at his pleaſure might doe it. And they be called imbattlements, becauſe they are defences againſt battels in aſſaults. Tenellare or tanellare, is to make holes or lopes in walls to ſhoote out againſt the Aſſailants. Machecollare or machecoulare, is to make a warlike deuice ouer a gate or other paſſage like to a grate, through which ſcalding water, or ponderous, or offenſiue things may bee caſt vpon the aſſaylants. But to return to the matter from whence vpon this occaſion we are fallen.

By the name of a towne Villa, a mannor may paſſe. In Domeſday, Alodium (in a large ſence) ſignifieth a free mannor, and Alodiarij or Alodarij, lords of the ſame, and Lannemanni there ſignifie lords of a mannor, hauing ſocam & ſacam de tenentibus & hominibus ſuis. And by the name of a Mannor, diuers townes may paſſe, quod olim dicebatur fundus nunc manerium dicitur, by the name of a ferme or fearme firma, houſes, lands and tenements may paſſe, and firma is deriued of the Saxon word feormian, to feede or releeue, for in ancient time they reſerued vpon their Leaſes, cattell and other victuall and proviſion for their ſuſtenance. Note a fearme in the North parts is called a Tacke, in Lancaſhire a Fermeholt, in Eſſex a Wike. But the word fearme, is the generall word, and anciently fundus ſignified a fearme and ſometime land. Lands making a Knights fee, ſhall paſſe by the grant of a Knights fee de vno feodo militis.

Vnum ſolinum, or ſolinus terræ in Domeſday booke conteyneth two plow lands and ſomewhat leſſe then an halfe, for there it is ſaid, Septem Solini, or Solinæ terræ ſunt 17. carucat'. Vna Hida ſeu carucata terræ, which is all one as a plow-land, viz. aſmuch as a plough can till, ſullerye alſo ſignifieth a plow-land. Vna virgata terræ, a yard land, the Saxons called it Zirdland, and now the G. is turned to a Y. as in ſome Countries 10 in ſome 20. in ſome 24. in ſome 30. &c. Vna bnuata terræ, an organge, or an orgate of land, is as much as an oxe can till. But carucata terræ, and bovata terræ, are words compound, and may conteyne meadow, paſture, and wood, neceſſary for ſuch tillage. Iugum terræ in Domeſday, conteyneth halfe a plow-land. And by all theſe names in the raigne of R.1. lands were vſually demanded and long after.

By the name of a Grange, grangia a houſe or edifice, not only where corne is ſtored vp like as in barnes, but neceſſary places for husbandry alſo, as ſtables for hay and horſes, and ſtables and ſtyes for other cattell, and a curtilage, and the cloſe wherein it ſtandeth ſhall paſſe, and it is a French word, and ſignifieth the ſame, as we take it.

Stagnum, in Engliſh a poole doth conſiſt of water and land, and therefore by the name of

Regiſt.1.E.3.4. F.N.B.2. 16. Aſſ.p.9. Regiſter.

Iampna.

*Paſch.41.E.3. coram Rege Lincoln. rot.28. Mag. Carta.ca.31. Walingford. Nott. Bolan, Lanc. &c. Trin. 33.E.1. coram Rege in Theſ. honor de Huntingdon. Mich.9.E.2. coram Rege in Theſ.18.E.2. Aſſ.377. 26. Aſſ.p.60. 6.E.3.56.47.E.3.21. honor de peuerel.49.E.3.4. honor de Egles. 9.H.6.27.36.H.8. Dier.58. honor de Glouc. F.N.B.265. honor Abbath. de Merle. 5.E.4.129.7.H. 6.39.1.E.3.4. &c. 13.E.3. iuriſdict.23. Lib.4. fo.88. Lutterelscaſe.5.H.7.f 14.H.4. intercurſo longe. 8.H.4.pl.Com.168. 8.H.7.1.4 E.4.16. * 13.E.3. iuriſdict.23. 26.Aſſ.54.29.E.3.15. 29.H.6. trauers.4. Bract.fo.434.1.E.3.4. 5.H.7.9.3.E.2. Mucking 188 37.H.6.26. 18.H.6.11. Iohn. mbr ſcac fol.18. In veteri magna carta Cap. eſſebeatrie, fo.162. Britten.c.20. Rot. Parliam.45.E.3.nu.34 6.H.4.nu.19.1.E.4.ca.1. Rot. Parliament.1.E.3.2. pars. Alano & har eton. 22.E.1.2.pars. Thorne Barkley &c. Lamb.expoſit.verb.ferme. Pl.Com.195. Pl.Com.169.Regiſt.227. b.eccleſ. firma. 17.E.3.fo 8. 5.E.3.213. 16.E.3.bre.165.12.E.2. bre.814. 4.E.3.161.6.E.3.283. 2.E.3.5.35.H.6.29. Pl.Com.168. 7.Aſſ.18. 11.Aſſ.13. Lamb.expoſ.verb. Hyde & virgat.ter æ. Glanuil.lib.ca. Domeſd y. Bract.lib.2.ca.26.27. & lib.5.fo.434. Regiſt.72. 45.E.3.fine 49.13.E.3. fine 67. 39.H.6.8. 4.E.3.159.8.E.3.377. Bract.fol.180.269.411. 5.H.3. Droit.66. Pl.Com. 168. 13.E.3.bre.241.2.E.3.57. temps.E.1.bre.811.pl. com.168. Pl.com.169. Linwood. 44.E.3.21.4.E.3.32. 4.E.3.tit.ſeffments & fines 79.14.E.3. Formdon.34. 34.Aſſ.pl.11.*

11.E.3.4.4.E.3.143.
8.E.1.38..10.E.3.482.
13.E.3. entry 57.
F.N.B.191.h.
Domeſday.

Stagnum or a poole, the water and land ſhall paſſe alſo. In the ſame manner Gurges, a deepe pit of water, a gorge or gulfe conſiſteth of water and land, and therefore by the grant thereof by that name, the ſoile doth paſſe, and a præcipe doth lye thereof, and ſhall lay his eſpleeg in taking of fiſhes, as Breames and Roches. In Domeſday it is called guort, gort & gors plurally, as for example, de 3. gorz mille anguillę.

Temps.E.1.bre.861.
4.E.3.5.10.H.7.30.
44.E.3.12.43.E.3.34.
35.H.6.55.3.H.6.2.
Domeſday. Bracton.
lib.4.fo.235.
Int.adiudicat.coram Rege.
p.39 E.3.lib.2.fo.95.in Theſaur.
40..Aſſ.38.4.H.6.14.
35.H.6.ca.6.
Anno 10.R.2. inter finei in Theſaur. Ferlingus terra centi-
32.*acras.*
Domeſday.
Feuſtrum.16.E.3.tit.
coron 9.
Mich 8.H.3.in cipien.9.
Coram Rege.Warr.Ro.6.
Virg.eglog.1.o.
Brack.211.233.22.E.4.stat.
240.*pl.com.*168.171.
23.H.8.*Br.ſeſſments* 53.
9.*Aſſ.p.*21.35.H.6..44.
*pl.com.*169.
Domeſday.
Paſch.30.E.1.coram Rege Kane.in Theſaur.
Statut. de extent.mauriti
Domeſday.
Domeſday.

So it is of a Foreſt, Parke, Chaſe vivarye, and warren in a mans owne ground, by the grant of any of them, not only the priuiledge, but the land it ſelfe paſſe, for they are compound. In the booke of Domeſday, that is called leuuad and leuga, and leuued, and leuue, which in Latyn is called leuca.

Stadium, or ferlingus ſive ferlingum, or quarentena terræ, is a furlong of land, and is as much as to ſay, a furrow long, which in ancient time was the eight part of a mile, and land ſtill paſſe by that name. And ſome hold, that by that name land may be demanded. And de ferlingis & quarentenis, you ſhall reade diuers times in the booke of Domeſday, and there you ſhall reade, In inſula Rex habet vnũ fruſtrũ terræ vnde exeunt ſex vomeres. Nota Fruſtrũ, ſignifieth a parcell. Warectum or wareccum, or varectum, doth ſignifie falloẅ; Terra jacet ad Warectũ, the land lyeth falloẅ: but in truth the word is vervactum, quaſi verè novo victũ ſeu ſubactum, terra novalis ſeu requieta quia alternis annis requieſcat, Tam culta novalia. By the grant of a meſſuage, or houſe meſuagium, the orchard, garden, and curtilage doe paſſe, and ſo an acre or more may paſſe by the name of a houſe. It is deriued of the French word meſe. In Domeſday, a houſe in a Citie or Burrough, is called haga; other houſes are called there manſiones, manſuræ & domus, and in an ancient plea concerning Feuerſham in Kent, haẅes are interpreted to ſignifie manſiones. In Normans French it is called meſiul or meſnil: Bye ſignifieth a dẅelling, bye an habitation, and byan to dẅell.

Feuſtrum.16.E.3.tit.
coron 9.
Mich 8.H.3.in cipien.9.
Coram Rege.Warr.Ro.6.
Virg.eglog.1.o.
Brack.211.233.22.E.4.stat.
240.*pl.com.*168.171.
23.H.8.*Br.ſeſſments* 53.
9.*Aſſ.p.*21.35.H.6..44.
*pl.com.*169.
Domeſday.
Paſch.30.E.1.coram Rege Kane.in Theſaur.
Statut. de extent.mauriti
Domeſday.
Domeſday.

It is to be noted, that in Domeſday there be often named bordarij ſeu borduanni, coſces, coſcet, cotucami cotarij, are all in effect boꝛes or huſbandmen, or cotagers, ſauing that bordarij, which commeth of the French word borde for a cottage ſignifieth, there boꝛes holding a little houſe with ſome land of huſbandꝛie bigger then a cottage, and coterelli are more cottagers, qui cotagia & curtilagia tenent.

Villani in Domeſday (often named) are not taken there for bondmen, but had their name de villis, becauſe they had fermes, and there did worke of huſbandꝛie for the lord, and they were euer named before bordarij, &c. and ſuch as are bondmen are called there ſervi.

Int.placita coram domino Rege Mich.10.E.3. Rot.26.

Coleberti often alſo named in Domeſday, ſignifieth Tenants in free ſocage by free rent, and ſo it is expounded of record Radmans and Radchemilires, (Rad, or rede, ſignifieth firme and ſtable) there alſo often named, theſe are liberi tenentes qui arabant & herciebant ad curiam domini, ſeu falcabant, aut metiebant, becauſe their eſtates are firme and ſtable, and they are many times called Sochemans and ſokemanni, becauſe of their plough ſeruice.

Lamb.expoſit.verb.Thanus.

Druchs ſignifieth free tenants of a Mannor there alſo named. Taini or thaini mediocres were freeholders, and ſometime called milites regis, and their land called Tainland, and there it is ſaid, hæc terra T R E. fuit Tainland, ſed poſtea conuerſa in Reueland. But thainus regis is taken for a Baron, for it is ſaid in an ancient Author, Thainus regis proximus comitiest, & ibidem mediocris thainus, & alibi Baro ſive thainus. Berqualia or Bercaria, commeth of Bere, an old Saxon word, vſed at this day for barkes or rindes of trees, and ſignifieth a Tanhouſe, or a heath houſe, where barkes or rindes of trees are laid to tanne withall, and Berquarij are mentioned in Domeſday.

Lib.Rub.cap.15. & cap.41. & 76.W.2.c.46.
7.H.4.38.
Le.dentries tit.Aſſ. corpt.pol.2.
Domeſday.
7.H.4.38.
Fleta lib.2.ca.35.

By Vaccaria in law, is ſignified a Dairy houſe, deriued of vacca the cow. In Latyn it is, Lactarium or Lactitium, and vaccarius is mentioned in Domeſday. And Fleta maketh alſo mention of porcaria a ſwineſtye.

Domeſday.
10.R.2.Inter fines.

The content of an Acre is knowne, the name is common to the Engliſh, German, and French. In legall Latyn it is called, Acra, which the Latiniſts call iugerum. In Domeſday it is called Arpeu prati, ſilvæ, &c 10.R.1. inter fines acra, in Cornẅall, continet 40. perticatas in longitudine & 4. in latitudine & quelibet perticata de 16. pedibus in longitudine.

9.E.3.39. Temps.E.1. br.866.Mich.30.E.1. coram Rege Glouc.in Theſaur.

By the grant of a Sellon of land, Selio terræ, a ridge of land, which containeth no certainty, for ſome be greater and ſome be leſſer, and by the grant de vna porca, a ridge doth paſſe: Selio is deriued of the French word Sellon for a ridge.

Brack.fo.377.431.43.E.3.27 Regil.fo.1. 94.248.249. F.N.B.fo.87.F.I. Regula.

By the grant de centum libratis terræ, or 50. libratis terræ, or centum ſolidatis terræ, &c. land of that value paſſeth, and ſo of more or leſſe, and in ancient time by that name it might haue beene demanded. And many things may paſſe by a name, that by the ſame name cannot bee demanded by a præcipe (for that doth require more preſcript forme) but whatſoeuer may be demanded by a precipe, may paſſe by the ſame name by way of grant.

7.R.2.inter finei Suſſex.

Frythe is a plaine betweene woods, and ſo is lawnd or lound, Combe, hope, dene, glyn, hawgh, howgh ſignifieth a Vally. Howe hoo, knol law peu, and cope a hill. Ey, Iug and worth ſignifieth a watry place or water. Faleſia is a banke or hill by the ſea ſide, it commeth of falaize, which ſignifieth the ſame: of all theſe you ſhall reade in ancient bookes, charters, deedes,

and

and recoꝛds, and to the end that our ſtudient ſhould not be diſcouraged foꝛ want of knowledge when he meetes with them (neſcit enim generoſa mens ignorantiam pati) we haue armed him with the ſignification of them, to the end he may pꝛoceed in his reading with alacritie, and ſet vpon, and know how to woꝛke into, with delight, theſe rough mines of hidden treaſure.

(m) By the name of Minera oꝛ fodina plumbi, &c. the land it ſelfe ſhall paſſe in a grant if liuery be made, and alſo be recouered in an aſſiſe, & ſic de ſimilibus.

(m) 17.E.3.7.43.E.3.33.b *Regiſt.*165.10.H.7.21. *Pl.Com.*191.195. *Bract.*211.325.

By the grant of a houſe oꝛ the like lands and tenements may paſſe. (n) Tenementũ, Tenement is a large woꝛd to paſſe, not only lands, and other inheritances which are holden, but alſo offices, rents, commons, pꝛofits appꝛender out of lands and the like, wherein a man hath any franktenement, and whereof he is ſeiſed, vt de libero tenemento. But hereditamentum, hereditament, is the largeſt woꝛd of all in that kinde, foꝛ whatſoeuer may be inherited is an hereditament, be it coꝛpoꝛeall oꝛ incoꝛpoꝛeall, reall oꝛ perſonall oꝛ mixt.

(n) 45.E.3.Vouchee.72. 33.E.3.graun.102. 11.H.6.22.27.14.E.4.4. 20.Aſſ.p.9. 3.E.4.19.11.H.7.25.

(o) A man ſeiſed of lands in fee hath diuers Charters, deeds, and euidences, and maketh a feoffment in fee, either without warranty, oꝛ with warranty only againſt him & his heires, the purchaſer ſhal haue all the Charters, deeds and euidences, as incident to the lands, and ratione terræ, to the end he may the better defend the land himſelfe, hauing no warranty to recouer in value, foꝛ the euidences are as it were the ſinewes of the land, and the feoffoꝛ being not bound to warrantie, hath no vſe of them. But if the feoffoꝛ be bound to warranty, ſo that he is bound to render in value, then is the defence of the title at his pꝛill, and therefoꝛe the feoffee in that caſe ſhall haue no deeds that compꝛehend warranty, whereof the feoffoꝛ may take aduantage. Alſo hee ſhall haue ſuch Charters as may ſerue him to deraigne the warrantie paramount; Alſo hee ſhall haue all deeds and euidences, which are materiall foꝛ the maintenance of the title of the land, but other euidences which concerne the poſſeſſion, and not the title of the land, the feoffee ſhall haue them.

(o) *Lib.*1.*fo.*1.& 2.*in Seignios Buckhurſts caſe.* 44.E.3.11.b.39.E.3.17.a. 19.H.6.65.b.34.H.6.1.a. 10.E.4.9.b.18.E.4.14.15. 6.H.7.3.b.H.7.33.a.

¶ *Auer & tener.* These two woꝛds doe in this place pꝛoue a double ſignification, viz. auer, to haue an eſtate of inheritance of lands diſcendible to his heires; and tener to hold the ſame of ſome ſuperioꝛ loꝛd.

There haue beene eight foꝛmall oꝛ oꝛderly parts of a deede of feoffment, viz. 1. the premiſſes of the deed implied by Littleton. 2. the habendum where Litl. here ſpeaketh, 3. the tenendum mentioned by Litt. 4. the Reddendum. 5. the clauſe of warrantie. 6. the In cuius rei teſtimonium, Compꝛehending the ſealing. 7. The date of the deede contayning the day, the moneth, the yeare, and ſtile of the King, oꝛ of the yeare of our Loꝛd. (a) Laſtly, the clauſe of hijs teſtibus, and yet all theſe parts were contained in very few and ſignificant woꝛds, (b) Hæc fuit candida illius ætatis fides & ſimplicitas, quæ pauculis lineis omnia fidei firmamenta poſuerunt.

*Vid.Sect.*40.&.370.371. *many things declarde & explained: Fleta.lib.*3.*cap.*14. *Britton.*100.101. *Bracton lib.*5.*fo.*396.a. 3.9.38.H.6.32.36. *Pl.com.Wroteſs caſe.fo.*96. (a) *Vid. Thregmortons caſe, pl.com.*

The office of the premiſſes of the deede is twofold. Firſt rightly to name the feoffoꝛ and the feoffee. And ſecondly to compꝛehend the certainty of the lands oꝛ tenements to be conueyed by the feoffment, either by expꝛeſſe woꝛds, oꝛ which may by reference be reduced to a certainty; foꝛ, id certum eſt quod certum reddi poteſt. The habendum hath alſo two parts, viz. firſt, to name againe the feoffee, and ſecondly to limit the certaintie of the eſtate. The Tenendum at this day where the fee ſimple paſſe, muſt be of the chiefe loꝛds of the fee. And of the Reddendum moꝛe ſhalbe ſaid in his pꝛoper place in the chapter of Rents. Of the clauſe of warrantie moꝛe ſhall be ſaid in the chapter of warranties. In Cuius rei teſtimonium ſigillum meum appoſiui was added, foꝛ the Seale is of the eſſentiall part of the deed. The date of the deede many times Antiquitie omitted, and the reaſon thereof was foꝛ that the limitation of pꝛeſcription oꝛ time of memoꝛy did often in pꝛoceſſe of time change, and the law was then holden that a deede, bearing date, befoꝛe the limitted time of pꝛeſcription was not pleadable, and therefoꝛe they made their deedes without date, to the end they might alleage them within the time of pꝛeſcription. And the date of the deedes was commonly added in the raigne of E.2. and E.3. and ſo euer ſince.

(b) *Lib.*6.*fo.*43. *in Sir Anthony Mildemayes caſe.*

*Vid.Sect.*298.

*Britt.fol.*101.

And ſometimes antiquitie added a place, as Datum apud D. which was in diſaduantage of the feoffee, foꝛ being in generall, he may alleage the deede to be made where he will. And laſtly, Antiquitie did adde, hijs teſtibus in the continent of the deede after the In cuius rei teſtimonium, written with the ſame hand that the deede was, which witneſſes were called, the Deede read, and then their names entred. (p) And this is called charter land, and accoꝛdingly the Saxons called it Beckland, as it were booke land which clauſe of hijs teſtibus in ſubiects deeds continued vntill and in the raigne of H.8. but now is wholly omitted. And it appeareth by the ancient Authoꝛs and Authoꝛities of the Law; that befoꝛe the Statute of 12.E.2.ca.2. Pꝛoceſſe ſhould be awarded againſt the witneſſes named in the deede, teſtes in carta nominatos, (a) and that the ſame Statute was but an affirmance of the Common law, which not being well vnderſtood, hath cauſed varietie of opinions in our bookes. But the delay therein was ſo great, and ſometimes (though rarely) by exceptions againſt thoſe witneſſes, which being found true, they were not to be ſworne at all, neither to be ioyned to the Jury, noꝛ as witneſſes; (b) as if the witneſſe were infamous, foꝛ example, if he be attainted of a falſe verdict, oꝛ of a conſpiracie at the ſuite

(p) *Lamb.expoſit.verb. terra ex.ſcripto. Vid.Forteſcue.cap.*32. *ſee the ſecond part of the Inſtitut.cap.*38. 12.E.2.c.2. *ſee the ſecond part of the inſtitutes, Marlbr. cap.*6.& *cap* 14. (a) *Britton fo.*65.101. 11.E.3.*Proces.*170. 6.H.3 *proces.*229. 8.H.3.*proces.*210. 4.E.2.*grd* 119. (b) *Mirror.cap.* 4.§ *de infamies & periurie. Glanuil.lib.*2 *cap.*15. *Bract.lib.*5 *fo.*288.292. *Britt fo.*134.135.101. *Fleta lib* 5 *ca.*21. 8.E.2.*Aſſ.*356. 2.E.3.& 2.24.E.3 34.

ſuite of the King, or conuicted of periury, or of a Præmunire, or of forgerie vpon the Statute of 5. Eliz. cap. 14. and not vpon the Statute of 1. H. 5. cap. 3. or conuict of felony, or by iudgement loſt his eares, or ſtood vpon the pillory, or tumbrell, or beene ſtigmaticus branded, or the like, whereby they become infamous for ſome offences, quæ ſunt minoris culpæ ſunt maioris infamiæ. (c) If a champion in a writ of right become recreant or coward, hee thereby looſeth liberam legem and thereby becomes infamous, and cannot be a witneſſe, for regularly hee that looſeth liberam legem, becommeth infamous and can be no witneſſe. Or if the witneſſe be an infidell, or if non ſane memory, or not of diſcretion, or a partie intereſſed or the like. (d) But often times a man may be challenged to be of a Jury, that cannot be challenged to be a witneſſe; and therefore though the witneſſe be of the neereſt alliance, or kindred, or of counceil, or tenant, or ſeruant to either partie, (or any other exception that maketh him not infamous, or to want vnderſtanding, or diſcretion, or a partie in intereſt) though it be proued true, ſhall not exclude the witneſſe to bee ſworne (e) but hee ſhall bee ſworne, and his credit vpon the exceptions taken againſt him left to thoſe of the Jury, who are tryers of the fact, inſomuch as ſome bookes haue ſaid that though the witneſſe named in the Deede be named a Diſſeiſor in the writ, yet he ſhalbe ſworne as a witneſſe to the deede, (f) A witneſſe amongſt others named in a Deed was outlawed, & no Proces was awarded againſt him by the Statute, becauſe he was extra legem, and an outlawed perſon cannot be an Auditor. And the Court in ſome books haue ſaid, that they haue not ſeene witneſſes challenged, which is regularly to be vnderſtood, with the limitations aboue ſaid, but ſuch as are returned to be of a Jury, are to bee challenged for the cauſes aforeſaid for outlawrie, and diuers other cauſes (for the which a witneſſe cannot be challenged) and ſuch proces againſt witneſſes baniſhed. But ſeeing the witneſſes named in a Deede ſhall be ioyned to the Inqueſt, and ſhall in ſome ſort ioyne alſo in the verdict (in which caſe if Jury and witneſſes finde the Deede that is denied to bee the Deede of the partie, the aduers partie is barred of his attaint, becauſe there is more then 12. that affirme the verdict.) It is reaſon that in that caſe of ioyning, ſuch exception ſhall bee taken againſt the witneſſe as againſt one of the Jury, becauſe he is in the nature of a Juror. (a) And therefore to put one example if hee be outlawed in a perſonall action hee cannot bee ioyned to the Jurie, but yet that is no exception againſt him to exclude him to be ſworne as a witneſſe to the Jury. And the reaſon of all this is, for that if he with others ſhould ioyne in verdict with the Jury in affirmance of the Deede, the partie ſhould be barred of his Attaint. But note there muſt be more then one witneſſe, that ſhall be ioyned to the Inqueſt. And albeit they ioyne with the Jury, and finde it not his Deede, notwithſtanding this ioyning, the partie ſhall haue his attaint, for it is a maxime in Law, (b) That witneſſes cannot teſtifie a negatiue, but an affirmatiue. And if one of the witneſſes named in the Deede be one of the paneil, he ſhalbe put out of the paneil, and all theſe ſecrets of law, doe notably appeare in our bookes.

43. E. 3. Conſpir. 11. 27. Aſſ. 59. 33. H. 6. 55. 21. H. 6. 30. (c) Forteſcu. cap. 26. Pat. 55. H. 3. m. 3. Stanf. Pl. Cor. 174. a.

(d) Forteſcue. ca. 25.

(e) 22. Aſſ. 12. & 41. 23. Aſſ. 11. 19. E. 2. tit. Aſſ. 409.

(f) 34. E. 1. Proces. 208.

(a) 34. E. 1. tit. proces. 208. 21. Aſſ. p. 19. 20. 12. Aſſ. p. 1. 12. 41. 18. Aſſ. p. 11. 22. Aſſ. 15. 23. Aſſ. 15. 40. Aſſ. 23. 48. Aſſ. p. 5. 21. H. 6. 30.

(b) 48. E. 3. 30. 12. H. 6. fo 6. a 50. E. 3. 16. 43. E. 3. 32. 12. H. 4. 9. 19. E. 2. Aſſ. 408. Paſch. 14. E. 3. coram Rege Denn. in Theſaur. Fleta. lib. 6. cap. 6. Fitz. N. B. 106. H & 97. c.

(c) Mirror ca. 3. Pl. Com. fo. 10. Bract lib. 5. fo. 400.

To ſhut vp this point, it is to be knowne, (c) that when a tryall is by witneſſes, regularly the affirmatiue ought to be proued by two or three witneſſes, as to proue a ſummons of the tenant, or the challenge of a Juror, and the like. But when the tryall is by verdict of 12. men, there the iudgement is not giuen vpon witneſſes, or other kinde of euidence, but vpon the verdict and vpon ſuch euidence as is giuen to the Jury they giue their verdict. And Bracton ſaith, there is probatio duplex, viz. viua, as by witneſſes viua voce, and mortua, as by deedes, writings, and inſtruments. And many times Juries, together with other matter, are much induced by preſumptions, whereof there be three ſorts, viz. violent, probable, and light or temerarie. Violenta preſumptio is many times plena probatio, as if one be runne thorow the body with a ſword in a houſe, whereof he inſtantly dieth, and a man is ſeene to come out of that houſe with a bloody ſword, and no other man was at that time in the houſe, preſumptio probabilis moueth little, but, Preſumptio leuis ſeu temeraria, moueth not at all. So it is in the caſe of a Charter of feoffment, if all the witneſſes to the Deede be dead (as no man can keepe his witneſſes aliue, and time weareth out all men) then violent preſumption which ſtands for a proofe is continuall and quiet poſſeſſion, for ex diuturnitate temporis omnia preſumuntur ſolenniter eſſe acta, alſo the deed may receiue credit, per collationem ſigillorum, ſcripturæ, &c. & ſuper fidem cartarum mortuis teſtibus erit, ad patriam de neceſſitate recurrendum.

Fleta lib. 6. ca. 33. 8. E. 3. 290. 37. E. 3. 21. b.

Note, it hath beene reſolued by the Iuſtices, that a wife cannot be produced either againſt or for her huſband, quia ſunt duæ animæ in carne vna, and it might be a cauſe of implacable diſcord and diſſention betweene the huſband and the wife, and a meane of great inconuenience, but (d) in ſome caſes women are by law wholly excluded to beare teſtimony, as to proue a man to be a Vtlicine, mulieres ad probationem ſtatus hominis admitti non debent. It was alſo agreed by the whole Court (e) that in an Information vpon the ſtatute of Vſurie, the partie to the vſurious contract ſhall not be admitted to be a witneſſe againſt the Vſurer, for in effect hee ſhould be teſtis in propria cauſa, and ſhould auoide his owne bonds and aſſurances, and diſcharge himſelfe of the money borrowed, and, though he commonly raiſe vp an Informer to exhibite the Information, yet in rei veritate he is the partie. And herewith in effect agreeth Britton,

Glanvil. lib. 10. ca. 12. Fleta lib. 6. ca. 33.

Paſch. 30. Ia. in Com. banco vpon the Statute of Bankrouts.

(d) Fleta lib 2 ca. 44. 13. E. 1. tit. Vtl. 36 37. 29 E. 2 Ibid 32.

(e) Tr. 8. Ia in Com. banco Smiths Caſe. in euidence vpon an information vpon the ſtatute of Vſury.

Britt. fo. 134.

ton, that he that challengeth a right in the thing, in demand cannot be a Witneſſe, for that he is a partie in intereſt. But now let vs returne to that from the which by way of digreſſion (vpon this occaſion) we are fallen.

And the ancient Charters of the King which paſſed away any franchiſe or reuenue of any eſtate of inheritance had euer this clauſe of hijs teſtibus, of the greateſt men of the kingdome, as the Charters of creation of Nobility, yet haue at this day: when hijs teſtibus was omitted, and when teſte me ipſo came in into the Kings grants, you ſhall reade in the ſecond part of the Inſtitutes magna charta, ca. 38. I haue tearmed the ſaid parts of the Deed, formall or orderly parts, for that they be not of the eſſence of a Deede of feffment, for if ſuch a Deede be without premiſſes, habendum, tenendum, reddendum clauſe of warrantie, the Clauſe of In cuius rei teſtimonium, the Date. and the clauſe of his teſtibus, yet the Deede is good. (f) For if a man by Deede giue lands to another, and to his heires without more ſaying, this is good, if he put his Seale to the Deede, deliuer it, and make liuery accordingly. (g) So it is if A. giue lands, to haue and to hold, to B. and his heires, this is good, albeit the feoffee is not named in the premiſſes. And yet no well aduiſed man will truſt to ſuch Deedes, which law by conſtruction maketh good vt res magis valeat, but when forme and ſubſtance concurre, then is the Deede faire and abſolutely good. The ſealing of Charters, and Deeds is much more ancient then ſome, out of error, haue imagined; for the Charter of the King Edwyn, brother of King Edgar, bearing date Anno Domini, 956. made of the land called Iecklea in the Iſle of Ely, was not only ſealed with his owne Seale (which appeareth by theſe words, Ego Edwinus gratia dei totius britanniæ telluris rex meum donum proprio ſigillo confirmavi) but alſo the Biſhop of Wincheſter put to his Seale, Ego Ælfwinus Wintoñ Eccleſiæ divinus ſpeculator propriũ ſigillũ impreſſi. And the Charter of King Offa, whereby he gaue the Peter-pence, doth yet remaine vnder Seale. But no King of England, before, or ſince the Conqueſt, ſealed with any ſeale of Armes, before King R. 1. but the Seale was the King ſitting in a chaire on the one ſide of the Seale, and on horſe-backe on the other ſide in diuers formes. And King R. 1. ſealed with a Seale of two Lyons, for the Conqueror for England bare two Lyons, and King Iohn in the right of Normandy (the Duke whereof bare one Lyon) was the firſt that bare three Lyons, and made his Seale accordingly, and all the Kings ſince haue followed him. And King E. 3. in anno 13. of his raigne, did quarter the Armes of France with his three Lyons, and toke vpon him the title of King of France, and all his ſucceſſors haue followed him therein.

(f) *Mirror ca* 1 §. 6. & *ca* 5 § 1. *Glanuil. lib* 10 *ca.* 11. *Bract lib.* 5. *fo* 396. *Fleta. lib.* 6. *ca* 32. *Britt fo* 66.

(g) *Vid tearmes of the law, verb faits.*

Vid. Glanu l lib. 10 *cap.* 12. *Mirror, cap.* 1. §. 3. & *cap.* 3.

The antiquity of ſealing.

In ancient Charters of feoffment there was neuer mention made of the deliuery of the Deed or any liuery of ſeiſin indorſed, for certainly the witneſſes named in the Deede, were witneſſes of both: and witneſſes either of deliuery of the Deede, or of liuery of ſeiſin by expreſſe tearmes was but of latter times, and the reaſon was in reſpect of the notorietie of the feoffment. And I haue knowne ſome ancient Deedes of feoffment hauing liuery of ſeiſin indorſed ſuſpected, and after detected of forgerie. As if a Deede in the ſtile of the King name him Defenſor fidei before 13. H. 8. or ſupreame head before 20. H. 8. at what time hee was firſt acknowledged ſupreame head by the Cleargie, albeit the King vſed not the ſtile of ſupreame head in his Charters, &c. till 22. H. 8. or King of Ireland, before 33. H. 8. at which time he aſſumed the title of the King of Ireland, being before that called Lord of Ireland, it is certainly forged, & ſic de ſimilibus.

21. *H.* 8. *ca.* 16.

And ſome haue obſerued, that Grace was attributed to King H. 4. Excellent grace to King H. 6. Maieſtie to King H. 8. and before the King was called, Soueraigne Lord, Liege Lord, Highneſſe, and Kingly Highneſſe, which in Latyn in legall proceedings is called regia celſitudo, as the beginning of the Petition of right to the King is, humilimè ſupplicauit veſtræ celſitudini regiæ, &c. and the like. And vpon this occaſion it ſhall not be impertinent, ſeeing it is part of the formall Deede, to ſet downe the ſeuerall ſtiles of the Kings of England ſince the Conqueſt.

Vid 2. H. 4 ca. 15. *where Royall Maieſty is attributed to the King, and Crimen leſe Maieſtatis is farre more ancient.*

William the Conqueror commonly ſtyled himſelfe Willielmus rex, and ſometimes Willielm. rex Anglorum. And the like did William Rufus, and ſometimes Willielmus dei gratia rex Anglorum.

Henry the firſt, Henricus rex Anglorum. and ſometimes Henricus dei gratia rex Anglorum.

Mawde the ſole daughter and heire of H. 1. wrote Matildis imperatrix Henrici regis filia & Anglorum domina. Diuers of whoſe creations and grants I haue ſeene.

King Stephen vſed the ſtile that King H. 1. did.

Henry the 2. Fitz emprice omitted dei gracia, and vſed this ſtile, Henricus rex Angliæ, dux Normanniæ, & Aquitaniæ, & comes Andegauiæ, hee hauing the Dutchie of Aquitaine, and Earledome of Poitiers in the right of Elianor his wife heire to both: And the Earledome of Aniowe Tournie and Maine, as ſonne and heire to Ieffery Plantagenet by the ſaid Mawde his wife, daughter and ſole heire of King H. 1. She was firſt married to Henry the Emperour, and after his death to the ſaid Ieffery Plantagenet. Which Dutchie of Aquitaine doth include, Gaſcoigne and Guian.

King R. 1. vſed the ſtile that H. 2. his father did, yet was he King of Cyprus, and after of Ieruſalem, but neuer vſed either of them.

King Iohn vſed that ſtile, but with this addition Dominus Hiberniæ, and yet all that he had in Ireland was conquered by his father King H. 2. which tytle of Dominus Hiberniæ, hee aſſumed, as annexed to the Crowne, albeit his father, in the 23. yeare of his raigne, had created him King of Ireland in his life time.

King H. 3. ſtiled himſelfe as his father King Iohn did, vntill the 44. yeare of his raigne, and then he left out of his ſtile Dux Normanniæ, & comes Audegauiæ, and wrote only Rex Angliæ dominus Hiberniæ, & dux Aquitaniæ.

King E. 1. ſtiled himſelfe in like manner as King H. 3. his father did, Rex Angliæ dominus Hiberniæ, & dux Aquitaniæ. And ſo did King E. 2. during all his raigne. And King E. 3. vſed the ſelfeſame ſtile vntill the 13. yeare of his raigne, and then he ſtiled himſelfe in this ſorme Edwardus dei gratia Rex Angliæ & Franciæ, & dominus Hiberniæ, leauing out of his ſtile dux Aquitaniæ. He was King of France, as ſonne and heire of Iſabell wife of King E. 2. daughter and heire of Philip la beau King of France, he firſt quartered the French armoyes with the Engliſh in his great Seale, Anno domini 1338. & regni ſui 14.

King R. 2 and King H. 4. vſed the ſame ſtile that King E. 3. did. And King H. 5. vntill the 8. yeare of his raigne continued the ſame ſtile, and then wrote himſelfe, Rex Angliæ hæres & regens Franciæ, & dominus Hiberniæ, and ſo continued during his life.

Vid. Rot. Parliam. anno 1. H. 6. nu. 15. he was ſtiled Rex Franciæ & Angliæ & dominus Hiberniæ.

King H. 6. wrote, Henricus dei gratia Rex Angliæ & Franciæ, & dominus Hiberniæ; this King being crowned in Paris King of France vſed the ſaid ſtyle 39. yeares, till he was diſpoſſeſſed of the Crowne by King E. 4. who after he had raigned alſo about tenne yeares, King H. 6. was reſtored to the Crowne againe, and then wrote, Henricus dei gratia rex Angliæ & Franciæ, & dominus Hiberniæ ab in choatione regni ſui 49. & recaptionis regiæ poteſtatis primo.

King E. 4, R. 3. and H. 7. ſtiled themſelues, Rex Angliæ & Franciæ, & dominus Hiberniæ.

King H. 8. vſed the ſame ſtile till the tenth yeare of his raigne, and then hee added this word (Octavus) as Henricus octavus dei gratia, &c. In the 13. yeare of his raigne he added to his ſtile fidei Defenſor. In the 22. yeare of his raigne, in the end of his ſtile hee added ſupremum caput Eccleſiæ Anglicanæ. And in the 33. yeare of his raigne he ſtiled himſelfe thus Henricus octavus dei gratia Angliæ, Franciæ & Hiberniæ rex fidei defenſor, &c. & in terra Eccleſiæ Anglicanæ & Hiberniæ ſupremum caput.

King E. 6. vſed the ſame ſtile, and ſo did Queene Mary in the beginning of her raigne, and by that name ſummoned her firſt Parliament, but ſoone after omitted ſupremum caput. And after her marriage with King Philip, the ſtile notwithſtanding that omiſſion was the longeſt that euer was, viz. Philip and Mary by the grace of God King and Queene of England and France, Naples, Ieruſalem and Ireland Defendors of the Faith, Princes of Spaine and Cicilie, Archdukes of Auſtria, Dukes of Millaine, Burgundie, and Brabant, Countees of Hasburgh, Flanders and Tyroll. And this ſtile continued till the fourth and fift yeare of King Philip and Quœne Mary, and then Naples was put out, and in place thereof both the Cicills put in, and ſo it continued all the life of Quœne Mary.

I need not mention the ſtile of Quœne Elizabeth, King Iames, nor of our Soueraigne Lord King Charles, becauſe they are ſo well knowne, and I feare I haue beene too long concerning this point, which certainely is not vnneceſſary to be knowne for many reſpects. But to ſhew the cauſes and reaſons of theſe alterations would aſke a treatiſe of it ſelfe, and doth not ſort to the end, that I haue aymed at. And now let vs returne to the learning of Charters and deeds of Feoffments and Grants.

Liuery of ſeiſin incident to a Feoffment. Vid. Sect. 59.

Very neceſſary it is, that witneſſes ſhould be vnderwritten or indorſed, for the better ſtrengthening of Deedes, and their names (if they can write) written with their owne hands. For Liuery of ſeiſin. See hereafter Sect. 59. and for Deedes, Sect. 66. and of conditionall Deedes. See our Author in his Chapter of conditions. And now let vs proceede to the other words of our Author.

Mirr. ca. 2. §. 15. Bract. lib. 2 fo. 62. b. Flet. lib. 6. ca. 1. & 54. & lib 1. ca. 13. Glanvill lib. 7. ca. 1. & ca. 13. & 13.

¶ *A luy & a ſes heires.* Hæres, in the legall vnderſtanding of the Common Law, implyeth that he is ex iuſtis nuptijs procreatus, for Hæres legittimus eſt quem nuptiæ demonſtrant, and is he to whom lands, tenements, or hereditaments by the act of God, and right of blood doe diſcend of ſome eſtate of inheritance, for ſolus Deus hæredem facere poteſt non homo: dicuntur autem hæreditas & hæres ab hærendo, quod eſt arctè inſidendo, nam qui hæres eſt hæret, vel dicitur ab hærendo quia hæreditas ſibi hæret, licet nonnulli hæredem dictum velint quod hæres fuit, hoc eſt dominus terrarum, &c. quæ ad eum perueniunt.

(a) Bract. lib. 5. fo. 437. 438. Britt. ca. 66. fo. 167. & ca. 83. Fleta lib. 1. ca. 5.

A monſter which hath not the ſhape of man kinde, cannot be heire or inherit any land, albeit it be brought forth within marriage, (a) but although he hath deformitie in any part of his bodie, yet if he hath humane ſhape he may be heire. Hij qui contra formam humani generis conuerſo more procreantur, vt ſi mulier monſtroſum, vel prodigioſum enixa, inter liberos non computentur partus tamen, cui natura aliquantulum ampliauerit vel diminuerit, non tamen ſuperabundantur (vt ſi ſex digitos vel niſi quatuor habuerit) bene debet inter liberos connumerari.

Si

Si invtilia natura reddidit, ut ſi membra, tortuoſa habuerit, non tamen is partus monſtroſus. Another ſaith, ampliatio ſeu diminutio membrorum non nocet. (b) A Baſtard cannot bee heire, for (as hath beene ſaid before) qui ex damnato coitu naſcuntur inter liberos non computentur. Euery heire is either a male, or female, or an Hermophradite, that is both male and female. And an Hermophradite (which is alſo called Androgynus) ſhall bee heire, either as male, or female, according to that kinde of the ſexe which doth preuaile. Hermophradita, tam maſculo, quam feminæ comparatur, ſecundum prævaleſcentiam ſexus in caleſcentis. And accordingly it ought to be baptized. See more of this matter, Sect 35.

(b) *Vid. Sect.* 188. 399. *Bract. lib.* 2. *fo.* 92. *Britton, fo. Fleta lib.* 1. *ca.* 5. & *lib.* 6. *ca.* 8 *Fleta. vbi ſup a.* 3. *R.* 2. *entr. cong.* 38.

(c) A man iſſued of lands in fee hath iſſue an Alien that is borne out of the Kings ligeance, he cannot be heire, propter defectum ſubiectionis, albeit he be born within lawfull mariage. If made Denizen by the Kings Letters patents, yet cannot he inherite to his father or any other. But otherwiſe is it, if he be naturalized by act of Parliament, for then hee is not accounted in law alienigena, but indigena. But after one bee made Denizen, the iſſue that hee hath afterwards ſhalbe heire to him, but no iſſue that he had before. If an Alien commeth into England and hath iſſue two ſonnes, theſe two ſonnes are indigenæ ſubiects borne, becauſe they are borne within the realme. And yet if one of them purchaſe lands in fee, and dieth without iſſue, his brother ſhall not be his heire, for there was neuer any inheritable blood betweene the father and them, and where the ſonnes by no poſſibility can be heire to the father, the one of them ſhall not be heire to the other. See more at large of this matter, Sect. 198. *This is not law. v. Sect: 198.*

(c) *Mirror ca.* 1. *Ca.* 3. §. *ca.* 5. §. *Bract. lib.* 5 *fo.* 425. 427. *Britt. fo.* 29. *Fleta lib.* 6. *ca.* 47. 13. *E.* 3. *br.* 677. 25. *E.* 3. *de natis vltra mare.* 31. *E.* 3. *Caſe age* 5. 42. *E.* 3. 2. 11. *H.* 4. 26. 14. *H.* 4. 19. 20. 3. *H.* 6. 55. 22. *H.* 6. 38. 9. *E* 4. 7. *lib.* 7 *fo.* 1. *in Calvins caſe.*

If a man be attainted of treaſon, or felony, although hee be borne within wedlocke, hee can be heire to no man, nor any man heire to him propter delictum, for that by his attaindor his blood is corrupted. And this corruption of blood is ſo high, as it cannot abſolutely bee ſalued, and reſtored but by Act of Parliament, for albeit the perſon attainted obtaine his Charter of pardon, yet that doth not make any to be heire whoſe blood was corrupted at the time of the attainder, either downward or vpward. (d) As if a man hath iſſue a ſonne before his attainder and obtaineth his pardon, and after the pardon hath iſſue another ſonne, at the time of the attainder the blood of the eldeſt was corrupted and therefore he cannot be heire. But if hee die liuing his father the younger ſonne ſhall bee heire, for he was not in eſſe at the time of the attainder, and the pardon reſtored the blood as to all iſſues begotten afterwards. But in that caſe if the eldeſt ſonne had ſuruiued the father, the younger ſonne cannot be heire, becauſe he hath an elder brother which by poſſibilitie might haue inherited, but if the elder brother had beene an Alien the younger ſonne ſhould bee heire, for that the alien neuer had any inheritable blood in him. See more plentifully of this matter, Sect. 646, 647.

1. *E.* 3. 4. 6. *E.* 3. 55. 27 *E.* 3. 77. 3. *E.* 2. *diſcent. Br.* 64. 31. *E.* 1. *diſcent.* 17. 46. *E.* 3. *Petition* 20. 26. *Aſſ. p.* 2. 49. *Aſſ. pl.* 4. 29. *Aſſ. p.* 11. 9. *H.* 5. 9. (d) *Stanf. pl. cor.* 195. 196. *Bract. lib* 3 *fo.* 132. 133. 276. & *lib.* 5. *fo.* 374. *Britt. fo.* 215. *b. Fleta lib.* 1. *ca.* 28.

If a man hath iſſue two ſonnes, and after is attainted of treaſon, or felony, and one of the ſonnes purchaſe lands and dieth without iſſue, the other brother ſhall be his heire, for the attainder of the father corrupteth the lineall blood only, and not the collaterall blood betweene the brethren, which was veſted in them before the attainder, and each of them by poſſibilitie might haue beene heire to the father, and ſo hath it beene adiudged, (*) but otherwiſe in the caſe of the alien nee, as hath beene ſaid. (e) But ſome haue holden that if a man after he be attainted of treaſon or felony haue iſſue two ſonnes that the one of them cannot bee heire to the other becauſe they could not be heire to the father, for that they neuer had any inheritable blood in them.

(*) *In the Exchequer Mich.* 40. & 41. *Eliz. in le Caſe de Holby.*

(e) *Bracton lib.* 3. *fol.* 130. *Britton fol.* 15. *Fleta. lib.* 1. *cap.* 58.

(f) One that is borne deafe and dumbe may be heire to another, albeit it was otherwiſe holden in ancient time, And ſo if borne deafe, dumbe and blinde, for in hoc caſu, vitio parcitur naturali, but contract they cannot. Ideots, leapers, madmen, outlawes in debt, treſpaſſes, or the like; perſons excommunicated, men attainted in a præmunire, or conuicted of hereſie, may be heires.

(f) *Bracton lib.* 3. *fo.* 421. 430. 434. *lib.* 2. *fo.* 12. *Fleta. lib.* 6. *ca.* 39. 47. 14. *H.* 3. *bre.* 877. 32. *E.* 3. *Age.* 8. 10. *E.* 3. 53. 18. *E.* 3. 53. 13. *E.* 3. *Ley* 49.

(g) If a man hath a wife, and dieth, and within a very ſhort time after the wife marrieth againe, and within 9. moneths hath a childe, ſo as it may be the childe of the one or of the other. Some haue ſaid, That in this caſe the childe may chooſe his father, quia in hoc caſu filiatio non poteſt probari, and ſo is the booke to be intended, for auoyding of which queſtion and other inconueniences, this was the Law before the Conqueſt; Sit omnis vidua ſine marito duodecim menſibus, & ſi maritauerit perdat dotem.

(g) 21. *E.* 3. 39. *Panarollus noua reperta* 485. *&c. Opus eximium* 48. *b. Lambard de priſcis Anglorum legibus* 120. 72. *acc.*

(h) A man by the Common Law cannot be heire to goods or chattels, for hæres dicitur ab hæreditate. (i) If a man buy diuers fiſhes, as Carps, Breames, Tenches, &c. and put them in his Pond and dieth, in this caſe the heire ſhall haue them and not the Executors, but they ſhall goe with the inheritance, becauſe they were at libertie and could not bee gotten without induſtrie as by nets, and other ingines, otherwiſe it is if they were in a trunke or the like. Likewiſe Deere in a Parke, conies in a Warren, and Doues in a doue houſe young and old ſhall goe to the heire. (k) But of ancient time the heire was permitted to haue an action of debt vpon a bond made to his Auncеſtor and his heires, but the Law is not ſo holden at this day. Vid. Sect. 12.

(h) *Bracton lib.* 4. *ca.* 9. *fo.* 265. *lib.* 2. *fo.* 62. *b. Fleta. lib.* 6. *ca.* 1. *Lib.* 8. *fo.* 54. *Symſ caſe.*

(i) *Mich.* 36. & 37. *Eliz. Rot.* 25. *Inter. Gray and Paulet in the Kings bench. Stanford* 25. *b.* 18. *E.* 4. 8. 22. *Aſſ.* 25. 18. *H.* 8. 2.

(k) 13. *E.* 3. *dett.* 135. 139. 140. 47 *E.* 3. 23. 25. *E.* 3. *fo.* 48. 26. *E.* 3. *fo.* *V. ſo for an heireleme hereditarium or principalius, Sect.* 12

(l) It is to be noted that one cannot be heire till after the death of his auncеſtor, he is called hæres apparens, heire apparant.

(l) *Mirror. ca.* 1. §. 3.

In

In our olde bookes and recoꝛds there is mention made of another heire, viz. hæres aſtrarius, ſo called of Aſtre that is an harth of a houſe, becauſe the anneceſſor by conueyance hath ſet his heire apparant, and his family in a houſe and liuing in his life time, of whom Bracton ſaith thus; (a) Item eſto quod hæres ſit aſtrarius, vel quod aliquis anteceſſor reſtituat hæredi in vita ſua hæreditatem, & ſe dimiſerit, videtur quod nullo tempore iacebit hæreditas, & ideo quod nec relevari poſſit, nec debet nec relevium dari. (b) For the benefit, and ſafetie of right heires contra partus ſuppoſitos, the Law hath prouided remedy by the Writ de ventre inſpiciendo, whereof the rule in the Regiſter is this; Nota ſi quis habens hæreditatem duxerit aliquam in vxorem & poſtea moriatur ille ſine hærede de corpore ſuo exeunte, per quod hæreditas illa fratri ipſius defuncti deſcendere debeat, & vxor dicit ſe eſſe pregnantem de ipſo defuncto cum non ſit, habeat frater & hæres breve de ventre inſpiciendo. It ſeemeth by Bracton and Fleta which followed him, that this Writ doth lye, Vbi vxor alicuius in vita viri ſui ſe pregnantem fecit cum non ſit, vel poſt mortem viri ſui ſe pregnantem fecit cum non ſit ad exhærædationem veri hæredis, &c. ad quærelam veri hæredis per præceptum domini regis, &c. Which is to be vnderſtood according to the rule of the Regiſter: When a man hauing lands in fee ſimple dieth, and his wife ſoone after marrieth againe, and faine her ſelfe with childe by her former huſband, in this caſe though ſhee be married, the Writ de ventre inſpiciendo doth lye for the heire. But if a man ſeiſed of lands in fee (for example) hath iſſue a daughter, who is heire apparant, ſhe in the life of her father cannot haue this Writ for diuers cauſes; firſt becauſe ſhe is not heire, but heire apparant, for as hath beene ſaid nemo eſt hæres viuentis, and this Writ is giuen to the heire to whom the land is diſcended. And both Bracton and Fleta ſaith, that this Writ lieth ad quærelam veri hæredis, which cannot be in the life of his anceſtor, and herewith agreeth Britton and the Regiſter. Secondly, the taking of a huſband in the caſe aforeſaid being her owne act, cannot barre the heire of his lawfull action once veſted in him. Thirdly, the Law doth not giue the heire apparant any Writ, for it is not certaine whither he ſhall be heire, ſolus deus facit hæredes. Fourthly, the inconuenience were too great if heires apparant in the life of their anceſtor ſhould haue ſuch a Writ to examine and trie a mans lawfull wife in ſuch ſort as the Writ de ventre inſpiciendo doth appoint, and if ſhe ſhould be found to be with childe, or ſuſpect, then ſhee muſt be remoued to a Caſtle and there ſafely kept vntill her deliuery, and ſo any mans wife might bee taken from him againſt the lawes of God and man.

The words of the Writ de ventre inſpiciendo make this euident, Rex vic: ſalutem, monſtrauit nobis A. quod cum R. *quæ fuit vxor Clementis* B. pregnans non ſit, ipſa falsò dicit ſe eſſe pregnantem de eodem Clemente, *adexhæredationem* ipſius A, deſicut terra quæ fuit eiuſdem C. *ad ipſum A. iure hæreditario diſcendere debeat* tanquam *ad fratrem & hæredem* ipſius C. ſi prædict R. prolem de eo non habuerit, &c. but this rather belongs to the treatiſe of originall Writs, and therefore thus much herein ſhall ſuffice.

And it is to be obſerued that euery word of Littl: is worthy of obſeruation, firſt (Heires) in the plurall number, for if a man giue land to a man and to his heire in the ſingular number, he hath but an eſtate for life, for his heire cannot take a fee ſimple by diſcent, becauſe he is but one, and therefore in that caſe his heire ſhall take nothing. Alſo obſeruable is this coniunctiue (Et), For if a man giueth lands to one, To haue & to hold to him or his heires, he hath but an eſtate for life for the vncertaintie. (Ses, ſuis) If a man giue land vnto two, To haue and to hold to them two & hæredibus (c) omitting ſuis, they haue but an eſtate for life for the vncertainty, whereof more hereafter in this Section. But it is ſaid if land be giuen to one man & hæredibus, omitting ſuis, that notwithſtanding a fee ſimple paſſeth, but it is ſafe to follow Littleton.

¶ (d) *Et ſes aſſignes.* Aſſignee, commeth of the verbe aſſigno. And note there be aſſignes in Deede, and aſſignes in Law, whereof ſee more in the chapter of Warrantie, Sect. 733.

¶ *Ceux parolx (ſes heires) tantſolement font leſtate denheritance en touts feoffments & grants.* (e) Si autem facta eſſet donatio, vt ſi dicam, do tibi talem terram, iſta donatio non extendit ad hæredes ſed ad vitam donatoris, &c. (f) Here Littleton treateth of purchaſes by naturall perſons, and not of bodies politique or corporate; (g) for if lands bee giuen to a ſole body politique or corporate, (as to a Biſhop, Parſon, Vicar, maſter of an Hoſpitall, &c.) there to giue him an eſtate of inheritance in his politique or corporate capacitie, he muſt haue theſe words, To haue and to hold to him and his ſucceſſors, for without theſe words Succeſſors in thoſe caſes there paſſeth no inheritance, for as the heire doth inherite to the anceſtor, ſo the ſucceſſor doth ſucceed to the predeceſſor and the executor to the teſtator. (h) But it appeareth here by Littleton that if a man at this day giue lands to I.S and his ſucceſſors, this createth no fee ſimple in him, for Littleton ſpeaking of naturall perſons ſaith that theſe words (his heires) make an eſtate of inheritance in all Feoffments and Grants whereby he excludeth theſe words (his ſucceſſors) (i) And yet if it be in an ancient grant it muſt bee expounded as the Law was taken at the time of the grant. (k) A Chantry prieſt incorporate tooke a Leaſe to him

(a) *Bract. lib. 2. fo. 85. Hereſ p. 8. E. 1. Ro. 80. de Bance. Mirr. cap. 2. §. 18. Briton 151. b.*
(b) *Regiſtr. fo. 227. Bracton. lib. 2. fo. 69. Britton. fo. 165. Fleta lib. 1. ca. 14.*
Britton. fo. 165. b. Regiſt. vbi ſupra.
Vid. Bracton Britton. & Fleta vbi ſupra. Regiſtr. vbi ſupra. Bracton and Fleta vbi ſupra haue (ad exhæredationem.)
(d) *Lib. 5. fo. 96. 97. Brit. fo. 28. H. 8. Dier. Pl. Com. 287. 288.*
(c) *Bract. lib. 2. cap. 39. fo. 92. b. Brit. ca. 39. fo 99. b. Fleta. lib. 6. ca. 1. 2. & lib. 3. cap 2. 20. H. 6 35. 36. 19. H. 6. 17. 22. 74. 22. E. 4. 16. b. 4. E. 6. pl com 26.*
(f) *Vid. Sect 413.*
(g) *7. E. 3. 25. Vid. Sect. 686. 25. E. 3. 35. Bract. lib. 2. fo. 62. b. Vid. Sect. 413.*
(h) *Pl. Com 242. Segrier Berkleys caſe.*
(i) *Vid. Britt. fo. 86 121. & 130. 17. E. 3. 25. b. 33. H. 6. 22. 10. H. 7. 13. 14. 9. H. 7. 11. 16. H. 7. 9. 15. E. 4 13 14. H 6. 12. 35. H. 6. 54. 24. Aſſ. 14. 40. Aſſ. 21. Tr. 5. E. 3. Ro. 4. in Scaccario. 3. E. 3. 32. 7. E. 3. 40. 11. H 4. 84. 12. H. 4. 12. 18. E. 3. Conuſans 39. b. 5. E. 4. 121. 38. E 3. 4. Lib. 9. fo. 28. in Caſe. de Abb. de Strata Marcella.*
(e) *10. H. 6. 7. 22. H. 6. 15. Pl. Com. 28 b. 22. E. 4. 16. 2. H. 4. 13. 20. E. 3. br. 377.*

him and his ſucceſſors for a hundred yeares, and after tooke a releaſe from the Leaſor to him and his ſucceſſors, and it was adiudged that by the releaſe he had but an eſtate for life, for he had the Leaſe in his naturall capacitie for it could not goe in ſucceſſion, and (his ſucceſſors) gaue him no eſtate of inheritance for want of theſe words (his heires.) (l) If the King by his Letters patents giueth lands Decano & Capitulo, habendem ſibi & hæredibus & ſucceſſoribus ſuis, In this caſe albeit they be perſons in their naturall capacitie to them and their heires, yet becauſe the Grant is made to them in their politique capacitie, it ſhall enure to them and their ſucceſſors. And ſo if the King doe grant lands to I.S. Habendum ſibi & ſucceſſoribus ſiue hæredibus ſuis, this grant ſhall enure to him and his heires.

(l) 18.H.6.11.b.&c. adiudge.

(m) B. hauing diuers ſonnes and daughters A. giueth lands to B. & Liberis ſuis & a lour heires, the father and all his children doe take a fee ſimple ioyntly by force of theſe words (their heires) but if he had no childe at the time of the feoffment the childe borne afterward ſhall not take.

(m) 15.E.3.tit. Counterpleade Voucher. 43. 37.H.6.30.11.E.4 2.

Theſe words (his heires) doe not only extend to his immediate heires, but to his heires remote, and moſt remote borne and to be borne, (n) Sub quibus vocabulis (hæredibus ſuis) omnes hæredes propinqui comprehenduntur, & remoti, nati, & naſcituri, And hæredum appellatione veniunt hæredes hæredum in infinitum. And the reaſon, wherefore the Law is ſo preciſe to preſcribe certaine words to create an eſtate of inheritance, is for auoyding of vncertainty, the mother of contention and confuſion.

(n) *Fleta lib.*3.*ca.*8.

*Pl.Com.*163.

There be many words ſo appropriated, as that they cannot be legally expreſſed by any other word, or by any periphraſis, or circumlocution: Some to eſtates of Lands, &c. as here and in (a) other places of our Author. In this place theſe words tantſolement, not ſolement alone, but tantſolement all only; .i. ſolummodo, or duntaxat, are to be obſerued; (b) Some to tenures; (c) Some to perſons, (d) Some to offences; (e) Some to formes of originall Writs either for recouery of right, or remouing, or redreſſe of wrong; (f) Some to warrantie of Land. Theſe haue I touched for examples, I leaue others to the ſtudious reader to obſerue, and adde holding this for an vndoubted verity, that there is no knowledge, caſe, or point in Law, ſeeme it of neuer ſo little account, but will ſtand our ſtudient in ſtead at one time or other, and therefore, in reading, nothing to be pretermitted.

(a) *Sect.*17.62.133. (b) *Sect.*156.161. (c) *Sect.*184. (d) *Sect.*190.194.746. (e) *Sect.*9.67.194.204 234. 236.241.405 485.478. 651.655.646.620.614.637 674.692. (f) *Sect.*733.

¶ *Font leſtate.* Status dicitur a ſtando, **becauſe it is fixed, and permanent.** The Iſle of Man, which is no part of the kingdome, but a diſtinct territorie of it ſelfe, hath beene granted by the great Seale to diuers ſubiects and their heires. (g) It was reſolued by the Lord Chancellor, the two chiefe Iuſtices and chiefe Baron, that the ſame is an eſtate diſcendible according to the courſe of the Common law, for whatſoeuer ſtate of inheritance paſſe vnder the Great Seale of England, it ſhall be diſcendible according to the rules, and courſe of the Common Law of England.

(g) *Tr.*40.*Eliz. inle Counte de Derbys caſe, by the Lo: Chancellor, les 2. chiefe Iuſtices & chiefe Baron.*

¶ *En touts feoffments & grants.* **Here hee giueth the feoffment the** firſt place, as the ancient and the moſt neceſſary conueyance, both for that it is ſolemne and publique, and therefore beſt remembred and proued, (g) and alſo for that it cleareth all diſſeiſins, abatements, intruſions, and other wrongfull or defeaſible eſtates, where the entry of the feoffor is lawfull, which neither fine, recouery, nor bargaine and ſale by Deede indented and inrolled doth. And here is implyed a diuiſion of fee, or inheritance, viz, (h) into corporeall (as Lands and tenements which lye in liuery) comprehended in this word feoffment, and may paſſe by liuery by Deed, or without Deed, which of ſome is called hæreditas corporata, and incorporeall, (which lye in grant, and cannot paſſe by liuery, but by deede, (as Aduowſons, Commons, &c. and of ſome is called hæreditas incorporata) and, by the deliuery of the Deed, the freehold, and inheritance of ſuch inheritance, as doe lye in grant, doth paſſe) comprehended in this word Grant. And the Deede of incorporeate inheritances doth equall the liuery of corporeat. And therefore Littleton ſaith, in all Feoffments and Grants. Hæreditas, alia corporalis, alia incorporalis: Corporalis eſt, quæ tangi poteſt & videri, incorporalis quæ tangi non poteſt, nec videri.

(g) *Vid S ct.*59.*&*66. (h) *Mirror.ca.*2.§.15.*& ca.* 5.§.2.*Bract.lib* 2.*fo.*53. 366.368.*Fleta lib.*& *ca.* 1.2.15.*Brit.*84.87.*a. & fo* 63.101 102 141.142. *agreeth herewith Pl.Com.* 171. *Hill & Grange.*

Feoffment is deriued of the word of art feodum, quia eſt donatio feodi, for the ancient Writers of the Law called a feoffment donatio, of the verbe do or dedi, which is the aptеſt word of feoffment. And that word Ephron vſed, * when he enfeoffed Abraham, ſaying, I giue thee the field of Machpelah ouer againſt Mamre, and the Caue therein I giue thee, and all the trees in the field and the borders round about, all which were made ſure vnto Abraham for a poſſeſſion, in the preſence of many witneſſes.

*For the Antiquitie of Feoffments. See the ſecond part of the Inſtitutes Merlebridge ca.*9 8.E.3.24.28 *H.*6.24. 39.*H.*6.39. * *Geneſis* 23.

By a Feoffment the corporeate fee is conueyed, & it properly betokeneth a conueyance in fee, as our Author himſelfe hereafter ſaith, * in his chapter of Tenant for life. And yet ſometime improperly it is called a feoffment when an eſtate of freehold only doth paſſe, Done eſt noſme generall plus que neſt feoffment, car done eſt generall a touts choſes moebles & nient moebles, feoffment eſt riens forſque del ſoyle. And note there is a difference inter cartam & factū, for carta is

* *Vid.Sect.*59. *Britt.ca.* 34. 44.E.3.41.

*See more of feoffment Sect.*60. *See of Factum. Sect.*259.

entended a Charter which doth touch inheritance, and ſo is not factum vniuerſeit hath ſome other addition.

*Lib.*3 *fo.*63. *in Lincolne Colle'geca'ſe.*

Grant, Conceſſio, is properly of things incorporeall which (as hath beene ſaid) cannot paſſe without Deede. And here it is to be obſerued (that I may ſpeake once for all) that euery Period of our Author in all his three bookes containe matter of excellent learning, neceſſarily to be collected by implication, or conſequence, for example hee ſaith here, that theſe words (his heires) make an eſtate of inheritance in all feoffments and grants, he expreſſing feoffments and grants, neceſſarily implyeth, that this rule extendeth not, firſt to Laſt wills and teſtaments, for thereby, (t) as he himſelfe after ſaith, an eſtate of inheritance may paſſe without theſe words (his heires) (k) As if a man deuiſe 20. acres to another, and that he ſhall pay to his executors for the ſame tenne pound, hereby the deuiſee hath a fee ſimple by the intent of the deuiſor, albeit it be not to the value of the land. (l) So it is if a man deuiſe lands to a man imperpetuum, or to giue, and to ſell, or in feodo ſimplici, or to him and to his aſſignes for euer, In theſe caſes a fee ſimple doth paſſe by the intent of the Deuiſor, but if the deuiſe bee to a man and his Aſſignes without ſaying (for euer) the Deuiſee hath but an eſtate for life. (m) If a man deuiſe land to one & ſanguini ſuo that is a fee ſimple, but if it be ſemini ſuo, it is an eſtate taile

(i) *Lut..lib.*3.*ca.de Attorn. Sect* 5.8.6. 4.*E* 6 *Eſtates Br.*78. 29 *H* 8.*Teſtaments* 18. 22.*Eliz Dier* 371. *Temps H.*8 *tit. Conſcience Br* 25. (k) 21.*E.*3.16.24.*H.*6.7. 19.*H.*8.9.*la*'.3.*fo.*21. *in Boraſtons caſe lib.*6.*fo.*15.17.*lib.* 10.*fo* 67. (l) *Ibid.Sect.* 585. (m) *Mich.*40 *&* 41.*Eliz. in Error Int.Dewiſha l & Caterby adiudge. Brooke tr. taile* 21.

(n) Secondly, that it extendeth not to a fine ſur conuſans de droit come ceo que il ad de ſon done, by which a fee alſo may paſſe without this word (heires) in reſpect of the height of that fine, and that thereby is implyed that there was a precedent gift in fee.

(n) *Lib.*1.*fo.*100. *Shellyes caſe.* 42.*E.*3.7. 19.*H.*6.17.*b.*22.*b. Pl.Com.*248.

Thirdly, Not to certein Releaſes, and that three manner of wayes, (o) firſt when an eſtate of inheritance paſſeth and continueth, as if there be three coparceners or ioyntenants, & one of them releaſe to the other two, or to one of them generally without this word (heires) by Common option they haue a fee ſimple as appeareth hereafter. Secondly, by releaſe (p) when an eſtate of inheritance paſſeth & continueth not, but is extinguiſhed, as where the Lord releaſes to the tenant or the grantee of a rent, &c. releaſe to the tenant of the land generally all his right, &c. hereby the Seigniorie, rent, &c. are extinguiſhed for euer, without theſe words (heires) Thirdly (q) when a bare right is releaſed, as when the diſſeiſee releaſe to the diſſeiſor all his right, he neednot ſaith our Author in another place ſpeake of his heires. But of all theſe, and the like caſes, more ſhall be treated in their proper places, Fourthly, not to a Recouery, A. ſeiſed of land ſuffereth B. to recouer the land againſt him by a common recouery where the iudgement is quòd prædictus B. recuperet verſus prædict. A tenementa prædicta cum pertin, yet B. recouereth a fee ſimple without theſe words (heires) for regularly euery recouerer recouereth a fee ſimple. Fiftly, not to a creation of Nobilitie by writ, for when a man is called to the vpper houſe of Parliament by Writ, hee is a Baron and hath inheritance therein without the word (heires) yet may the King limit the generall ſtate of inheritance created by the Law and cuſtome of the Realme to the heires males, or generall, of his body by the Writ, as he did to Bromfleet who in 27. H.6. was called to Parliament by the name of the Lo: Vere, &c. with the limitation in Writ to him and the heires males of his body, but if he be created by patent, he muſt of neceſſitie haue theſe words (his heires) or the heires males of his body, or the heires of his body, &c. otherwiſe he hath no inheritance. The firſt creation of a Baron by patent that I finde was of Iohn Beauchampe of Holte created Baron by patent in 11.R 2. for Barons before that time were called by Writ. And it is to be obſerued, that of ancient times Earles, &c. were created by girding them with a ſword, and nominating him Earle, &c. of ſuch a County or place and this with a calling of him to Parliament by Writ, by that name was a ſufficient creation of inheritance.

(o) *Litt.lib.*2.*ca.tenant in Common.Sect.*304 305. *cap.Attorn.Sect.*374. *Dier* 9.*Eliz.* 263. (p) *Litt lib.*3.*ca. Releaſes, Sect.*479.480. 20.*H.*6.17.19.*H.*6.17.22. (q) *Litt.ca.Releaſes Sect.*467.

27.*H.*6.*Lo.Veſcies caſe.*

But out of this rule of our Author the Law doth make diuers exceptions (& exceptio probat regulam) for ſometime by a feoffment a fee ſimple ſhall paſſe without theſe words (his heires.) For example, firſt, (r) if the father infeoffe the ſonne, To haue and to hold to him and to his heires, and the ſonne infeoffeth the father as fully as the father enfeoffed him, by this the father hath a fee ſimple, quia verba relata hoc maximè operantur per referentiam vt in eſſe videntur. (ſ) Secondly, in reſpect of the conſideration, a fee ſimple had paſſed at the Common Law without this word (heires) and at this day an eſtate of inheritance in tayle, as if a man had giuen land to a man with his Daughter in Franeke marriage generally, a Fee ſimple had paſſed without this word (heires) for there is no conſideration ſo much reſpected in Law, as the conſideration of marriage, in reſpect of Alliance, and poſterity. (t) Thirdly, if a feoffment or Grant be made by Deed to a Mayor and communalty or any other Corporation aggregate of many perſons capable, they haue a fee ſimple without the word (Succeſſors) becauſe in iudgement of the Law they neuer die. (u) Fourthly, in caſe of a ſole corporation a fee ſimple ſhall ſometime paſſe without this word (ſucceſſors) as if a feoffment in fee be made of land to a Biſhop, To haue and to hold to him in libera elemoſina, a fee ſimple doth paſſe without this word (Succeſſors) (w) And ſo if a man giue lands to the King by Deede inrolled, a fee ſimple doth paſſe without theſe words (ſucceſſors or heires) becauſe in iudgement of Law the King neuer dieth. Fiftly, in Grants ſometimes an Inheritance ſhall paſſe without this word

(r) 39.*Aſſ.*12.41.*E.*3.*tit. Feoffments & faits* 254. 14.*H.*4.13.34.*E.*3. *Anowry.*258. (ſ) *Vid.Sect.*17. 12.*H.*4.19.*in Formdon.* (t) 8.*E.*3.27.11.*H.*7.12. 22.*E.*4. 11.*H.*4.84. 2.*H.*4.13.

(u) 19.*H.*6.74.20.*H.*6.36.

(w) *Pl.com.Lo.Berkleyes Caſe.*

(heires)

(heires)(x) as if partition be made betweene copercners of Lands in fee ſimple, and for oweety of partition the one grant a rent to the other generally, the grantee ſhal haue a fee ſimple without this word (heires) becauſe the grantor hath a fee ſimple in conſideration whereof he granted the rent, ipſæ etenim leges cupiunt vt jure regantur. Sixtly, by the Forreſt law if an aſſart be granted by the King at a Juſtice ſeat (which may be done without Charter) to another Habendum & tenendū ſibi imperpetuū, ſhe hath a fee ſimple without this word (heires)(y) for there is a ſpeciall Law of the Forreſt, as there is a law Marſhall for Warres, and a Marine law for the ſeas. (z) And this rule of our Author extendeth to the paſſing of eſtates of inheritances in exchanges, releaſes, or confirmations that enure by way of enlargement of eſtates, warranties, bargaine and ſales by Deed indented & inrolled, & the like in which this word (heires) is alſo neceſſary for they doe tant amount to a feoffment or grant or ſtand vpon the ſame reaſon that a feoffment or grant doth, for like reaſon doth make like law, vbi eadem ratio, ibi idem jus. And this is to be obſerued throughout all theſe three bookes, that where other caſes fall within the ſame reaſon, our Author doth put his caſe but for example, for ſo our Author himſelfe in another place * explanethit, ſaying, Et memorandū q̄ en touts autets caſes coment que ne ſont icy expreſſement moves & ſpecifies ſi ſont en ſemblable reaſon ſont en ſemblable ley, And here our Author is to bee vnderſtood to ſpeake of heires when they are inheritable by diſcent, for they are capable of land alſo by purchaſe, and then the courſe of diſcent is ſometime altered, as if lands of the nature of Gauilkinde be giuen to B. and his heires hauing iſſue diuers ſonnes, all his ſonnes after his deceaſe ſhall inherite, but if a leaſe for life be made, the remainder to the right heires of B. and B. dieth, his eldeſt ſonne only ſhall inherite, for he only to take by purchaſe is right heire by the Common law. So note a diuerſitie betweene a purchaſe and a diſcent, but where the remainder was limitted to the right heires of B. it need not to be ſaid and to their heires, for being plurally limitted it includeth a fee ſimple, and yet it reſteth but in one by purchaſe.

(x) 29. Aſſ 23. 15. H. 7. 14. 2 H. 7. 5. 11. H. 4. 3. 21. E. 3. 1. 21. Aſſ.

(y) 40. H. 7. 7.

(z) 22. L. 3. 3. 45. E. 3. 20. 9. E 4. 21. Lib. 4. fo. 121. Buſſards caſe. Vid. Sect. 465. 469. & 10. 19. H 6. 17. 22. 19. E. 2. gar. 85.

* Sect. 301.

Out of that which hath beene ſaid it is to be obſerued, that a man may purchaſe lands to him and his heires by Ten manner of conueyances, (for I ſpeake not here of eſtoppells.) Firſt by Feoffment, ſecondly by Grant (of which two our Author here ſpeaketh.) Thirdly by Fine which is a feoffment of record. Fourthly by common Recouery which is a common conueyance and is in nature of a feoffment of record. Fiftly by Exchange which is in nature of a grant. Sixtly, by Releaſe to a particular tenant. Seuenthly by Confirmation to a particular tenant both which are in nature of Grants. Eightly, by grant of a reuerſion or remainder with attornment of the particular tenant, of all which our Author ſpeaketh hereafter. Ninthly, by bargaine and ſale by Deede indented and inrolled ordained by ſtatute ſince Littleton wrote. Tenthly, by deuiſe by cuſtome of ſome particular place, as he ſheweth hereafter, and ſince he wrote, by will in writing generally by authority of Parliament.

27. H. 8. ca. 16. 32 H. 8 ca. 2. 34. H. 8. ca. 5.

What words are apt words for a feoffment or grant Vid. §. 531. Our Author ſpeaketh of feoffments and grants, whereby is implyed lawfull conueyances, & therfore this rule extendeth not to diſſeiſins, abatements or intruſions into lands or tenements or to vſurpations to aduouſons, &c. in which caſes eſtates in fee ſimple are gained by the act and wrong of the diſſeiſors, abators, intruders and vſurpers, and if a diſſeiſin abatement or intruſion be made to the vſe of another if cēy que vſe agreeth thereunto in pays by this bare agreement he gaineth a fee ſimple without any liuery of ſeiſin or other ceremony.

Sect. 531. 37. Aſſ. p. 8. 38. Aſſ. p. 9. 12. E. 4. 9. &c.

Section 2.

¶ ET ſi home pchaſe tres en fee ſimple & deny ſans iſſue cheſcun q̄ eſt ſon prochine coſin collateral del entire ſanke, de quel pluis long degree q̄ il ſoit, poet inheriter & auer m̄ la tre come heire a luy.

AND if a man purchaſe land in fee ſimple and die without iſſue hee which is his next coſen collaterall of the whole blood, how farre ſo euer hee bee from him in degree, may inherit & haue the land as heire to him.

¶ Littleton ſheweth here who ſhalbe heire to lands in fee ſimple, for hee entendeth not this caſe of an eſtate taile, for that he ſpeaketh of an heire of the whole blood for that extendeth not to eſtates in taile as ſhall bee ſaid hereafter in this chapter, Section 6.

¶ *Prochein coſin collaterall.* Neyther excludeth he brethren or ſiſters, becauſe he hath a ſpeciall caſe concerning them in this chapter, Sect. 5. and in his chapter of parceners, but this is intended where

where a man purchaſe lands and dieth without iſſue, and hauing neither brother nor ſiſter, then his next couſin collaterall ſhall inherite. So as here is implyed a diuiſion of heires, viz. lineall (who euer ſhall firſt inherit,) and collaterall, (who are to inherite for default of lineall) For in diſcents it is a maxime in law quod linea recta ſemper preferitur tranſuerſali. Lineall diſcent is conueyed downward in a right line, as from the grandfather to the father, from the father to the ſonne, &c. Collaterall diſcent is deriued from the ſide of the lineall, as grandfathers brother, fathers brother, &c. Prochein couſin-collaterall enherita doth giue a certaine direction to the next couſin to the ſonne, and therefore the fathers brother and his poſterity ſhall inherite before the grandfathers brother and his poſterity. Et ſic de ceteris, for propinquior excludit propinquum & propinquus remotum, & remotus remotiorem.

Glanvil lib.7 ca.3.4. Bract. lib.2.ca.30 fo 65. Britt.ca 119. Fleta lib.6.cap.1.& 2.

Bract lib 2.ca.30 f.64. Fleta lib.5.ca 5 & lib 6 ca 1.& 2. Britt.ca 119. Mirror 11.ca.1. §.3. 30.Aſſ.p.47.

Vpon this word (Prochein) I put this caſe. One hath iſſue two ſonnes A and B. and dieth, B. hath two ſonnes C. and D. and dieth. C. the eldeſt ſonne hath iſſue and dieth: A. purchaſeth lands in fee ſimple and dieth without iſſue, D. is his next couſin, and yet ſhall not inherite, but the iſſue of C. for he that is inheritable is accounted in law next of blood. And therefore here is vnderſtood a diuiſion of next, viz. next, iure repræſentationis, and next, iure propinquitatis, that is, by right of repreſentation and by right of propinquitie. And Littleton meaneth of the right of repreſentation, for legally in courſe of diſcents he is next of blood inheritable. And the iſſue of C. doth repreſent the perſon of C. and if C. had liued he had beene legally next of blood. And whenſoeuer the father if he had liued, ſhould haue inherited, his lineall heire by right of repreſentation ſhall inherite before any other, though another be iure propinquitatis nearer of blood. And therefore Littleton intendeth his caſe of next couſin of blood immediately inheritable. So as this produceth another diuiſion of next of blood, viz. immediatly inheritable, as the iſſue of C. and mediatly inheritable as D. if the iſſue of C. die without iſſue, for the iſſue of C. and all that line be they neuer ſo remote ſhall inherite before D or his line, and therefore Littleton ſaith well de quel pluis long degree que il ſoit. And here ariſeth a diuerſity in law betweene next of blood inheritable by diſcent, and next of blood capable by purchaſe. And therefore in the caſe before mentioned if a Leaſe for life were made to A. the remainder to his next of blood in fee. In this caſe as hath beene ſaid D. ſhall take the remainder, becauſe he is next of blood and capable by purchaſe, though he be not legally next to take as heire by diſcent.

19.R.2.tit.garr.100.

30.Aſſ.p.47.

Section 3.

¶ *Vncore le pier eſt pluis prochein de ſanke.* And therefore ſome doe hold vpon theſe words of Littleton that if a Leaſe for life were made to the ſonne the remainder to his next of blood that the father ſhould take the remainder by purchaſe, and not the vncle, for that Littleton ſaith the father is next of blood, and yet the vncle is heire. As if a man hath iſſue two ſonnes, and the eldeſt ſonne hath iſſue a ſonne and die, a remainder is limited to the next of his blood, the younger ſonne ſhall take it, yet the other is his heire

5.E 6.tit.Adminiſtr. Br.47. Ratcliffes caſe vbi ſupra. See after in the chapter of Socage.

¶ (p) *Eſt vn Maxime en le Ley que enheritance poet linealment diſcender mes nemy aſcender.*

(p) *Pl.Com.293.b. Osborns ca.9.*

Maxime, i. A ſure foundation or ground of art, and a

¶ Mes ſi ſoit pier & fits, & le pier ad vn frere que eſt vncle a le fits, & le fits purchaſe fre en fee ſimple & mor ſans iſſue viuant ſon pier, luncle auera la terre come heire al fits & nemy le pier, vncore le pier eſt pluis prochein de ſank; pur ceo que eſt vn maxime en le ley, Que enheritãce poet lincalment diſcender, mes nẽy aſcender. Vncor̃ ſi le fits en tiel caſe mor ſans iſſue, & ſon vncle entra en la fre come heire a le

But if there bee father & ſon, & the father hath a brother that is vncle to the ſon, & the ſon purchaſe land in fee ſimple, and die without iſſue, liuing his father, the vncle ſhal haue the land as heire to the ſon, & not the father, yet the father is neerer of blood; becauſe it is a maxime in law, That inheritance may lineally diſcend, but not aſcend. Yet if the ſon in this caſe die without iſſue, and his vncle enter into the land as heire to the

conclusion

fits (ſi come il deuoit p la ley) & apres luncle deuia ſans iſſue, viuant le pier, donqs le pier auera la terre cõe heire al vncle, & nẽy cõe heire a ſon fits, pur ceo que il deigne al terre p collaterall diſcent & nẽy p lineall aſcention.

ſonne (as by law hee ought) and after the vncle dieth without iſſue, liuing the father, the father ſhall haue the land as heire to the vncle, & not as heire to his ſon, for that hee commeth to the land by collateral diſcent & not by lineall aſcent.

conclusion of reaſon ſo called (q) quia maxima eſt eius dignitas & certiſſima authoritas, atque quod maximè omnibus probetur, ſo ſure and vncontrolable as that they ought not to be queſtioned. (r) And that which our Author here and in other places calleth a Maxime, hereafter he calleth a Principle, and it is all one with a Rule, a common ground, Poſtulatum or an Axiome, and it were too much curioſitie to make nice diſtinctions betweene them. And it is well ſaid in our bookes, (ſ) neſt my a diſputer lancient principles del ley. I never read any opinion in any booke old or new againſt this Maxime but only in lib.rub. where it is ſaid, (t) ſi quis ſine liberis diſceſſerit pater aut mater eius in hæreditatem ſuccedat, vel frater & ſoror ſi pater & mater deſint, ſi nec hos habeat, ſoror patris vel matris & deinceps qui propinquiores in parentela fuerint hæreditario ſuccedant, & dum virilis ſexus extiterit, & hæreditas abinde ſit, fœmina non hæreditat'. But all our ancient Authors and the conſtant opinion euer ſince doe affirme the maxime.

(q) *Pl.Com.27.b.*

(r) *S.C.90.648.*

(ſ) *12.H.4. Glanvill lib.7.ca.1. Bract.lib.2.cap.29.*

(t) *Lib.Rub.cap.70.*

By this maxime and the concluſion of his caſe, only lineall aſcention in the right line is prohibited, and not in the collaterall, (u) Quælibet hæreditas naturaliter quidem ad hæredes hæreditabiliter diſcendit, nunquam quidem naturaliter aſcendit, diſcendit itaque jus quaſi ponderoſum quod cadens deorſum recta linea vel tranſuerſali, & nunquam reaſcendit ea via qua diſcendit poſt mortem anteceſſorum, à latere tamen aſcendit alicui propter defectum hæredum inferius prouenientium; ſo as the lineall aſcent is prohibited by law, and not the collaterall. And in prohibiting the lineall aſcent, the Common Law is aſſiſted with the Law of the 12. tables.

(u) *Bract.ca.119. Fleta lib.6.cap.1. Num.b.ca.27. Ratcl ff. caſe vbi ſupra.*

Here our Author for the confirmation of his opinion draweth a reaſon and a proofe (as you haue perceiued) from one of the maximes of the Common law: Now that I may here obſerue it once for all, his proofes and arguments, in theſe his three bookes, may bee generally deuided into two parts, viz. from the Common law and from Statutes, of both which, and of their ſeuerall branches I ſhall giue the ſtudious reader ſome few examples and leaue the reſt to his diligent obſeruation.

From the Common Law his proofes and arguments are drawne from 20. ſeuerall fountaines or places.

(a) Firſt from the Maxims, Principles, Rules, Intendment, and Reaſon of the Common Law, which indeede is the Rule of the Law as here, and in other places our Author doth vſe.

(b) Secondly, from the bookes, records, and other authorities of Law cited by him, Ab authoritate, & pronunciatis.

(c) Thirdly, from originall Writs in the Regiſter, à reſcriptis valet argumentum.

(d) Fourthly, from the forme of good pleading.

(e) Fiftly, from the right entry of iudgements.

(f) Sixtly, à præcedentibus approbatis & vſu, from approued Precedents and Vſe.

(g) Seuenthly, a non vſu, from not vſe.

(h) Eightly, ab artificialibus argumentis, conſequentibus & concluſionibus, artificiall arguments conſequents and concluſions.

Ninthly, (i) a communi opinione juriſprudentum, from the common opinion of the ſages of the Law.

Tenthly, (k) ab inconuenienti, from that which is inconuenient.

Eleuenthly, (e) a diuiſione from a diuiſion vel ab enumeratione partium from the enumeration of the parts.

Twelfthly, (m) a maiore ad minus, from the greater to the leſſer, or (n) from the leſſer to the greater, (o) a ſimili, (p) a pari.

13. (p) ab impoſſibili from that which is impoſſible.

14. (q) A fine from the end.

15. (*) Ab vtili vel inutili from that which is profitable or vnprofitable.

16. (r) Ex abſurdo for that thereupon ſhould follow an abſurdity quaſi à ſurdo prolatum, becauſe it is repugnant to vnderſtanding and reaſon.

17. (ſ) A natura et ordine naturæ, from nature or the courſe of nature.

(a) *Sect.5.8.90.96.52.53.57.59.65.99.130.146.156.169.178.231.293.302.352.360.376.377.396.410.440.441.346.347.462.43.*

(b) *Sect.20. where a number other are quoted.*

(c) *Sect.67.132.170.234.241.263.613.614.*

(d) *Sect.58.170.183.369.*

(e) *Sect.248.249.*

(f) *Sect.88.74.76.145.332.371.372.445.*

(g) *108.733.*

(h) *Sect.170.264.283.302.429.464.629.633.686.340.418.613.686.739.*

(i) *Sect.697.59.104.288.332.478.*

(k *Sect.87. where many others are quoted.*

(l) *Sect.13. where many more are quoted but ſee chiefly, Sect.381.*

(m) *Sect.438.439.441.*

(n) *Sect.18.(o)301.&c.*

(p) *291.298.409.&c.*

(p.)*129.440.*

(q) *Sect.46.194.*

* *Sect.360.*

(r) *Sect.722.*

(ſ) *Sect.114.223.129.211.107.108.*

18. (t) Ab ordine religionis, from the order of Religion.
19. (u) A communi præsumptione from a common presumption.
20. (w) A lectionibus iurisprudentium, from the readings of learned men of Law.

From Statutes his arguments and proofes are drawne;

1. (x) From the rehearsall or preamble of the Statute.
2. By the body of the Law diuersly interpreted.

Sometime by other parts of the same Statute, which is benedicta expositio, & ex visceribus causæ.

(y) Sometime by the reason of the Common Law. But euer the generall words are to be intended of a lawfull Act, (z) and such interpretation must euer be made of all Statutes, that the innocent or he in whom there is no default may not be damnified.

¶ *En la ley.* **There bee** diuers Lawes **within the Realme of** England. As first, (a) Lex Coronæ, the Law of the Crowne.

2. (b) Lex & consuetudo parliamenti. Ista lex est ab omnibus quærenda, à multis ignorata, à paucis cognita.

3. (c) Lex naturæ, the Law of nature.

4. (d) Communis lex Angliæ, the Common Law of England sometime called Lex terræ, intended by our Author in this and the like places.

5. (e) Statute Law. Lawes established by authoritie of Parliament.

6. (f) Consuetudines. Customes reasonable.

7. (g) Ius belli. The Law of Armes, Warre, and Chiualrie, in republica maximè conseruanda sunt iura belli.

8. (h) Ecclesiasticall or Canon Law in Courts in certaine Cases.

9. (i) Ciuill Law in certaine cases not only in Courts Ecclesiasticall, but in the Courts of the Constable and Marshall, and of the Admiraltie, in which Court of the Admiraltie is obserued la ley Olyron, anno 5. of Richard the first, so called, because it was published in the Isle of Olyron.

10. (k) Lex forestæ. Forrest Law.

11. (l) The law of Marque or reprisall.

12. (m) Lex mercatoria, Merchant, &c.

13. (n) The Lawes and Customes of the Isles of Iersey, Gernesey and Man.

14. (o) The Law and priuiledge of the Stanneries.

15. (p) The Lawes of the East West, and middle Marches which are now abrogated.

But hereof this little taste for our Student, that he may bee capable of that which hee shall reade concerning these and others in Records, and in our Books, and orderly obserue them, shall suffice.

¶ *Et son vncle enter en la terre.* **For if the vncle in this case doth** not enter into the land, then cannot the father inherite the land, for there is another maxime in law herein implyed: (q) That a man that claymeth as heire in fee simple to any man by discent, must make himselfe heire to him that was last seised of the actuall freehold and inheritance. And if the Vncle in this case doth not enter, then had he but a freehold in Law, and no actuall freehold, but the last that was seised of the actuall freehold was the sonne to whom the father cannot make himselfe heire, And therefore Littleton saith, Et son vncle enter en la tre (sicome deuoit per la ley) to make the father to inherit, as heire to the vncle. (r) Note that true it is that the vncle in this case is heire, but not absolutely heire, for if after the discent to him the father hath issue a sonne or daughter, that issue shall enter vpon the vncle. (s) And so it is if a man hath issue a sonne and a daughter, the sonne purchaseth Land in fee and dieth without issue, the daughter shall inherit the land, but if the father hath afterward issue a sonne, this sonne shall enter into the Land as heire to his brother, and if he hath issue a daughter and no sonne, she shalbe coparcener with her sister.

¶ *Sicome il deuoit per la ley.* **These words as a key doe open** the secrets of the Law, for hereupon it is concluded, that where the vncle cannot get an actuall possession by entrie or otherwise, there the father in this case cannot inherit. And therefore if an Aduowson be granted to the sonne and his heires, and the sonne die, and this discend to the vncle, and he die before he doth or can present to the Church, the father shall not inherit, because he should make himselfe heire to the sonne which he cannot doe. And so of a Rent and the like. But if the vncle had presented to the Church, or had seisin of the rent there the father should haue inherited. For Littleton putteth his case of an entrie into Land, but for an example, If the sonne make a Lease for life, and die without issue, and the reuersion discend to the vncle, and he die, the reuersion shall not discend to the father, because in that case hee must make himselfe heire to the sonne. A, infeoffe the sonne with warrantie to him and his heires, the sonne dies, the vncle enters into the Land and dies, the father if he bee impleaded shall not take aduantage of this warrantie,

(t) *Sect.* 202.
(u) *Sect.* 440.
(w) *Sect.* 481.
(x) *Sect.* 13. &c. *Sect.* 731. 692. 635. 633. 441. 103. 193. 154. 140. 2.
(y) *Sect.* 464.
(z) *Sect.* 731. 685.
(a) 17. E. 3. *Rot. parl. nu.* 19. 25. E. 3. *cap.* 1. *Regist. inter Leges Regias* 61. &c.
(b) *Commonly spoken of in Parliament Rolls.*
(c) 13. E. 4. 9. *Lib.* 7. *Calvyns case. Pl. com. Sharingtons case.*
(d) *This Law appeareth in our bookes and in ciuill records.*
(e) *These are of record in Rolls of Parliament.*
(f) *Whereof you shall reade in our authors, and in our bookes.*
(g) *Rot. parliam.* 2. R 2. *nu.* 3. 13. R. 2 *ca.* 2.
(h) *Lib.* 7. *Cawdries case artic. super cartas. &c.*
(i) 37. H. 6. 21. *Forteſc ca.* 32. 13. H. 4. 4. 28. H. 8. *ca.* 15.
(k) *Carta de foresta &c. the eares of the Forest.*
(l) 27. E. 3. *ca.* 17. *Wi. ca.* 23. 4. H. 5. *ca.* 7.
(m) *Mirror des Iustic. ca.* 1. *Bract.* 334. 444. *Flet. lib.* 2. *ca.* 51. 52. &c. 5. E 3. 11. 38. E. 3. 7. 27. E. 3. *cap.* 8. *Forteſc.* 32. *F. N. B.* 115. 13. E. 4. 9. *Rot. parl.* 6. H. 4. *nu.* 43. 10. H. 7. 16. 47. E. 3. 22. 30. E. 1. *Account* 127. *Carta me ceteris* 31. E. 1. *rot. patent.*
(n) *Mich.* 41. E. 3. *coram rege in thesaur.* 1. E. 3. *fol.* 7. 12. H. 8 *fol.* 5. *Rot. parl. an.* 30. E. 1. *Lib.* 7. *Calvyns case fol.* 21. *Regist. fol.* 22.
(o) 50. E. 3. *Rot. parl.* 50. E. 3. *Rot. patent. &c.*
(p) 31. H. 6. *ca.* 3. 4. *Ia. ca.* 1.
(q) 11. H. 4. 11. 10. *ass.* 27. 34. *ass. p.* 20. 19. E. 2. *quar. imped.* 177. 45. E. 3. 13. 40. *ass. p.* 6.
(r) 11. *ass. p.* 6. *Doct. & Stud.* 12. *b.* 32. H. 6. 35.
(s) 19. H. 6. 61.

rantie, for then hee muſt vouch A. as heire to his ſonne, which hee cannot doe, for albeit the warrantie diſcended to the vncle, yet the vncle leaueth it, as hee found it, and then the father by Littletons (deuoit) cannot take aduantage of it. For Littleton Sectione 603. ſaith that warranties, ſhall diſcend to him that is heire by the Common Law, and Sect. 718 he ſaith that euery warrantie which diſcends, doth diſcend to him that is heire to him which made the warrantie by the Common Law, which proueth that the father ſhall not be bound by the warrantie made by the ſonne, for that the father cannot bee heire to the ſonne, that made the warrantie. And a warrantie ſhall not goe with tenements, whereunto it is annexed to any especiall heire, but alwayes to the heire at the Common Law. And therefore if the vncle be ſeiſed of certaine lands, and is diſſeiſed, the ſonne releaſe to the diſſeiſor with warrantie, and die without iſſue, this ſhall bind the vncle, but if the vncle die without iſſue, the father may enter, for the warrantie cannot diſcend vpon him. So if the ſonne concludeth himſelfe by pleading concerning the tenure and ſeruices of certaine lands, this ſhall bind the vncle, but if the vncle die without iſſue, this ſhall not bind the father, becauſe he cannot be heire to the ſonne, and conſequently not to the eſtoppell in that caſe; but if it be ſuch an eſtoppell as runneth with the land, then it is otherwiſe.

Vid. Sect. 603. 718.

Vid. Sect. 735. 736. 737.

35. *H.* 6. 33. *Iohn Crookes caſe.*

Section 4.

¶ En tiel caſe, lou le fits purchaſe terre en fee ſimple, & deuie ſauns iſſue, ceux de ſon ſanke de part ſon pier enheriteront cõe heires a luy, deuant aſcun de ſanke de pt ſa mere: mes ſil nad aſcun heire de part ſon pier, donques la tre diſcendera a les heires de part la mere. Mes ſi home pzent enheritrix des tres en fee ſimple, q̃r ont iſſue fits, & deuiont, & le fits enter en les tenements, cõe fits & heire a ſa mere, & puis deuie ſans iſſue, les heires de part la mere doient enheriter les tenẽnts & iammes les heires de part le pier. Et ſil ny ad aſcun heire de part la mere, donque le ſeignioꝛ, de que la terre eſt tenus, auera la

AND in caſe, where the ſonne purchaſeth land in fee ſimple, and dies without iſſue, they of his bloud on the fathers ſide ſhall inherit as heires to him, before any of the bloud, on the mothers ſide. But if he hath no heire on the part of his father, then the land ſhall diſcend to the heires on the part of the mother. But if a man marrieth an inheritrix of lands in fee ſimple, who haue iſſue a ſon, and die, and the ſonne enter into the tenements, as ſonne and heire to his mother, and after dies without iſſue, the heires of the part of his mother ought to inherit, and not the heires of the part of the father. And if hee hath no heire on the part of the mother, then the Lord

¶ BY this it appeareth, that our author deuideth heires into heires of the part of the father, and into heires of the part of the mother. (a) And note, it is an olde, and true Maxime in Law, That none ſhall inherit any lands as heire, but only the bloud of the firſt purchaſer. for * refert à quo fiat perquiſitum. As for example, Robert Coke taketh the daughter of Knightley to wife and purchaſeth lands to him and to his heires, and by Knightley hath iſſue Edward, none of the bloud of the Knightleys though they be of the bloud of Edward ſhall inherit, albeit hee had no kinred but them, becauſe they were not of the bloud of the firſt purchaſer, viz. of Robert Coke.

Vid. Sect. 354. *an excellent point.*

(a) *Pl. com. Sir Edward Cleres caſe.* 447.

(*) *Fleta. lib.* 6. *ca.* 1. 2. *&c. Bracton lib.* 2. *fol.* 65. 67 68. 69. *&c. Britton. ca.* 119. 24. *E.* 3. 50. 39. *E.* 3. 29. 30. 38 49. *E.* 3. 12. 49. *aſſ. p.* 4. 12. *E.* 4. 14. *pl. com.* 445. *&* 450. 7. *E.* 6. *Dier* 6. 1 24. *E.* 3. 24. 37 *aſſ.* 4. 40. *E.* 3. 9. 42. *E.* 3. 10. 45. *E.* 3. *Releaſes* 28. 7. *H.* 5. 3. 4. 8. *aſſ.* 6. 35. *aſſ.* 2. 5. *E.* 4. 7. 3. *H.* 5. 21. *H.* 7. 33. 40. *aſſ.* 6. *Ratcliffs caſe lib.* 3. *fol.* 42.

¶ (b) *Ceux del ſank de part ſon pier.* Here it is to bee vnderſtood, that the father hath two immediate bloods in him, viz. the bloud of his father, and the bloud of his mother, both theſe bloods are of the part of the father. (c) And this made ancient Authors ſay, that if a man be ſeiſed of lands in the right of his wife, and is attainted of felonie, and after hath iſſue, this iſſue ſhould not inherit his mother, for that he could deriue no bloud inheritable from the father. And both theſe bloods of the part of the father muſt bee ſpent before

(b) *Bracton. vbi ſupra. Fleta. vbi ſupra. Britton. ca* 118. 119. *pl. com.* 445. *Cleres caſe. Tr.* 19. *E.* 1. *in banco Rot.* 25. *Lincoln. Will. Seels caſe.*

(c) *Britton. fol.* 15. *Fleta. lib.* 1. *ca.* 18. *pl. com.* 445. 446. *&c. Cleres caſe.*

before the heire of the bloud of the part of the mother ſhall inherit, wherein euer the line of the male of the part of the father, (that is) the poſteritie of ſuch male, bee they male or female (who euer in diſcents are preferred) muſt faile before the line of the mother ſhall inherit, (d) and the reaſon of all this is for that the bloud of the part of the father is more worthy and more neere in iudgement of law, than the bloud of the part of the mother.

(d) 19.R.2. *garr* 100.

*Britton.ca.*118.119. *Fleta.lib.6.ca.2.*

℄ *Deuant aſcun del ſanke del part del mere.* And it is to be obſerued, that the mother hath alſo two immediate blouds in her (viz.) her fathers bloud, and her mothers bloud. Now to illuſtrate all this by example. Robert Fairefield ſonne of Iohn Fairefield and Iane Sandie, take to wife Anne Boyes daughter of Iohn Boyes and Iane Bewpree and hath iſſue William Fairefield who purchaſeth lands in fee. Here William Fairefield hath foure immediate blouds in him, two of the part of his father, viz. the bloud of the Fairefields, and the bloud of the Sandyes, and two of the part of his mother, viz. the bloud of the Boyes, and the bloud of the Bewprees, and ſo in both caſes vpward in infinitum.

terre per Eſcheat. En meſme le maner eſt, ſi teneñts diſcendont a le fits de part le pier, & il enter & puis mozuſt ſans iſſue, cel terre diſcendza as heires de part le pier, & nẽp as heires de part la mere. Et ſil ny ad aſcun heire de part le pier, donques le ſeignioz, de que la terre eſt tenus, auera la terre per Eſcheat. Et ſic vide diuerſitatem, **lou le fits purchaſe terres ou tenements, en fee ſimple, & lou il vient, eins a ticls terres ou tenements per diſcent de part ſa mere ou de part ſon pier.**

of whom the land is holden, ſhall haue the land by Eſcheate. In the ſame manner it is, if lands diſcend to the ſonne, of the part of the father, and hee entreth, and afterwards dies without iſſue, this land ſhall diſcend to the heires on the part of the father, and not to the heires on the part of the mother, And if there bee no heire of the part of the father, the Lord of whom the Land is holden ſhall haue the land by Eſcheate. And ſo wee ſee the diuerſitie, where the ſonne purchaſe lands or tenements in fee ſimple, and where hee commeth to them by diſcent on the part of his mother, or on the part of his father.

Now admit that William Fairefield die without iſſue, firſt the bloud of the part of his father, viz of the Fairefields, and for want thereof the bloud of the Sandyes (for both theſe are of the part of the father) if both theſe faile, then the heires of the part of the mother of William Fairefield ſhall inherit, viz. firſt the bloud of the Boyſes, and for default thereof the bloud of the Bewprees.

It is neceſſary to be knowne in what caſes the heire of the part of the mother ſhall inherite, and where not. If a man be ſeiſed of lands as heire of the part of his mother and maketh a feoffment in fee, and taketh backe an eſtate to him and to his heires, this is a new purchaſe, and if he dieth without iſſue, the heires of the part of the father ſhall firſt inherite. If a man ſo ſeiſed maketh a feoffment in fee vpon condition, and die, the heire of the part of the father which is the heire at the Common law ſhall enter for the condition broken, but the heire of part of the mother ſhall enter vpon him, and enioy the land.

9.H.7.24.

(m) 7.H.6.4. *Lib.*1. *fol.*100. *Shelleys caſe.*

(m) If man ſo ſeiſed maketh a feoffment in fee reſeruing a rent to him, and to his heires, this rent ſhall goe to the heires of the part of the father; but, (n) if he had made a gift in taile, or a leaſe for life reſeruing a rent, the heire of the part of the mother ſhall haue the reuerſion, and the rent alſo, as incident thereunto, ſhall paſſe with it, but the heire of the part of the mother ſhall not take aduantage of a condition annexed to the ſame, becauſe it is not incident to the reuerſion nor can paſſe therewith. (o) If a man had beene ſeiſed of a mannor as heire on the part of his mother, and before the ſtatute of Quia emptores terrarum had made a feoffment in fee of parcell to hold of him by rent and ſeruice, albeit they be newly created, yet for that they are parcell of the Mannor, they ſhall with the reſt of the mannor diſcend to the heire of the part of the mother, quia multa tranſeunt cum vniuerſitate quæ per ſe non tranſeunt.

(n) 5.E.2.111. *auowry* 207.

(o) 5.E.2. *auowry* 207.

If a man hath a rent ſecke of the part of his mother, and the tenant of the land gran-

granteth a diſtreſſe to him and his heires, and the grantee dieth the diſtreſſe ſhall goe with the rent to the heire of the part of the mother as incident or appurtenant to the rent, for now is the rent ſecke become a Rent charge.

(p) A man ſo ſeiſed as heire on the part of his mother maketh a Feoffment in Fee to the vſe of him and his heires, the vſe being a thing in truſt and confidence ſhall inſue the nature of the land, and ſhall diſcend to the heire on the part of the mother. (q) A man hath a ſeignory as heire of the part of his mother, and the tenancy doth eſcheate, it ſhall goe to the heire of the part of the mother. If the heire of the part of the mother of land whereunto a warranty is annexed is impleaded and Vouche; and iudgement is giuen againſt him, and for him to recouer in value, and dieth before execution (r) the heire of the part of the mother ſhall ſue execution to haue in value againſt the Vouchees, for the effect ought to purſue the cauſe, and the recompence ſhall enſue the loſſe.

(p) 5.E.4.4.lib.1.fol.100. *Shellyes caſe.* 27.H.8. *Dier Buckenhams caſe.* 32.H.8. *gard. Brooke.* 93. 13.H.7.6. (q) 16.E.3. *age.* 46. *Pl. Com.* 292. *&* 515. *See more of this in the Chapter of Warranties.*

If a man giueth lands to a man, to haue and to hold to him and his heires on the part of his mother, yet the heires of the part of the father ſhall inherit it, for no man can inſtitute a new kind of inheritance not allowed by the Law, and the words (of the part of his mother) are voide, as in the Caſe that Littleton putteth in this Chapter, If a man giueth lands to a man to him and his heires males, the Law reiecteth this word males, becauſe there is no ſuch kind of inheritance, whereof you ſhall reade more in his proper place.

A man hath iſſue a ſonne, and dieth, and the wife dieth alſo, Lands are letten for life, the remainder to the heires of the wife, the ſonne dieth without iſſue, the heires of the part of the father ſhall inherit, and not the heires of the part of the mother, becauſe it veſted in the ſonne as a Purchaſer. And the rule of Littleton holdeth aſwell in other kind of Inheritances, as in Lands and Tenements. (ſ) And therefore if there be Lord, fem meſne, and tenant, and the Meſne bind her ſelfe and her heires by her deed to the acquitall of the tenant, the Meſne take husband, the Tenant by his Deed granteth to the husband and his heires, that hee or his heires ſhall not be bound to acquitall, the husband and wife haue iſſue, and die, this iſſue, being bound as heire to his mother, ſhall not take benefit of the ſaid grant of diſcharge, for that extends to the heires of the part of the father, & not to the heires of the part of the mother, and therefore the heire of the part of the mother was bound to the Acquitall. And thus much for the better vnderſtanding of Littletons Caſes concerning the heire of the part of the mother ſhall ſuffice.

(ſ) 38.E.3.12.

¶ *Mes ſi homepriſt feme inheritrix &c.* Heere there is another maxime, (t) That whenſoeuer Lands doe diſcend from the part of the mother, the heires of the part of the father ſhall neuer inherit. And likewiſe when Lands diſcend from the part of the father, the heires of the part of the mother ſhall neuer inherit. Et ſic paterna paternis, & è conuerſo, materna maternis For more manifeſtation hereof, and of that which hereafter ſhall be ſaid touching Diſcents, ſee a Table in the end of this Chapter.

(t) 39.E.3.29. 49.E.3.12.

¶ *Auerala terre per Eſcheat.* (u) *Eſcheat*, Eſchaeta is a word of art, and deriued from the French word Eſchear (id eſt) cadere, excidere or accidere, and ſignifieth properly when by accident the Lands fall to the Lord of whom they are holden, in which Caſe we ſay the fee is eſcheated. And therefore, of ſome, Eſcheats are called excadentiæ or terræ excadentiales. (w) Dominus vero capitalis loco hæredis habetur quoties per defectū vel delictum extinguitur ſanguis ſui tenentis, loco hæredis & haberi poterit niſi per modum donationis ſit reuerſio cuiuſcuque tenementi. And Ockam (who wrote in the raigne of Henry the ſecond) treating of tenures of the King, ſaith, Porro eſchaetæ vulgo dicuntur, quæ decedentibus his quæ de Rege tenent &c. cum non exiſtit ratione ſanguinis hæresad fiſcum relabuntur. (x) So as an Eſcheat doe happen two manner of wayes, aut per defectum ſanguinis .i. for default of heire, aut per delictum tenentis .i. for felonie, and that is by iudgement three manner of waies aut quia ſuſpenſus per collum, aut quia abiurauit regnum, aut quia vtlegatus eſt, And therefore, they which are hanged by martiall Law, in furore belli forfeit no Lands: and ſo in like Caſes Eſcheats by the Ciuilians are called Caduca.

(u) *Vid Sect.* 130. *Glanvill. lib.7. cap.17. Bract. lib.3. fol.118. Fleta. lib.5. cap.5. & lib 3. cap.10. Britton. ca.37. & cap.119. F.N.B.100. Tr. 19.El in banco Rot.25.* (w) *Fleta lib.6. cap.1. Ockam. cap. quod non abſolutur. &c.* (x) *Pl. Com. Dome Hales caſe.*

(y) The father is ſeiſed of Lands in fee holden of I.S. the ſonne is attainted of high treaſon, the father dieth the Land ſhall eſcheat to I.S. propter defectum ſanguinis, for that the father dieth without heire, And the King cannot haue the Land becauſe the ſonne neuer had any thing to forfeit. But the King ſhall haue the eſcheate of all the Lands whereof the perſon attainted of high treaſon was ſeiſed, of whomſoeuer they were holden.

(y) *Pl. Com. in Nicholls caſe.*

(z) In an Appeale of Death or other Felonie, &c. proceſſe is awarded againſt the defendant, and hanging the proceſſe the defendant conueyeth away the Land, and after is outlawed, the Conueyance is good and ſhall defeat the Lord of his eſcheate, but if a man be indited of Felonie, and hanging the proceſſe againſt him, hee conueyeth away the Land, and after is outlawed, the Conueyance ſhall not in that caſe preuent the Lord of his eſcheate. And the reaſon of this diuerſitie is manifeſt: For in the caſe of the Appeale, the writ containeth no time when

(z) 38.E.3.ſo.37.30.H 6.5. *Bract. l.2. title de Forf. Staunf. Pl. Cor.* 192. *and according to this diuerſitie was it reſolued in* 5.E.6. *as it appeareth by my Lord Diers Manuſcript.*

the Felonie was done, and therefore the eſcheate can relate but to the outlawrie pronounced. But the inditement containeth the time when the felonie was committed, and therefore the eſcheate vpon the outlawrie ſhall relate to that time. Which Cases I haue added, to the end the ſtudent may conceiue, that the obſeruation of Writs, Inditements, Proceſſe, Iudgements, and other Entries, doth conduce much to the vnderſtanding of the right reaſon of the Law.

(a) *Mirror.ca.1.§.5. 51.H.3 ſtatutum de Scac. Britton.fo.33.34. Fleta.lib 1.cap.36. & lib.2.ca 34.35. Regiſt.301.bis Oath 18.E.1. Ro.Parl. Tom.21.E 1. Rot.1.29.E.1.ſtat. de Eſcheatoribus,14.E.3.ca.8. 28.E.1. ca.18.F.N.B.100.c. Stanf. Prer.81.1.H.8.ca.8. 3.H.8.ca 2. Capitula Eſchaetria in Vet. magna carta.fo.160.161.&c.*

Of this word (eſchaeta) here vſed by our Author, commeth (a) Eſchaetor, an ancient Officer ſo called, becauſe his office is properly to looke to Eſcheats, Wardſhips, and other Caſualties belonging to the Crowne. In ancient time there were but two Eſcheators in England, the one on this ſide of Trent, and the other beyond Trent, at which time they had Subeſchaetors. But in the raigne of Edward the ſecond, the Offices were diuided, and ſeuerall Eſchaetors made in euerie Countie for life, &c. and ſo continued vntill the raigne of Edward 3. And afterwards by the ſtatute of 14.E.3. it is enacted by Authoritie of Parliament, that there ſhould bee as many Eſcheators aſſigned, as when King Edward 3. came to the Crowne, and that was one in euerie Countie, & that no Eſcheator ſhould tarry in his office aboue a yeere, and by another Statute to be in office but once in three yeers, the Lord Treaſurer nameth him.

And hereof alſo commeth eſchaetria, which ſignifieth the Eſcheatorſhip or the office of the Eſcheater. But now let vs heare what our Author will further ſay vnto vs.

¶ Et ſic vide, &c. **This kind of ſpeech is often vſed by our** Author, and doth euer import matter of excellent obſeruation, which you may find in the Sections noted in the margent *.

* *Sect.147.149.248. 289.417.667.&c.*

And it is to be well obſerued, that our Author ſaith, Sil nad aſcun heire, &c. la terre eſchaetera. In which words is implied a diuerſitie (as to the Eſcheate) betweene fee ſimple abſolute, which a naturall bodie hath, and fee ſimple abſolute with a bodie politique, or incorporate hath. (b) For if land holden of I. S. be giuen to an Abbot and his ſucceſſors: In this caſe if the Abbot and all the Conuent die ſo that the bodie politique is diſſolued, the Donor ſhall haue againe this land, & not the Lord by eſcheat. And ſo if land be giuen in fee ſimple to a Deane and Chapter, or to a Maior and Cominaltie, and to their ſucceſſors, and after ſuch bodie politique or incorporate is diſſolued, the Donor ſhall haue againe the land, and not the Lord by Eſcheate. And the reaſon, and cauſe of this diuerſitie is for that in the caſe of a body politique or incorporate the fee ſimple is veſted in their politique or incorporate capacitie created by the policie of man, and therefore the Law doth annex a condition in Law to euery ſuch gift and grant That if ſuch body politique or incorporate be diſſolued, that the Donor or grantor ſhall re-enter, for that the cauſe of the gift or grant faile, but no ſuch condition is annexed to the eſtate in fee ſimple veſted in any man in his naturall capacitie, but in caſe where the Donor or Feoffor reſerue to him a tenure, and then the Law doth imply a Condition in Law by way of eſcheate. Alſo (as hath beene ſaid) no Writ of eſcheate lyeth but in the three caſes aforeſaid, and not where a body politique or incorporate is diſſolued.

(b) *7.E.4.11.12. Fitz N.B.33.9.E.3.26. 27.E.3.ſtatut. de templariis.*

Section 5.

¶ Now commeth our Author to the diſcent betweens brethren, which hee purpoſely omitted before. ¶ Diſcent diſcenſus commeth of the Latyn word diſcendo, and, in the legall ſence, it ſignifieth when lands doe by right of blood fall vnto any after the death of his Anceſtors: or a diſcent is a meanes whereby one doth deriue him title to certaine lands, as heire to ſome of his Anceſtors. And of this, and of that which hath beene ſpoken doth ariſe another diuiſion of eſtates in fee ſimple, viz. euery man that hath a lawfull eſtate in fee ſimple, hath it either by diſcent, or by purchaſe.

¶ Item ſi ſoint trois freres, & le mulnes frere purchaſe terres en fee ſimple & deuie ſauns iſſue leigne frere auera la terre per diſcent & nemy le puiſne, &c. Et auſi ſi ſoint trois freres & le puiſne purchaſe terres en fee ſimple & deuie ſans iſſue, leigne frere auera la terre per diſcent &

ALſo if there bee three brethren, and the middle brother purchaſeth lands in fee ſimple, and die without iſſue, the elder brother ſhall haue the land by diſcent, and not the younger, &c. And alſo if there be three brethren, and the youngeſt purchaſe lands in fee ſimple, and die without iſſue, the eldeſt brother ſhall

nemy

nemy le mulnes, pur ceo que leigne & pluis digne de ſanke.

haue the land by diſcent & not the middle, for that the eldeſt is moſt worthy of blood.

¶ *Leigne eſt pluis digne de ſanke.* It is a maxime in Law, that the next of the worthieſt blood ſhall euer inherite, as the male and all diſcendant from him before the female, and the female of the part of the father before the male or female of the part of the mother, &c. becauſe the female of the part of the father is of the worthieſt blood. (c) And therefore among the males the eldeſt brother and his poſterity ſhall inherite lands in fee ſimple as heire before any younger brother, or any diſcending from him, becauſe as Littleton ſaith he is pluis digne de ſanke. Quod prius eſt dignius eſt, and qui prior eſt tempore potior eſt iure. Si quis plures filios habuerit jus proprietatis primo diſcendit ad primogenitum, eo quòd inuentus eſt primo in rerum natura. In King Alfreds time Knights fees deſcended to the eldeſt ſonne, for that by diuiſion of them betweene males the defence of the Realme might be weakened, but in thoſe dayes Socage fee was deuided betweene the heires males, and therewith agreeth Glanuill * Cum quis hæreditatem habens mbriatur, &c. ſi plures reliquerit filios, tunc diſtinguitur vtrum ille fuerit miles, ſiue per feodum militare tenens, aut liber Sockmannus quia ſi miles fuerit aut per militiam tenens tunc ſecundum jus regni Angliæ primogenitus-filius patri ſuccedit in toto, &c. ſi verò fuerit liber Sockmanus, tunc quidem diuidetur hæreditas inter omnes filios, &c. But hereof more ſhall be ſaid hereafter in his proper place.

(c) *Britton cap. 119. Bract. lib. 2. cap. 30. 277. 279. 3. E. 3. 26. 3. Eliz. Dier 138. Stanford prær. 52. 58. 3. E. 1. tit. auowry. 235. 32 E. 3. diſcent. 80. Bract. lib. 4. 211. Fleta. lib. 6. ca. 2. Glanuill. lib. 7. ca. 1. Mirror cap. 1. §. 3. * Glanuill lib. 7. ca. 3. & ca. 1. Vid. Pl. com 229. b.*

Section 6.

¶ Item eſt aſcauoir, que nul auera terre de fee ſimple per diſcent come heire a aſcun home, ſi non que il ſoit ſon heire dentire ſanke. Car ſi home ad iſſue deux fits per diuers venters & leigne purchaſe terres en fee ſimple & mozuſt ſans iſſue, le puiſne frere nauera la terre, mes luncle leigne frere, ou auter ſon procheine coſin ceo auera, pur ceo que le puiſne frere eſt de demy ſanke al eigne frere.

ALſo it is to bee vnderſtood, that none ſhall haue land of fee ſimple by diſcent as heire to any man, vnleſſe he be his heire of the whole blood, for if a man hath iſſue two ſonnes by diuers venters, and the elder purchaſe lands in fee ſimple, and die without iſſue, the younger brother ſhall not haue the land but the Vncle of the elder brother, or ſome other his next coſin ſhall haue the ſame, becauſe the younger brother is but of halfe blood to the elder.

¶ NO man can bee heire to a fee ſimple by the Common Law, (d) but he that hath ſanguinem duplicatum the whole blood, that is both of the father and of the mother, ſo as the halfe blood is no blood inheritable by diſcent becauſe that he that is but of the halfe blood cannot be a compleat heire, for that hee hath not the whole and compleate blood, and the Law in diſcents in fee ſimple doth reſpect that which is compleat and perfect. And this maxime doth not only hold where lands (whereof Littleton here ſpeaketh) are claymed or demanded as heire (e) but alſo in caſe of appeale of death; for, if one brother bee ſlaine, the other brother of the halfe blood ſhall neuer haue an appeale (albeit hee ſhall recouer nothing therein either in the reality or perſonalty) becauſe in the eye of the Law hee is not heire to him. Alſo this rule extends to a warrantie as our Author himſelfe elſewhere holdeth.

(a) *Bract. lib 4. 279. b. idem lib. 2. fo. 65. Britton. ca. 119. Fleta. lib. 6. ca. 1. 1. E. 3. 19. Iohn Giffords caſe. 31. E. 3. Conterpl. de Voucher 88. 40. Aſſ. 6. 4. E. 2 Formod. 49. Vid. Ratcliffs caſe lib 3. fo. 40. 41.*

(c) *7. E. 4. 15.*

Sect. 737.

Section 7.

¶ ET ſi home ad iſſue fits & file

AND if a man hath iſſue a ſonne and a

¶ This is put for an example to illuſtrate that which hath beene

bene & ſaid needeth no explanation. And herewith agreeth Britton.

Britton. ca. 119.

¶ *Eiſie de terres en fee ſimple.* These words exclude a ſeiſin in fee taile, albeit he hath a fee ſimple expectant. (f) And therefore if lands bee giuen to a man and his wife, and to the heires of their two bodies, the remainder to the heires of the husband, and they haue iſſue a ſonne, and the wife dieth, and hee taketh another wife, and hath iſſue a ſonne, the father dieth, the eldeſt ſonne entreth, and dieth without iſſue, the ſecond brother of the halfe blood ſhall inherite becauſe the eldeſt ſonne by his entrie was not actually ſeiſed of the fee ſimple being expectant but only of the eſtate taile. And the rule is that poſſeſſio fratris de feodo ſimplici facit ſororem eſſe hæredem, and here the eldeſt ſonne is not poſſeſſed of the fee ſimple but of the eſtate taile. And where Littleton ſpeaketh only of lands, (g) yet there ſhall be poſſeſſio fratris of an vſe, of a Seigniory, a rent, an aduowſon and of other hereditaments.

(f) 24. E. 3. 24. 30.
31 E. 3. Count de Veuch. 88.
32 E. 3. tit. Voucher.
37. Aſſ. p. 4.
40. E. 3. 9.
42. E. 3. 10.
39 E. 3.
7. H. 5. 3.

(g) 5. E. 4. fo. 7. Pl. Com. fo. 58. in Wimbiſhes caſe.

¶ *Et leigne fits enter.* (h) These words are materially added when the father die ſeiſed of lands in fee ſimple, for if the eldeſt ſonne doth not in that caſe enter, then without queſtion the youngeſt

(h) 10. Aſſ. 27. 34. Aſſ. 10. 31. E. 3. Count de Vencher. 88. 32. E. 3. tit. Vouch.

per vn venter, & fits p anter venter, & le fits del primer venter purchaſe terres en fee, & mor ſans iſſue, la ſoer auera la terre p diſcent, come heire a ſa frere & nyp le puiſne frere, pur ceo que la ſoer eſt de le entire ſanke a ſon eigne frere.

daughter by one venter, & a ſon by another vẽter, & the ſon of the firſt venter purchaſe lands in fee and die without iſſue, the ſiſter ſhall haue the land by diſcent as heire to her brother, and not the younger brother, for that the ſiſter is the whole blood of her elder brother.

Sect. 8.

¶ Et auxi ou hõe eſt ſeiſie de terres en fee ſimple, & ad iſſue fits & file per vn venter, & fits per auter venter, & mor, & leigne fits enter, & mor ſans iſſue, la file auera les tenements, & nyp le puiſne fits, vncore le puiſne fits eſt heire a le pere, mes nemy a ſon frere, mes ſi leigne fits ne entra en la fre apres la mort ſon pere, mes mor deuant aſcun entrie fait per luy, donqs le puiſne frere poit enter, & auera le terre come heire a ſon pere. Mes ſi leigne fits en le caſe auandit entra apres la mort ſon pere, & ad ent poſſeſſion, donqs la ſoer auera la terre

AND alſo where a man is ſeiſed of lands in fee ſimple, and hath iſſue a ſonne, and daughter by one venter, and a ſon by another venter, and die, and the eldeſt ſon enter, and die without iſſue, the daughter ſhall haue the land, and not the younger ſonne, yet the yonger ſon is heire to the father but not to his brother, but if the elder ſon doth not enter into the land after the death of his father but die before any entrie made by him, then the younger brother may enter, & ſhal haue the land as heire to his father but where the elder ſon in the caſe aforeſaid enters after the death of his father, and hath poſſeſſion,

Quia

Quia poſſeſſio fratris de feodo ſimplici facit ſororem eſſe hæredem. **Mes ſi ſont deux freres per diuers venters, & leigñ eſt ſeiſie de terre en fee, & moꝝ ſans iſſue, & ſon vncle entra come prochein heire a luy quel auri moꝝ ſans iſſue, ore le puiſne frere puit auer la terre come heire al vncle, pur ceo que il eſt de lentier ſanke a luy, coment que il ſoit de demy ſanke a ſon eigne frere.**

there the ſiſter ſhall haue the land, Becauſe *Poſſeſsio fratris de feodo ſimplici facit ſororem eſſe hæredē.* But if there bee two brothers by diuers venters, & the elder is ſeiſed of land in fee, and die without iſſue, and his vncle enter as next heire to him, who alſo die without iſſue, now the younger brother may haue the land as heire to the vncle, for that he is of the whole blood to him, albeit he be but of the halfe blood to his elder brother.

ſonne ſhall be heire, becauſe as it hath beene ſaid before regularly he muſt make himſelfe heire to him that was laſt actually ſeiſed (as to the purchaſor) and that was to the father where the eldeſt ſonne did not enter. And therefore Littleton addeth that the ſonne is heire to the father. (i) But when the eldeſt ſonne in this caſe doth enter, then cannot the youngeſt ſonne being of the halfe blood bee heire to the eldeſt, but the land ſhall diſcend to the ſiſter of the whole blood. Yet in many caſes albeit the ſonne doth not enter into lands diſcended in fee ſimple the ſiſter of the whole blood ſhall inherite, and in ſome caſes where the eldeſt ſonne doth enter, yet the younger brother of the halfe blood ſhall bee heire.

(i) 11.H.4.11. 40.E.3.30. 45.E.3.13. 40.Aſſ. p.6. *Ratcliffes caſe.lib.3.fo.41.*

(k) If the father maketh a Leaſe for yeares, and the Leſſee entreth & dieth, the eldeſt ſonne dieth during the tearme before entrie or receipt of rent, the younger ſonne of the halfe blood ſhall not inherite but the ſiſter, becauſe the poſſeſſion of the leſſee for yeares is the poſſeſſion of the eldeſt ſonne, ſo as hee is actually ſeiſed of the fee ſimple, and conſequently the ſiſter of the whole blood is to be heire. The ſame Law it is, if the lands be holden by Knights ſeruice, and the eldeſt ſonne is within age, and the Gardian entreth into the lands. And ſoit is if the gardian in Socage enter.

(k) 5.E.4.7.b. 3.H.7.5. 8.Aſſ.p.6. 45.E.3 tit *Releaſes.*28.

But in the caſe aforeſaid, if the father make a Leaſe for life or a gift in taile, and dieth, and the eldeſt ſonne dieth in the life of tenant for life or tenant in taile, the younger brother of the halfe blood ſhall inherite becauſe the tenant for life or tenant in taile is ſeiſed of the freehold, and the eldeſt ſonne had nothing but a reuerſion expectant vpon that freehold or eſtate taile, and therefore the youngeſt ſonne ſhall inherite the land as heire to his father, who was laſt ſeiſed of the actuall freehold. And albeit a rent had beene reſerued vpon the Leaſe for life, and the eldeſt ſonne had receiued the rent and died, yet it is holden by ſome * that the younger brother ſhall inherite becauſe the ſeiſin of the rent is no actuall ſeiſin of the freehold of the land. But 35.Aſſ.pl.2. ſeemeth to the contrary, becauſe the rent iſſueth out of the land and is in lieu thereof, wherein the only queſtion is, whither ſuch a ſeaſin of the rent, be ſuch an actuall ſeaſin of the land in the eldeſt ſonne as the ſiſter may in a writ of right make her ſelfe heire of this land to her brother. But it is cleere that (l) if there be baſtard eigne, and mulier puiſne, and the father maketh a Leaſe for life or a gift in tayle be reſeruing a rent and die, and the baſtard receiue the rent and die, this ſhall barre the mulier, for the reaſon of that ſtandeth vpon another maxime as ſhall manifeſtly appeare in his apt place, Sect.399.

* 7.H.5 3 4. *per Hall & Legdington.*

35.Aſſ.p.2.

(l) 14.E.2 *Baſtard.*26. *Vid.Sect.*399.

¶ *Seiſie des terres.* (m) **But in this caſe if the eldeſt ſonne doth** enter and get an actuall poſſeſſion of the fee ſimple, yet if the wife of the father be indowed of the third part and the eldeſt ſonne dieth the younger brother ſhall haue the reuerſion of this third part notwithſtanding the elder brothers entrie, becauſe that his actuall ſeiſin which hee got thereby was by the endowment defeated. But if the eldeſt ſonne had made a Leaſe for life, and the Leſſee had endowed the wife of the father, and tenant in dower had died, the daughter ſhould haue had the reuerſion, becauſe the reuerſion was changed and altered by the Leaſe for life, and the reuerſion is now expectant on a new eſtate for life.

(m) 7.H.5.2.3.4.

¶ *Enter.* **Hereupon the queſtion groweth whither if the father** be ſeiſed of diuers ſeuerall parcels of lands in one Countie, and after the death of the father the ſonne entreth into one parcell generally, and before any actuall entry into the other dieth, this generall entry into part ſhall veſt in him an actuall ſeiſin in the whole, ſo as the ſiſter ſhall inherite the whole. And this is a quære in 21.H.7.33.a.

21.H.7.33.a.

And ſome doe take a diuerſitie when an entrie ſhall veſt, or deueſt an eſtate, that there muſt be ſeuerall entries into the ſeuerall parcels, but where the poſſeſſion is in no man, but the free-hold in law is in the heire that entreth, there the generall entrie into one part reduceth all into his actuall poſſeſſion. And therefore if the Lord entreth into a parcell generally for a Mortmain, or the Feoffor for a condition broken, or the Diſſeiſee into parcell generally, the entrie ſhall not veſt nor deueſt in theſe or like caſes, but for that parcell. But when a man dies ſeiſed of diuers parcels in poſſeſſion, and the freehold in law is by law caſt vpon the heire, and the poſſeſſion in no man, there the entrie into parcel generally ſeemeth to veſt the actual poſſeſſion in him in the whole. But if his entrie in that caſe be ſpeciall, viz. that he enter only into that parcell and into no more, there it reduceth that parcell only into actuall poſſeſſion.

¶ *Home ſeiſie des terres.* **What then is the Law of a Rent,** Aduowſon, or ſuch things that lie in grant? (g) If a Rent, or an Aduowſon doe diſcend to the eldeſt ſonne, and hee dieth before hee hath ſeiſon of the Rent, or preſent to the Church, the Rent or Aduowſon ſhall diſcend to the youngeſt ſonne, for that he muſt make himſelfe heire to his father, as hath beene oftentimes ſaid before. The like Law is of Offices, Courts, Liberties, Franchiſes, Commons of inheritance, and ſuch like. (h) And this caſe differeth from the caſe of the tenant by the courteſie, for there if the wife dieth before the rent day, or that the Church become void, becauſe there was no laches or default in him, nor poſſibilitie to get ſeiſon, the law in reſpect of the iſſue begotten by him will giue him an eſtate by the courteſie of England. But the caſe of the diſcent to the youngeſt ſonne ſtandeth vpon another reaſon, viz. to make himſelfe heire to him that was laſt actually ſeiſed as hath beene ſaid.

(g) 19.E.2.quare imped.177. 3.H.7.5.

(h) 7.E.3.66.tit.barre.293. 3.H.7.5.

¶ *En fee ſimple.* (i) **For halfe bloud is not reſpected in eſtates** in taile, becauſe that the iſſues doe claime in by diſcent, per formam Doni, and the iſſue in taile is euer of the whole bloud to the Donee.

(i) 8.E.3.11.49.E.3.12. Ratcliffes caſe lib.3.fol.41.

¶ (k) *Poſſeſſio fratris de feodo ſimplici facit ſororem eſſe hæredem.* Hereupon foure things are to be obſerued, euery word almoſt being operatiue, and materiall. Firſt, That the brother muſt bee in actuall poſſeſſion. For poſſeſſio eſt quaſi pedis poſitio. Secondly, De feodo ſimplici, exclude eſtates in taile. Thirdly, Facit ſororem eſſe hæredem. So as (l) Soror eſt hæres facta, and therefore ſome act muſt bee done to make her heire, and the younger ſonne is hæres natus (m) if no act be done to the contrarie. And albeit the words be facit ſororem eſſe hæredem, yet this doth extend to the iſſue of the ſiſter, &c. who ſhall inherit before the younger brother. Fourthly, Of Dignities whereof no other poſſeſſion can be had but ſuch as diſcend as to bee a Duke, Marqueſſe, Earle, Vicont, or Baron) to a man and his heires, there can be no poſſeſſion of the brother to make the ſiſter to inherit, but the younger brother being heire as Littleton ſaith to the father, ſhall inherit the Dignitie inherent to the bloud, as heire to him that was firſt created noble.

(k) *Bracton.lib.2.fol.65. & lib.4.f.l.279. Britton.cap.119. Fleta.lib.6.ca.1.24.E.3.30.*

(l) *Ratcliffes caſe lib.3.fo.42.*

(m) *Britton.ca.119.*

And you ſhall vnderſtand that concerning Diſcents, there is a law, parcell of the lawes of England, called Ius coronæ, and differeth, in many things, from the generall law concerning the ſubiect. As for example, The King in any ſuite for any thing that pertaine to the Crowne ſhall not ſhew in certaine his cosinage as a ſubiect ſhall do, or as he himſelfe ſhall do, for things touching his Duchie. (n) And in the caſe of the King, if he hath iſſue a ſonne and a daughter by one venter, and a ſonne by another venter, and purchaſeth lands and dieth, and the eldeſt ſon enter and dieth without iſſue, the daughter ſhall not inherit theſe lands, nor any other fee ſimple lands of the Crowne, but the ponger brother ſhall haue them. Wherein note that neither poſſeſſio fratris doth hold of lands of the poſſeſſions of the Crowne, nor halfe bloud is no impediment to the diſcent of the lands of the Crowne, as it fell out in experience after the deceaſe of King Edward the firſt to the Queene Marie, and from Queene Marie, to Queene Elizabeth, both which were of the halfe bloud, and yet inherited not only the lands which King Edward or Queene Marie purchaſed, but the ancient lands parcell of the Crowne alſo.

6.H.4.1.

(n) 34.H.6.fo.34. *Pl.Com.fo.245.* 23.E.3.ca.de natu vltra mare.

Pl.Com.vbi ſupra.

A man that is King by diſcent of the part of his mother, purchaſe lands to him and his heires and die without iſſue, this land ſhall diſcend to the heire of the part of the mother, but in the caſe of a ſubiect, the heire of the part of the father ſhall haue them.

So King Henrie the eight purchaſed lands to him and his heires, and died hauing iſſue two daughters, the Ladie Marie, and the Ladie Elizabeth after the deceaſe of King Edward, the eldeſt daughter Queene Marie did inherit only, all his lands in fee ſimple. For the eldeſt daughter, or ſiſter of a King ſhall inherit all his fee ſimple lands. So it is if the King purchaſeth lands of the cuſtome of Gauelkind, and die hauing iſſue diuers ſonnes, the eldeſt ſonne ſhall only inherit theſe lands. And the reaſon of all theſe caſes is, for that the qualitie of the perſon doth in theſe and many other like caſes alter the diſcent, ſo as all the lands, and poſſeſſions whereof the King is ſeiſed in iure Coronæ, ſhall ſecundum ius Coronæ, attend vpon and follow the Crowne, and therefore to whomſoeuer the Crowne diſcend, thoſe lands and poſſeſſions diſcend alſo for the Crowne and the lands, whereof the King is ſeiſed in iure Coronæ, are

Pl.Com.fol.247.

con-

concomitantia. If the right heire of the Crowne be attainted of Treaſon, yet ſhall the Crowne diſcend to him, and eo inſtante (without any other reuerſall) the attainder is vtterly auoided, as it fell out in the caſe of Henrie the ſeuenth. (o) And if the King purchaſe lands to him and his heires, he is ſeiſed thereof in iure Coronæ, à fortiori, when he purchaſes land to him his heires and ſucceſſors. *Pl.Com. 238. 1.H.7.fol.4.* (o) *43.E.3.fol.20.*

But hereof this little taſte ſhall ſuffice.

Section 9.

CEt eſt aſcauoir que ē parol (enheritāce) neſt pas tātſolement entendue, lou home ad frees ou tenements per diſcent denheritage, mes auxi chelcun fee ſimple, ou taile que home ad p ſon purchaſe puit eſtre dit enheritance, pur ceo qne ſes heyres luy purront enheriter. Car en briefe de Droit que home portera de terre que fuit de ſon purchaſe demeſne, le bē dirra: Quam clamat eſſe ius & hæreditatem ſuam. Et iſſint ſerra dit en diuers autors briefs, q̄r hōe ou fēe porta ď ſ purchaſe ōmeſn, cōe apiert p l' Regiſt.

AND it is to wit, that this word (*inheritance*) is not only intended where a man hath Lands or Tenements by diſcent of inheritage, but alſo euery fee ſimple or taile which a man hath by his purchaſe may bee ſaid an inheritance, becauſe his heires may inherit him. For in a Writ of right which a man bringeth of land that was of his owne purchaſe, the Writ ſhall ſay, *Quam clamat eſſe ius & hæreditatem ſuam.* And ſo ſhall it be ſaid in diuers other Writs which a man or woman bringeth of his owne purchaſe, as appeares by the Regiſter.

CEt eſt aſcauoire. This kinde of ſpæch is vſed twice in this Chapter, and oftentimes by our Authour in all his thæ Bookes, and euer teacheth vs ſome rule of Law, or generall or ſure leading point, as you ſhall perceiue by reading, and obſeruing of the ſame, which for the eaſe of the ſtudious Reader I haue obſerued. *Sect.45.46.57.59.80.100. 146.164.170.184.229.243. 259.274 280.293.300.305. 419.420.421.489.632.697. 749.*

C *Quam clamat eſſe ius & hæreditatem ſuam.* (a) Here out Author declareth the right ſignification of this word (inheritance). And true it is that in the Writ of right Patent, &c. quando dominus remittit Curiam ſuam. The words of the Writ be, Quam clamat eſſe ius & hæreditatem ſuam. And in the Præcipe in capite, in a cui in vita, (b) when the Demandant claimeth by purchaſe, the Writ is quam clamat eſſe ius & hæreditatem ſuam. And with Littleton agreeth the Regiſter, fol.4. & 232. and the Booke in 49.E.3. 22. againſt ſodaine opinions 7 H.4.5. 10.H.6.0. 39.H.6.38. Pl.com. Wimbiſhes caſe 47. And yet in 7.H.4.5. which is the Booke of the greateſt weight Sir William Thirning Chiefe Juſtice of the Common Bench (as it ſeemeth doubting of it) went into the Chancery to enquire of the Chancerie men the forme of the Writ in that caſe, and they ſaid that the forme was both the one way and the other, ſo as thereby the opinion of Littleton is confirmed, and the Booke in 6.E.3.fol.30. is notable, for there in an action of waſte the Plaintife ſuppoſed, that the Defendant did hold de hæreditate ſua, and it is ruled, that albeit the Plaintife purchaſed the reuerſion, yet the Writ ſhould ſerue. And there it is ſaid, It hath beene ſeene, that in a Cui in vita, the Writ was, which the Demandant claymed as her right and inheritance, when it was her purchaſe. And ſo this point wherein there might ſeeme ſome contrarietie in Bookes is manifeſtly cleered. But in the Statute of W.2.ca.5. de hæreditate vxorum by conſtruction of the whole Statute is taken only for the wiues inheritance by diſcent, and not by purchaſe, as apppeareth in 1.E.2. tit. Quare imped. 43.35.H.6.54. F.N.B.34.b. (a) *Sect.732. Bract.lib.2.fol.62.b. Fleta lib.6.ca.1.* (b) *Regiſt.fol.1.2. Regiſt fol.4.232.49.E.3.22. 7.H.4.5.10.H.6.9. 39.H.6.38.6.E.3.30. Pl.com. Wimbeſhes caſe 47. & 58.b. 6.E.3.30. IV.2.ca.5. 1.E.2.tit.quare imped.43. 35.H.6.54. F.N.B.34.b.*

There be ſome that haue an inheritance (c) and haue it neither by diſcent nor properly by purchaſe but by Creation, as when the King doth create any man a Duke, a Marqueſſe, Earle Viſcount, or Baron to him and his heires, or to the heires males of his bodie, &c. hee hath an inheritance therein by Creation. A man may haue an inheritance in title of Nobilitie and Dignitie three manner of wayes, that is to ſay, by Creation, by Diſcent, and by Pre- (c) *Lib.6.fol.52.53. Comites de Rutlandi caſe. lib.8.fol.16. 17. the Prince caſe.*

Prescription. By Creation two manner of ordinarie wayes (for I will not speake of a Creation by Parliament) by Writ and by Letters Patents. Creation by Writ is the ancienter way, and here it is to be obserued; that a man shall gaine an inheritance by Writ. King Richard the second created Iohn Beauchampe de Holte Baron of Kedermister by his Letters Patents, bearing date the 10. of October, anno regni sui, 11. before whom there was neuer any Baron created by Letters Patents, but by Writ. And it is to be obserued, that if hee be generally called by Writ to the Parliament, he hath a fee simple in the Baronie without any words of inheritance. But if he be created by Letters Patents, the state of inheritance must be limited by apt words, or else the grant is void. If a man bee called by Writ to the Parliament, and the Writ is deliuered vnto him, and he dieth before he commeth and sits in Parliament, whether hee was a Baron or no? And it is to bee answered that hee was no Baron, for the direction and deliuerie of the Writ to him maketh not him Noble; for the better vnderstanding whereof it is to be knowne that the words of the Writ in that case are, Rex, &c. E.B de D. Chiualier salutem. Quia de aduisamento & assensu concilij nostri pro quibusdam arduis & vrgentibus negotijs statum & defensionem regni nostri Angliæ, &c. concernen quoddam Parliamentum nostrum apud Ciuitatem Westm. à 21. Octob. proxim. futuro tenerj ordinauimus, & ibid. vobiscum & cum Prælatis, Magnatibus & Proceribus dicti regni nostri colloquium habere & tractatum; vobis in fide & ligeancia quibus nobis tenemini firmiter iniungendo mandamus, quod considerat is dictorum negotiorum arduitate, & periculis imminentibus cessante excusatione quacunque, dictis die & loco personaliter interfitis nobiscum & cum Prælatis, Magnatibus, & Proceribus supradictis, super dictis negotijs tractaturis vestrumque concilium impensuris, &c. And this Writ hath no operation or effect vntill he sit in Parliament, and thereby his bloud is ennobled to him and his heires lineall, and thereupon a Baron is called a Peere of Parliament. (d) And if issue be ioyned in any action, whether hee bee a Baron, &c. or no, it shall not be tried by Iurie, but by the Record of Parliament, which could not appeare vnlesse he were of the Parliament. Therefore a Duke, Earle, &c. of another Kingdome, are not to be sued by those names here, for that they are not Peeres of our Parliament. And albeit the Creation by Writ is the ancienter, yet the Creation by Letters Patents is the surer, for he may be sufficiently created by Letters Patents, and made Noble, albeit he neuer sit in Parliament.

Lib. 6. fol. 52. 53. Countesse of Rutland case.
8. H. 6. 10. 48. E. 3. 30.
35. H. 6. 46. Pl. Com. 223.
(d) 35. H. 6. 46.
48. E. 3. 30. b.
48. Ass. p. 6. 22. Ass. p. 24.
Regist. 287.
11. E. 3. breue. 472. 20 E. 4. 6.

(e) And it is to be obserued that Nobilitie may be granted for tearme of life, by act in law without any actuall Creation; as if a Duke take a wife by the intermarriage she is a Duches in Law, and so of a Marquesse, an Earle, and the rest, and in some other case. And there is a diuersitie betweene a woman that is Noble by Discent, and a woman that is Noble by marriage. (f) For if a woman that is Noble by Discent, marrie one that is vnder the degree of Nobilitie, yet she remayneth Noble still; but if shee gaine it by marriage, shee loseth it, if she marrie vnder the degree of Nobilitie, and so is the rule to be vnderstood, Si mulier nobilis nupserit ignobili desinit esse nobilis. (g) But if a Duchesse by marriage marrieth a Baron of the Realme she remayneth a Duchesse and loseth not her name because her husband is Noble, & sic de cæteris.

(c) *Lib. 6. fol. 52. 53. Counter de Rutlands case.*
2. H. 6. 11. 22. Ass. 24.
12. E. 3. breue 254. 8. H. 4. 19
11. H. 4. 15.
V. Fleta lib. 6. ca. 10.
(f) *Lib. 4. fo. 118. Altons case Tempore Mariæ Regine.*
Brooke nosme de dignitie. 69.
14. H. 6. 18. 2. H. 6. 11.
(g) *22 H. 6. 52.*

And as an estate for life may be gained by marriage, so may the King create either man or woman Noble for life (h) but not for peeres, because then it might goe to Executors or Administrators. The true diuision of persons is, that euery man is either of Nobilitie that is, a Lord of Parliament of the vpper House, or the degree of Nobilitie, amongst the Commons, as Knights, Esquires, Citizens and Burgesses of the lower House of Parliament, commonly called the House of Commons, and hee that is not of the Nobilitie is by intendement of Law among the Commons.

(h) *Lib. 9. fol. 97. 98. Sir George Reynells case.*

¶ *Come appiert per le Register.* Which booke in the Statute of W. 2. cap 24 is called Registrum de Cancellaria, because it containeth the formes of Writs at the Common Law that issue out of the Chancerie, tanquam ex officina Iustitiæ. There is a Register of originall Writs, and a Register of Iudiciall Writs, but when it is spoken generally of the Register it is meant of the Register originall. For the antiquitie and excellencie of this Booke. See in my preface to the eight part of my Commentaries. This excellent Booke our Author voucheth diuers times in these Bookes, and so doth hee diuers other Authorities in law of seuerall kinds, but with this obseruation, that he citeth no Authoritie, but when the Case is rare or may seeme doubtfull, which appeareth in this, that hee putteth no Case in all his three Bookes but hath warrant of good Authoritie in Law. For hee knew well the rule that perspicua vera non sunt probanda. And the like obseruation is made of Iustice Fitzherbert in his Booke of Natura Breuium, that he neuer citeth Authoritie, but when the Case is rare or was doubtfull to him. The Authorities which our Author hath cited in his three Bookes I haue collected.

Vide Sect 88. 94. 96. 101. 157 234. 318. 383. 412. 420. 433. 514. 643. 644. 657. 660. 692. 702. 729.

Section 10.

¶ ET de tielx choſes de q̃ux hõe poit auer vn manuel occupation poſſeſſiõ ou reſceit, ſicõe des terres, tenemẽts, rents, & huiuſmodi, la home dirẽ en coũt countant, & en plee pledant, que vn tiel fuit ſeiſie en ſon demeſne come de fee. Mes de tiels choſes que ne giſont en tiel Manuel occupation, &c. ſicome de aduowſon deſgliſe, & huiuſmodi, la il dirra que il fuit ſeiſie come de fee, & nemy en ſon demeſne come de fee, & en Latin il eſt en lun cas, quod talis ſeiſitus fuit, &c. in dominico ſuo vt de feodo, & en lauter caſe, quod talis ſeiſiius fuit, &c. vt de feodo.

AND of ſuch things whereof a man may haue a Manuell occupation, poſſeſſion, or receipt, as of Lands, Tenements, Rents, and ſuch like, there a man ſhall ſay in his Count Countant and Plea Pleadant that ſuch a one was ſeiſed in his demeſne as of fee, but of ſuch things which doe not lie in ſuch Manuell Occupation, &c. as of an Aduowſon of a Church and ſuch like, there he ſhall ſay, that hee was ſeized as of fee, and not in his Demeſne as of fee. And in Latine it is in one Caſe, *Quod talis, ſeiſitus fuit in dominico ſuo vt de feodo*, and in the other Caſe, *Quod talis ſeiſitus fuit, &c. vt de feodo.*

¶ IN Count Countant. Coũt i. narratio cõmeth of the French word Conte which in Latine is Narratio, & is vulgarly called a Declaration. The originall writt is according to his name Breue, briefe and ſhort but the Count which the Plaintife or Demandant make is more narratiue and ſpacious and certaine both in matter and in circumſtance of time & place, to the end the Defendant may bee compelled to make a more direct anſwere; ſo as the writt may be compared to Logique, and the Count to Rhetorique, and it is that, which the Ciuilians call a Libell. And in that ancient Booke of the Mirror of Iuſtices, lib. 2. ca. des Loiers, Contors are Seriants ſkilfull in law ſo named of the Count as of the principall part, and in W. 2. ca 29. he is called Seriant counter. *Mirror. des Iuſtices.* *W. 2. cap. 29.*

¶ *En plea pleadant.* Placitum. Here Littleton teacheth good pleading in this point, of which in his third Booke and Chapter of Confirmations, Sect. 534. he thus ſaith, *Et ſaches mon fits que eſt vn des pluis honorables, laudables, & profitable choſes en noſtre ley, de auer le ſcience de bien pleader en actions reals & perſonels, & pur ceo, ieo toy counſaile eſpecialment de mettera ton courage, & cure de ceo apprender.* And for this cauſe this word Placitum is derived a placendo, quia bene placitare ſuper omnia placet, and is not, as ſome haue ſaid, ſo called per Antiphraſin, quia non placet.

¶ *Seiſie*; *Seiſus*, commeth of the French word *ſeiſin*. i. poſſeſſio, ſauing that in the Common Law ſeiſed, or ſeiſin is properly applied to freehold, and poſſeſſed or poſſeſſion properly to goods and chattels; although ſometime the one is vſed in ſtead of the other. *Bract. lib. 4. f. l. 263. Idem lib. 5. fol. 372 Britton. fol. 205 206. Fleta lib. 5. ca. 5. Stanf. prar. 8. Pl. Com. fol. 191. Wroteſleys caſe.*

¶ *En ſon demeſne come de fee*, in Dominico ſuo vt in feodo. Dominicum is not only that inheritance, wherein a man hath proper dominion or owner-ſhip, as it is diſtinguiſhed from the lands which another doth hold of him in ſeruice, but that which is manually occupied, manured, and poſſeſſed, for the neceſſarie ſuſtentation, maintenance and ſupportation of the Lord and his houſhold, and ſauoureth de domo, of the houſe, either ad menſam, for his or their bord and ſuſtentation, or manually receiued (as Rents) for bearing and defraying of neceſſarie charges publike or priuate. Of theſe (ſaith our Author) he ſhould plead, that he is ſeiſed in dominico ſuo vt de feodo. i. de feodo dominicali, ſeu terra Dominicali, ſeu reditu Dominicali, which is as much to ſay as Demeyne or Demaine, of the hand, i. manured by the hand, or receiued by the hand, and therefore he calleth it manuall occupation, poſſeſſion, or receipt. And in Domeſday demeane land is called Inland, as for example, 4. bouatas terræ de Inland, & 10. bouatas in ſeruitio. *Domeſday.*

¶ *En tiel manuel occupation, &c.* There is nothing in our Author

but is worthy of obſeruation. Here is the firſt (&c.) and there is no (&c.) in all his three Bookes (there being as you ſhall perceiue very many) but it is for two purpoſes. Firſt, it doth imply ſome other neceſſary matter. Secondly, that the ſtudient may together with that which our Author hath ſaid inquire what authorities there be in Law that treate of that matter, which will worke three notable effects; Firſt, it will make him vnderſtand our Author the better; Secondly, it will exceedingly adde to the readers inuention. And laſtly, it will faſten the matter the more ſurely in his memory, for which purpoſe I haue for his eaſe in the beginning ſet downe in theſe Inſtitutes the effect of ſome of the principall Authorities in Law as I conceiue them concerning the ſame. In this place the (&c.) implyeth poſſeſſion or receipt, and ſuch other matter as appeareth by my notes in this Section. As for the Authorities of Law, you ſhall finde the effect of them in this Section, and the like of the reſt of the (&c.) which you ſhal finde in the Sections hereafter mentioned, omitting thoſe (for auoyding of tedioufneſſe) that either are apparant, or which are explaned in ſome other places, viz. Sect. 20. 48. 102. 108. 120. 125. 136. 137. 146, 149, 154. 164. 166. 167. 168. 177. 179. 183. 184. 194. 200. 202. 210. 211. 217. 220. 226. 233. 240. 242. 244. 245. 248 262. 264. 269, 270. 271. 279. 320. 322. 323. 325. 326. 327. 329, 330. 335. 336. 341. 347. 348 349 350. 352. 355. 356. 359. 364. 365. 374. 375. 377. 381. 384. 389. 393. 395, 397. 399. 401. 402. 410 417. 428. 433 447. 449. 464. 470. 471. 477. 483. 489 500. 501. 522. 532. 552. 553. 556. 558. 562. 578. 591. 592. 593. 594. 603. 613. 624 625. 630. 632. 634. 637. 638, 648. 659. 660. 661. 669. 687. 693. 700. 718. 745. 748. 749. All which I haue obſerued and quoted here once for all for the eaſe of the ſtudious reader.

Britton 205. 206. *optime.* *Fleta lib.* 6. *ca.* 5. *Idem lib.* 3. *ca.* 15.

¶ *Vt de feodo.* **Where** (vt) **is not by way of ſimilitude, but to bee** vnderſtood poſitiuely that he is ſeiſed in fee. And ſo it is where one plead a diſcent to one vt filio & hæredi that is to Io. S. that is ſonne and heire, & ſic de ceteris. Where (vt) denotat ipſam veritatem.

(i) 7. *E* 3. 63. 24. *E.* 3. 74. 34. *H.* 6 34. 19. *E.* 3. *quar. imp* 154. *Mirror. cap.* 2. § 17.

¶ *Sicome de aduowſon.* **Of an Aduowſon** (i) **wherein a man hath** as abſolute owneriſhip and propertie as he hath in lands or rents, yet he ſhall not pleade, that he is ſeiſed in Dominico ſuo vt feodo, becauſe that inheritance, ſauouring not de domo, cannot either ſerue for the ſuſtentation of him and his houſhold, nor any thing can bee receiued for the ſame for defraying of charges. And therefore he cannot ſay, that he is ſeiſed thereof in dominico ſuo de feodo, whereby it appeareth how the Common law doth deteſt Simony and all corrupt bargaines for preſentations to any benefice, but that (k) idonea perſona for the diſcharge of the cure ſhould be preſented freely without expectation of any thing; nay ſo cautious is the Common law in this point that the pl. in a quare impedit ſhould recouer no damages for the loſſe of his preſentation vntil the ſtatute of W. 2. cap 5. And that is the reaſon that Gardian in Socage (l) ſhall not preſent to an Aduowſon, becauſe he can take nothing for it, and by conſequent he cannot account for it. And by the law he can meddle with nothing that he cannot account for. (m) And in a writ of right of Aduowſon, the patron ſhall not alledge the expleés or taking of the profits in himſelfe but in his incumbent. And hereby the old bookes ſhall bee the better vnderſtood, viz. Bracton, lib. 4. tract. 2. cap. nu. 5. Eſt autem dominicum quod quis habet ad menſam, & proprie ſicut ſunt Bordlands Anglice. And Fleta lib. 5. ca 5. Eſt autem dominicum propriè terra ad menſam aſſignata. Dominicum etiam dicitur ad differentiam eius quod tenetur in ſeruitio. But of an Aduowſon and ſuch like he ſhall plead, that he is ſeiſed de aduocatione vt de feodo & jure.

(k) *Lib.* 6. *fo.* 51. *Boſwel. caſe.*

(l) 8. *E.* 2. *Preſentment al Egliſe.* 10. 7. *E.* 3. 39. 27 *E.* 3. 89. 29. *E.* 3. 5. 31. *E.* 3. *Eſtopel* 240.

(m) 7. *E.* 3. 63. *Bracton.* 263. 373. *Fleta lib.* 5. *ca.* 5.

¶ *Aduowſon.* Aduocatio, **ſignifying an aduowing or taking into** protection, is as much as ius patronatus. Sir William Herle in 7. E. 3. fo. 4. ſaith, that it is not long paſt, that a man did know what an Aduowſon was, but when a man would grant an aduowſon he granted Eccleſiam, the Church, and thereby the aduowſon paſſed. Vid. 45. E. 3. 5. But ſurely the word is of greater antiquity, for in the Regiſter there is an originall writ de recto Aduocationis, and in the originall writ of Aſſiſe de darreine preſentment the patron is called Aduocatus. (n) Vid. W. 2. *ca* 5. And ſo doth (o) Bracton call him. Aduocatus autem dici poterit ille ad quem pertinet jus aduocationis alicujus, vt ad Eccleſiam præſentet nomine proprio & non alieno. And (p) Fleta lib. 5 ca. 14. agreeth herewith almoſt totidem verbis: Aduocatus eſt ad quem pertinet jus aduocationis alterius Eccleſiæ, vt ad Eccleſiam nomine proprio non alieno poſſit præſentare; And (q) Britton cap. 92. The Patron is called Auow, And the patrons are called aduocati for that they be either Founders or mainteyners or benefactors of the Church either by building, dotation or increaſing of it, in which reſpect they were alſo called Patroni, and the Aduowſon jus patronatus.

7. *E.* 3. 4. 45. *E.* 3. 5.

(n) *W.* 2 *ca.* 5. (o) *Br. fl. lib.* 4. *fo.* 240. (p) *Fleta lib.* 5 *ca.* 14. (q) *Britton. ca.* 92.

And it is to be vnderſtood that there is a great (r) diuerſity inter aduocationem medietatis Eccleſiæ, &c. & medietatem aduocationis Eccleſiæ, and of their ſeuerall remedies for the ſame. For the Aduowſon of the moity is when there be ſeuerall Patrons, and two ſeuerall incumbents in one Church, the one of the one moity thereof, and the other of the other moity, and one part

(r) 33. *H.* 6. 11. *b per Triſt* 14. *H.* 6. 15. *per Newton.* 31. *E.* 1. *droit.* 68. 69. *F. N. B.* 31. *b.* *Lib.* 10. 135. 136. *R. Smythes caſe.* 45. *E.* 3. *Fines* 41. 45. *E.* 3. 12. 19. *E.* 3. 78. 17. *E.* 2. *Dower* 163.

part aſwell of the Church as of the towne allotted to the one, and the other part thereof to the other, and in that caſe each Patron if he be diſturbed ſhall haue a quare impedit, quod permittat ipſum præſentare idoneam perſonam ad medietatem Eccleſiæ.

But if there be two Copercceners, and they doe agree to preſent by turne each of them in truth hath but a moity of the Church, but for that there is but one incumbent, if either of them be diſturbed ſhe ſhall haue a Quare impedit, &c. præſentare idoneam perſonam ad Eccleſiam; for that there is but one Church and one incumbent, and ſo of the like. But in (f) the ſaid caſe of two Copercceners one of them ſhall haue a Writ of right of Aduowſon de medietate aduocationis for in truth ſhe hath but a right to a moity, but in the other caſe where there be two Patrons and two incumbents in one Church each of them ſhall haue a Writ of right of Aduowſon de aduocatione medietatis.

(f) *Briton. fo.* 235. 31.*E.*1. *droit* 68.69. *F.N.B.*31.*b.c.*33.*a.* 5.*H.*7.8. 17.*E.*3.38.75.76. 7.*E.*3 327. 8.*E.*3.425. 22.*Aſſ.p.*33. 14.*H.*4 10. 33.*E.*3.*quar.imp.*196.

And as there may (as hath beene ſaid) be two ſeuerall Parſons in one Church, ſo there may be two that may make but one Parſon in a Church. (t) Britton ſaith, Si aſcun Egliſe ſoit done a diuers perſons per vn ſole avowe nul ne ſe pura pleadie per aſſiſe de iuris vtrum ne nul eſtre implede ſauns laurie, &c. And therewith agreeth Fleta (u) Item licet aliqua Eccleſia diuiſa fuerit inter duos, ſiue bona ſua habeant comunia ſiue ſeperata, dum tamen vnicum habeant advocatum nullus eorum ſine alio agere poterit vel implacitari. And Fitzh. ſaith, that two Prebendaries may be one Parſon of a Church, who ſhall ioyne in a Iuris vtrum, ſo as one Rectory may be annexed to two ſeuerall Prebends, and both of them make but one Parſon. But where one is Parſon of the one moity of a Church and another of the other moity as hath beene ſaid, there one of them ſhall haue a juris vtrum againſt the other, and in the writ ſhall name him perſona medietatis Eccleſiæ, &c. But for auoyding of ſuſpition of curioſitie if wee ſhould proceed any further herein, we will attend what Littleton will further teach vs.

(t) *Britton. fo.* 235.
(u) *Fleta lib.* 5.*ca.*19.

*F.N.B.*49. o.

*F.N.B.*49.*f.*

Section 11.

¶ Et nota que homme ne poit auer pluis ample ou pluis greinder eſtate denheritance, que fee ſimple.

And note that a man cannot haue a more large or greater eſtate of inheritance than Fee ſimple.

¶ This doth extend as well to fee ſimples conditional and qualified, as to fee ſimples pure and abſolute. For our Author ſpeaketh here of the amplenelle, and greatneſſe of the eſtate, and not of the perdurableneſſe of the ſame. And he that hath a fee ſimple conditionall or qualified hath as ample and great an eſtate as hee that hath a fee ſimple abſolute, ſo as the diuerſitie appeareth betweene the quantitie and qualitie of the eſtate.

From this ſtate in fee ſimple, eſtates in taile, and all other particular eſtates are deriued, and therefore worthily our Author beginneth his firſt booke with Tenant in Fee ſimple for a principalioribus ſeu dignioribus eſt inchoandum.

¶ *Ne poet auer pluis ample ou greinder eſtate, &c.* For this cauſe two (a) fee ſimples abſolute cannot be of one, and the ſelfe-ſame land. If the King make a gift in taile and the Donee is attainted of treaſon, in this caſe the King hath not two ſimples in him, viz the ancient reuerſion in fee, and a fee ſimple determinable vpon the dying without iſſue of Tenant in taile, but both of them are conſolidated and conioyned together; and ſo it is if ſuch a Tenant in taile doth conuey the land to the King his heires and Succeſſors, the King hath but one eſtate in fee ſimple vnited in him, and the Kings grant of one eſtate is good, and ſo was it adiudged in the Court of Common pleas. And yet in ſeuerall Parſons by act in Law a reuerſion may be in fee ſimple in one, and a fee ſimple determinable in another by matter Ex poſt facto; as if a gift in taile be made to a Villeine, and the Lord enter, the Lord hath a fee ſimple qualified, and the Donor a reuerſion in fee, but if the Lord infeoffe the Donor, now both Fee ſimples are vnited, and he hath but one fee ſimple in him; but one fee ſimple cannot depend vpon another by the grant of the partie, as if lands be giuen to A. ſo long as B. hath heires of his body the remainder ouer in fee, the remainder is voide.

(a) *Pl.Com* 349. & 348. 19.*H.*8.*Diet* 4. 29.*H.*8. *Diet* 33. 16.*Eliz. Diet.*330. 2.*Mariæ Diet.*107. *Auſtens caſe.* *Pa.*38.*Eliz.rot* 108. *In quar.imp. betweene the Queene Pl. and the Biſhop of Lincolne, Huſſey and others deff.* 15.*E.*4.6.8.

Sect. 12.

¶ Item purchaſe eſt appel la poſſeſſion de terres ou

Alſo purchaſe is called the poſſeſſion of lands or

¶ Purchaſe in Latyn is either acquiſitum of the verbe acquiro, for ſo I finde it in the originall Regiſter 243. In terris vel tenementis

mentis quæ viri & mulieres coniunctim acquisierunt, &c. Bracton calleth it perquisitum; and by (b) Glanuil it is called questus or perquisitum.

Bracton.lib.2.fo 65.
(b) Glanuil.lib.7. ca.1.
Britton ca.33.fo.84. & 121.

tenements que home ad p̄ son fait, ou per agreement, a quel possession il ne auient per title de discent de nul de ses auncesters, ou de ses cousins mes per son fait demesne.

tenements that a man hath by his deed or agreement, vnto which possession hee commeth not by title of descent from any of his ancestors, or of his Cousins but by his owne deed.

A purchase is alwayes intended by title, and most properly by some kinde of conueyance either for money or some other consideration, or freely of gift: for that is in Law also a purchase. But a discent, because it commeth meerely by act of Law, is not said to be a purchase; and accordingly the makers of the act of Parliament in 1.H.5.ca.5. speaketh of them that haue lands or tenements by purchase or discent of inheritance. And so it is of an escheate or the like because the inheritance is cast vpon, or a title vested in the Lord by act in Law and not by his owne deede or agreement as our Author here saith. Like Law of the state of Tenant by the courtesie tenant in dower or the like. But such as attaine to lands by meere iniury and wrong, as by disseisin, intrusion, abatement, vsurpation, &c. cannot be said to come in by purchase no more then Robberie, Burglary, Pyracy or the like can iustly be termed purchase.

Pl.Com, Wimbishes case, 47.b. 1.H.5.ca.5.

If a Noble man, Knight, Esquire, &c. be buried in a Church, and haue his coat armour and Pennions with his armes, and such other ensignes of honour as belong to his degree or order set vp in the Church, or if a graue stone or tombe bee laid or made, &c. for a monument of him. (c) In this case albeit the freehold of the Church be in the parson, and that these be annexed to the freehold, yet cannot the Parson or any take them or deface them, but he is subiect to an action to the heire, and his heires in the honor and memory of whose Auncestor they were set vp. And so it was holden, Mich.10.Ia. and herewith agreeth the Lawes (d) in other Countries. Note this kinde of inheritance: and some hold that the wife or Executors that first set them vp may haue an action in that case against those that deface them in their time. And note that in some places chattels as heire-loomes, (as the best bed, table, pot, pan, cart, and other dead chattels moueable) may goe to the heire, and the heire in that case may haue an action for them at the Common-law, and shall not sue for them in the Ecclesiasticall Court, but the heireloome is due by custome and not by the Common law. And the (e) ancient iewels of the Crowne are heire loomes, and shall discend to the next successor, and are not deuisable by testament.

(c) *9.E.4.14.*

Mich.10.Ia.Obiter in Com. banco.in Tyms case.
(d) B.Cassanens.fo.13. Concl.29.
30.E.3.2.&3.
39.E.3.6.9.10.
1.H.5.tit.Executors.108. tit.Discent.Br.43.
9.E.4.15. Madam Wiches case.
(e) Vid.28.H.8.24.

An heire loome is called principalium or hereditarium.

Fnt.adiudicata erram Rege. Tr.41.E.3.lib.2.fo.104. in Thesaur.

Consuetudo hundredi de Stretford in Com' Oxon̄ est quod hæredes tenentorum infra hundredum prædictum existen̄ post mortem antecessorum suorum habebunt, &c. principalium Anglice an heire Lombe, viz. De quodam genere catallor, vtensilium, &c. optimum plaustrum Optimam carucam, optimum ciphum, &c.

Sect.241.242.&c.

Our Author hath not spoken of parceners in this Chapter for that he hath particular chapters of the same.

Chap. 2. *Sect.* 13.

Murror.ca.2.§.15. & cap.1.§.5.

¶ *Tenant en Fee Taile.* Tallium, or Feodum talliatum, is deriued of the French word tailler, scindere, for so Littleton himself in his Chapter Sect.18. saith.

Tenant in fee taile est p̄ force de le statute de West.2. ca.1. **Car deuant l'dit statute, touts Enheritaces fuer fee simple; car touts les dones q̄ ſot specifies deins**

Tenant in Fee Taile is by force of the Statute of *W.2.cap.*1. for before the said Statute, al Inheritances were Fee simple; for al the gifts which bee specified in y^t stat. were fee simple

¶ *Le Statute de W.* 2. This Statute was made in 13.E.1. and is called West.2. because the Parliament was holden at Westminster, and

hath

Gradus Parentelæ & Consanguinitatis, pro meliori intelligentia Authoris nostri.

The degrees of Parentage and of Consanguinitie for the better understanding of our Authour.

Approued by
Bracton, lib. 2. cap. 31. fol. 67.
Britton, cap. 89. fol. 220. 221.
Fleta, lib. 5. cap. 7.
Mirror cap. 1. §. 3. & que heritages.

Adgnati ex parte Patris.
Cousins on the part of the Father the more worthy in Discents, though farther remote.

Cognati ex parte Matris.
Cousins on the part of the Mother the lesse worthy in Discents, though neerer of kinne.

Recta Linea. The right Line.

Linea transuersalis seu collateralis. The side Line.

Abpatruus magnus. The great Vncles Grand-father on the Fathers side.

Abamita magna. The great Vncles Grand-mother on the Fathers side.

Tritauus. The great Grand-fathers great Grand-father.

Tritauia. The great Grand-fathers great Grand-mother.

Linea transuersalis seu collateralis. The side Line.

Abauunculus magnus. The great Vncles Grand-father on the Mothers side.

Abmatertera magna. The great Vncles Grand-mother on the Mothers side.

5 *Attauus.* The great Grand-fathers Grand father. — *Attauia.* The great Grand-fathers Grand-mother.

Propatruus magnus. The great Vncles Father on the Fathers side.
Proamita magna. The great Vncles Mother on the Fathers side.

4 *Abauus.* The great Grand-fathers Father. — *Abauia.* The great Grand-fathers Mother.

Proauunculus magnus. The great Vncles Father on the Mothers side.
Promatertera magna. The great Vncles Mother on the Mothers side.

Patruus magnus. The great Vncle on the Fathers side.
Amita magna. The great Aunt on the Fathers side.

3 *Proauus.* The great Grand-father. — *Proauia.* The great Grand-mother.

Auunculus magnus. The great Vncle on the Mothers side.
Matertera magna. The great Aunt on the Mothers side.

2 *Auus.* The Grand-father. — *Auia.* The Grand-mother.

Patruus. The Vncle or Fathers Brother.
Amita. The Aunt or Fathers Sister.

1 *Pater.* Father. — *Mater.* Mother.

Auunculus. The Vncle or Mothers Brother.
Matertera. The Aunt or Mothers Sister.

Linea recta ascendens. The right Line ascending.

Patrueles à Patruo. Sonnes or Daughters, Cousin Germans on the Fathers side.
Amitini ab Amita. Sonnes or Daughters, Cousin Germans on the Fathers side.

Linea transuersalis, seu collateralis. The side Line.

Frater a Brother. *Semi germanus frater.* Brother of one Father and seuerall Mothers. *Soror.* Sister.

Frater, a Brother. *Vterinus frater.* Brother of one Mother & seuerall Fathers. *Soror.* Sister.

Linea transuersalis, seu collateralis. The side Line.

Auunculini ab Auunculo. Sonnes or Daughters, Cousin Germans on the Mothers side.
Materterini à matertera. Sonnes or Daughters, Cousin Germans on the Mothers side.

Propositus.

Linea recta The right Line *discendens.* discending.

Horum. Of these. *Filius.* The Sonne. *Filia* The Daughter right Cousin German.

Horum. Of these. *Filius.* The Sonne. *Filia.* The Daughter right Cousin German.

1 *Filius.* Sonne. — *Filia.* Daughter.

Eorum. Of these. *Nepos collat.* The collaterall Nephew. *Neptis collat.* The collaterall Niece.

2 *Nepos linealis.* The lineall Nephew. — *Neptis linealis.* The lineall Niece.

Eorum. Of these. *Nepos collat.* The collaterall Nephew. *Neptis collat.* The collaterall Niece.

3 *Pronepos linealis.* The lineall Nephewes or Neices Son. — *Proneptis linealis.* The lineal nephewes or neices daughter

Eorundem. Of these. *Pronepos collat.* The collaterall Nephewes Son *Proneptis collat.* The collaterall Nephewes Daughter. *Et sic in infinitum.*

4 *Abnepos linealis.* The grand Sonne of the lineall Nephew or Niece. — *Abneptis linealis.* The grand Daughter of the lineall Nephew or Niece.

5 *Atnepos linealis.* The great grand Sonne of the lineall Nephew or Niece. — *Atneptis linealis.* The great grand Daughter of the lineall Nephew or Neice.

Eorundem. Of these. *Pronepos collat.* The collaterall Nephewes Son *Proneptis collat.* The collaterall Nephewes Daughter. *Et sic in infinitum.*

6 *Trinepos linealis.* The great great grand Sonne of the lineall Nephew or Niece. *Et sic in infinitum.* — *Trineptis linealis.* The great great grand Daughter of the lineall Nephew or Niece. *Et sic in infinitum.*

Adgnati quasi a Patre cognati.

Cognati quasi natex parte...

Auus ab Aeuo quia patre antiquior.

Patruus quasi alter patru.

Amita quasi ... te tertia.

Auunculus, quasi ... minor.

Matertera quasi Mater altera.

Frater quasi fere alter.

Soror quasi forte ... semi germani fratres quasi ex eodem patre & seperalibus matribus nati. Filius. Filia ... ab amore parentum.

Vterini quasi nati ex eodem vtero fratres ex seperalibus patribus.

Nepos quasi natus post.

Place this next before Folio 19.

Bracto
(b) G
Britt.

Pl. C
1. H.

(c) 9.

Mich.
hance.
(d) E
Concl.
30. E.
39. E.
1. H. 5
nit. D
9. E. 4.
Wiche
(e) V

Fitz. aut
Tr. 41.
in Thef

Sect. 2

Mirro
& cap.

This Statute was made in 13. E. 1. and is called West. 2. because the Parliament was holden at Westminster, and

taces fuer fee simpl; car touts les dones q̄ sōt specifies deins

simple; for al the gifts which bee specified in yᵗ stat. were fee simple

hath

mẽstat, fuer fee simple cõditional al cõmon ley, cõe appiert p̃ rehersal d̃ mẽ statute. Et ore p cel stat tenãt en t̃ taile est en deux mañs, cestalcawire, tenant en taile generall, & tenant en taile special.

cõditional at the common law, as appeareth by the rehearsall of the same Statute. And now by this Statute, Tenant in Taile is in two manners, that is to say, Tenant in taile generall, and Tenant in taile speciall.

hath the name of the second, because another Parliament was formerly holden at Westminster in the third yere of the same Kings raigne, which was called Westminster the first. And albeit manie Parliaments were after holden at Westminster besides these, yet were they two onely, propter excellentiam, called the Statutes of Westminster. And the Act intended by Littleton, is W.2.c.1.

Upon which Statute, our Authour in the Inner Temple did learnedly read, whose reading I haue. Of King Ed.1. and of this Statute, Sir William Herle chiefe Iustice of the Court of Common Pleas, in 5.E.3.14. saith, That King E.1. was the wisest King that euer was: and the cause of the making of this Statute, was to preserue the Inheritance in the bloud of them to whom the gift was made. And in 9.E.3.22. he saith, That they were sage men that made this Statute. See more of this in the Chapter of warranties, Sect.746.

5.E.3.14.

9.E.3.22.

Of this estate Taile it is said, (a) Modus legem dat donationi, & tenend̃ est etiam conuentio, quia Modus & Conuentio vincunt legem: Vt si alicui cum vxore fiat donatio, habendum & tenendum sibi & hæredibus quos inter eos legitime procreabunt, ecce quod donator vult tales hæredes in hæreditate paterna & materna succedant, alijs hæredibus eorum remotioribus penitus exclusis: Et quod voluntas donatoris obseruari debet manifeste apparet per hæc Statuta, quia autem dudum Regi durum videbatur, &c.

(a) *Fleta lib.3.cap.9 Bract.lib.2.ca.5.& c. Brit.cap.24.& 36.*

¶ *Deuant le dit Statute* (b) *touts Inheritances fueront Fee simple.* Here Fee simple is taken in his large sence, including as well conditionall or qualified, as absolute, to distinguish them from estates in Taile since the said Statute. Before which Statute of Donis conditionalibus, If Land had beene giuen to a man, and to the heires males of his bodie, the hauing of an Issue female had beene no performance of the Condition; but if he had issue male, and died, and the issue male had inherited, yet hee had not had a fee simple absolute, (c) for if he had died without issue male, the Donor should haue entred as in his reuerter. By hauing of issue the Condition was performed for three purposes; First, to Alien: Secondly, to Forfeit: Thirdly, to charge with Rent, Common, or the like. But the course of discent was not altred by hauing issue; for if the Donee had issue and died, and the land had descended to his issue, (d) yet if that issue had died (without any alienation made) without issue, his collaterall heire should not haue inherited, because hee was not within the forme of the gift, viz. heire of the bodie of the donee. (f) Lands were giuen before the Statute in frankmarriage, and the donees had issue and died, and after, the issue died without issue, it was adiudged, that his collaterall issue shall not inherite, but the donor should re-enter. So note, that the heire in Taile had no fee simple absolute at the Common Law, though there were diuers discents.

(b) *Vid.Sect.18. Brit.ca.34.fol.93. Pl.Com 235.562.Sbelleys Cas.lib.1.fol.103.*

(c) *44.E.3.8. 30.E.1. Formedon 66. 7.E.3.6.7. 7.H.4.31. 12.H.4.2.*

(d) *18.E.3.46.18.Ass.p.3. 12.E.4.3.*

(f) *4.H.3. Formedon 34. 18.Ass.5. 12.E.4.3. Pl.Com.247.b. 18.E.2.tit. Formedon 58.59.*

If Lands had beene giuen to a man and to his heires males of his bodie, and hee had issue two Sonnes, and the eldest had issue a Daughter, the Daughter was not inheritable to the Fee simple, but the yonger sonne per formam Doni. And so if Land had beene giuen at the Common Law to a man and the heires Females of his bodie, and he had issue a Sonne and a Daughter, and died the Daughter should haue inherited this Fee simple at the Common Law, for the Statute of Donis Conditionalibus, createth no estate taile, but of such an estate as was fee simple at the Common Law & is discendible in such forme as it was at the Common Law. If the Donee in taile had issue before the Statute, & the issue had died without issue, the alienation of the Donee, at the Common Law, hauing no issue at that time had not barred the Donor.

(g) If Donee in taile at the Common Law had aliened before any issue had, and after had issue, this alienation had barred the issue, because he claimed a Fee simple, yet if that issue died without issue, the Donor might reenter for that he aliened before any issue, at what time he had no power to alien to barre the possibilitie of the Donor. (h) But if Feme tenant in taile had taken husband, and had issue, and the husband and wife had aliened in Fee by Deed before the Statute, yet the issue might haue had a Formdon in discender for the alienation was not lawfull: but otherwise it is, if it had beene by fine. And these things though they seeme ancient are necessarie, notwithstanding to be knowne, as well for the knowledge of the Common Law, as for Annuities and such like Inheritances as cannot be intailed, within the said Statute, and therefore remayne at the Common Law. (i) If the King before the Statute of Donis

(g) *30.E.1. formdon 65. Temps E.1. ibidem.62. 19.E.2. formdon 61. Pl.Com.246.*

(h) *4.E.2. formdon 59.*

6.E.3 56.Io. of Eltham's case.

conditionalibus had made a gift to a man, and to the heires of his bodie begotten, the Donee Post prolem suscitatam might haue alienedaswell as in the case of a common person. (k) But if the Donee had no issue, and before the Statute had alienedwith warrantie, and died, and the warrantie had discended vpon the King, this should not haue bound the King of his Reuersion without assets: but otherwise it was in the case of a common person. (l) Of the other side, if Lands had beene giuen to the King and to the heires of his bodie, hee could not before issue haue alienedin Fee, but only to haue barred his issue as a common person might haue done, but not to haue barred the reuersion, for that should haue beene a wrong in the case of a subiect, and the Kings Prerogatiue cannot alter his case, nor make it greater, then the Donor gaue vnto him: And it is a maxime in Law, That the King can doe no wrong when all Estates were Fee simple, then were Purchasers sure of their Purchases, Farmors of their Leases, Creditors of their Debts, the King and Lords had their Escheates, Forfeitures, wardships, and other profits of their Seigniories; and for these and other like cases, by the wisdome of the Common Law all estates of inheritance were Fee simple, and what contentions and mischiefes haue crept into the quiet of the Law by these fettered inheritances, daily experience teacheth vs. But see more of this matter in the aforesaid Chapter of Warrantie, Sect.746.

(k) 45. Ass. p. 6.

(l) Pl. Com. 246. b.

Lib. 10. fol. 38. in Tort. case.

¶ *Common ley.* See for explication hereof, Sect.170.

¶ *Come appeirt per le reherſall de meſme leſtatute.* Here, by the authoritie of our Author, The rehearsall or preamble of a Statute is to be taken for truth; for it cannot be thought that a Statute that is made by authoritie of the whole Realme, aswell of the King as of the Lords Spirituall and Temporall, and of all the Commons will recite a thing against the truth.

Dott. & Stud. lib. 2. cap. 55.

¶ *Et ore per cel ſtatute tenant en taile eſt en* 2. *Manners*, .S. *tenant en tayle generall*, *& tenant en tayle eſpeciall.*

This diuision of an estate taile is perfect and sound, For the membra diuidentia, viz. generall and speciall are conuerted properly with the thing defined, and they are proued by many Authorities of Law, and approued of all learned men, and so are all the diuisions through all his three Bookes which the studious and diligent Reader will obserue. And how excellent and difficult a thing it is to diuide rightly and properly, especially in the Law the learned doe know.

By this Statute the land is as it were appropriated to the Tenant in taile, and to the heires of his bodie, and therefore (r) if an estate be made, either before or since the Statute of 27. H. 8. cap. 10. to a man and the heires of his bodie, either to the vse of another and his heires, or to the vse of himselfe and his heires, this limitation of vse is vtterly void. For before the said Statute of 27. H. 8. he could not haue executed the estate to the vse, and so was it adiudged (s) in an Electione firmæ betweene Iohn Cowper Plaintife, and Thomas Franklin &c. Defendant.

(r) 24. H. 8. tit. feoffments al vses 4. 27. H. 8. fo.

(s) Pasch. 14 Ia. in the Kings Bench.

Section 14. 15.

¶ *Terres*, Terra, in his generall and legall signification (as hath beene said before) includeth not only all kind of grounds, as meadow, pasture, wood, &c. but houses and all edifices whatsoeuer. In a more restrained sence it is taken for arrable ground.

Vid. Sect. 1.

¶ *Tenements*, tenementa. This is the only word which the said Statute of W. 2. that created Estates taile vseth, and it includeth not only all Corporate Inheritances, which are or may be holden, but also all Inheritances issuing out of any of

¶ Enãt en taile generall, eſt lou tres ou teneñts ſont dones a vn hõe & a ſes heires de ſon corps engendres: En ceo caſe eſt dit generall taile, pur ceo q̃ quelcunq; feme q̃ tiel tenant eſpouſa (ſil auoit pluſors femes, & per cheſcun ẽ eux il ad iſſue) vncore cheſcun de les iſſues

TEnant in taile generall, is where Lands or Tenements are giuen to a man, and to his heires of his bodie begotten. In this case it is said generall taile, because whatsoeuer woman that such tenant taketh to wife (if he hath many wiues and by euery of them hath issue) yet euerie one of these issues by

pos-

per poſſibilitie poit enheriter les tenements per force del done, pur ceo que cheſcun tiel iſſue eſt de ſes corps engendre.

poſſibilitie may inherit the Tenements by force of the gift; becauſe that euerie ſuch iſſue is of his bodie ingendred.

¶ En meme le maner eſt lou terres ou tenements ſont dones a vn feme, & a ſes heires de ſa corps iſſuants, coment que el auoit diuers barons, vncore iſſue que el poit auer per cheſcun baron, poit enheriter come iſſue en le taile per force de tiel done, & pur ceo tiels dones ſont appelles generall tailes.

IN the ſame manner it is, where lands and Tenements are giuen to a woman, and to the heires of her bodie, albeit that ſhe hath diuers husbands, yet the iſſue which ſhee may haue by euery Husband may inherit as iſſue in taile by force of this gift. And therefore ſuch gifts are called generall tailes.

theſe Inheritances, or concerning, or annexed to, or exerciſible within the ſame, though they lie not in tenure, therefore all theſe without queſtion may be intailed. As (t) Rents, Eſtouers, Commons, or other profits whatſoeuer granted out of Land; Or Vſes, Offices, Dignities which concerne Lands or certaine places may be entailed within the ſaid Statute, becauſe all theſe ſauour of the Realtie. But if the grant be of an Inheritance mere perſonall, or to be exerciſed about Chattels, and is not iſſuing out of land, nor concerning any land or ſome certaine place, ſuch Inheritances cannot be intailed, becauſe they ſauour nothing of the realtie. But examples will illuſtrate and make this learning cleere.

(t) 7.E.3.363.18.E.3.27. 7.H.6.8. 32.H.28. 5.E.4.3. 1.H.7.28.4.H.7.9.1.H.5.1 H.8.fol.3. Neuils caſe. Hb. fol.33.34. Pl.Com.in Manxelkraſe fol.2. & 3.

The Writ of Aſſiſe (u) was De libero tenemento, & made his pleint of the Office of the fourth part of the Seriant of the Common Place, and the Writ adiudged good, and ſeeing that a man hath a free-

(u) 7. Aſſ.p.12. 7.E.6 1.

hold, Liberum tenementum in it, by conſequent it may bee intailed.

The Office of the keeping of the Church of our Ladie of Lincolne, was intailed, and a Formedon there brought vpon that gift of the Office by the iſſue in taile. The (x) Office of the Marſhall of England intailed. The (y) Office of one of the Chamberlaines of the Exchequer intailed. 1.H.7.28. The Office of a Fosterſhip intailed. 4.H.7.10 9.E.4.56.b. Charters intailed. 19.H.8.3 Vſe intailed. (z) Nomination to a Benefice intailed.

18.E.3.27. (x) 5.E.4.3. 10.E.4.14. (y) 11.E.4.1. 1.H.7.28. 4.H.7.10. 9.E.4.56. 19.H.8.3. 1.H.5.1.

Alſo a name of dignitie may be intailed within the Statute, (a) as Dukes, Marqueſſes, Earles, Viſcounts, and Barons, becauſe they be named of ſome Countie, Mannor, Towne, or Place. If the iſſue in taile (b) in a Formedon in the deſcender be barred by a falſe verdit, his releaſe is no barre to his iſſue, albeit the action is at the Common Law.

(a) Lib.7.fol.33.34. Neuils caſ. 28.H.6. Lord Veſeyes caſe. (b) 14. Aſſ.2. 3.Eliz. Dier.188.

The like Law is of a Writ of Errour 3.Eliz. Dier 188. If a gift in taile bee made with Warrantie, the Donee releaſes the warrantie, this ſhall not bind the iſſue in taile, for to all theſe caſes and the like the ſaid Statute doth extend. But if I grant to a man, and to the heires of his bodie to be Keeper of my Hounds, or Maſter of my Horſe, or to be my Faulconer, or ſuchlike with a fee therefore, yet theſe cannot bee intailed within the ſaid Statute, for that they be not iſſuing out of Tenements nor annexed to, or exerciſible within, or concerning Lands or Tenements of Freehold or Inheritance, but concerning Chattels, and ſauour nothing of the realtie. And ſo it is if I by my deed for me and my heires grant an annuitie to a man, and the heires of his bodie, for that this only chargeth my perſon and concerneth no land nor ſauoureth of the realtie.

Pl.Com. in Manxels caſe.

In all theſe caſes he hath a fee conditionall, as they were before the Statute, and the grantee by his grant or releaſe may barre his heire, as hee might haue done at the Common Law, for that in theſe caſes he is not reſtrained by the ſaid Statute.

¶ *Et a ſes heires de ſon corps engendres.* In gifts in taile theſe words (heires) are as neceſſary, as in Feoffments and Grants; for ſeeing euery eſtate taile, was a fee ſimple at the Common Law, and at the Common Law no Fee ſimple could bee in Feoffements and Grants without theſe words (heires) and that an eſtate in Fee taile is but a cut or reſtrained Fee, It followeth that in gifts in a mans life time, no Eſtate can bee created without theſe words (heires) vnleſſe it bee in caſe of Frankmarriage as hereafter ſhall bee ſhewed. And where Littleton ſaith (heires) yet (heire) in the ſingular number in a ſpeciall

caſe

case may create an Estate taile, as it appeareth by 39. Ass. p. 20. hereafter mentioned. And yet if a man giue lands to A. & hæredibus de corpore suo, the remainder to B. in forma prædicta, this is a good Estate taile to B. for that in forma prædicta do include the other. If a man letteth lands to A. for life the remainder to B. in taile, the remainder to C. in forma prædict. this remainder is void for the incertaintie. But if the remainder had beene, the remainder to C. in eadem forma, this had beene a good Estate taile, for Idem semper proximo antecedenti refertur. If a man giue Lands or Tenements to a man & semini suo, or exitibus vel prolibus de corpore suo, to a man and to his Seed, or to the Issues or Children of his bodie, he hath but an estate for life, for albeit, that the Statute prouideth that Voluntas donatoris secundum formam in charta doni sui manifestè expressam de cætero obseruetur. Yet that will and intent must agree with the rules of Law. And of this opinion was our Authour himselfe, as it appeareth in his learned reading aforementioned vpon this Statute: Where he holdeth if a man giueth land to a man. Et exitibus de corpore suo legitime procreatis, or semini suo, hee hath but an estate for life, for that there wanteth words of Inheritance.

39. Ass. p. 20.
20. H. 6. 35. 5. H. 4. 7. b.
14. H. 4. 15.

Vid. Shelleyes case lib. 1. fol.

¶ *De son corps.* These words are not so strictly required but that they may be expressed by words that amount to as much; For the example that the Statute of W. 2. putteth hath not these words (de corpore) but these words (hæredibus) viz. Cum aliquis dat terram suam alicui viro & ejus vxori & hæredibus de ipsis viro & muliere procreatis. If lands be giuen (c) to B. & hæredibus quos idem B. de prima vxore sua legitimè procrearet. This is a good estate in especiall taile (albeit he hath no wife at that time without these words (de corpore.) So it is (d) if lands be giuen to a man, and to his heires which he shall beget of his wife: (e) or to a man & hæredibus de carne suâ, or to a (f) man & hæredibus de se. In all these cases these be good estates in taile, and yet these words de corpore are omitted.

(c) 3. E. 3. tit. breue 743. 3. E. 3. tit. Estates.
(d) 12. H. 4. 2.
(e) 37. H. 6. 15.
(f) 5. H. 5. 6.

It is holden (g) by some opinion, that if there be grandfather, father and sonne, and lands are giuen to the grandfather, and to his heires begotten by the father, the father dieth, the grandfather dieth, the sonne is in as heire to the grandfather begotten vpon the body of his father, and the wife of the grandfather in that case shall be indowed. But certaine it is, that in some cases one shall haue the land per formam doni that is not issue of the body of the Donee which see Section 30.

(g) 12. H. 4. 2. per Horton.

¶ *Engendres.* This word may in many cases be omitted or expressed by the like, and yet the state in taile is good; as, Hæredibus de carne, hæredibus de se, hæred quos sibi contigerit, &c. as is aforesaid, and where the word of Littleton is, ingendred, or begotten, procreatis, yet if the word be procreandis, or quos procreauerit, the estate in taile is good: and as procreatis shall extend to the issues begotten afterwards, so procreandis shall extend to the issues begotten before.

18. E. 2. tit. Bre. 836.
24. E. 3. 28.

Section 16.

¶ *A vn home & sa feme.* (a) Then put the case that lands bee giuen to a man and a woman vnmarried, and the heires of their two bodies: for the apparant possibilitie to marry, they haue an estate taile in them presently. (b) So it is where lands bee giuen to the husband of A. and to the wife of B. and to the heires of their bodies, they haue presently an estate in taile, in respect of the possibilitie. If a feme sole doe infeoffe a married man causa matrimonij prælocuti, it is good for the possibilitie. But put the case that the premisses and the habendum bee in other manner than Littleton hath put, and let vs see what

(a) 5. H. 7. 10. 11. E. 3. Formdon 30. Tr. Com. 35.

(b) Lib. 1. fol. 120. Chudleys case, 40. Ass. pl. 13. 34. Ass. pl. 1. Fleta lib. 5. ca. 34.

TEnant en Taile especiall ẽ lour fees ou Tenements sont dones a vn home & a sa feme. & a les heires de lour deux corps engendres; en tiel case nul poet inherit p force de le dit done, forsq; ceux q̃ sont ingendres perentr̃ eux deux. Et est appel le speciall Taile, pur ceo que si la fẽe deuy, & il prent auẽ fẽe, & ad issue, issue del se-

TEnant in taile speciall is where Lands or Tenements are giuen to a man and to his wife, and to the heires of their two bodies begotten; In this case none shall inherit by force of this gift, but those that bee engendred between thẽ two. And it is called especiall taile, because if the wife die, and hee taketh another wife, and haue issue, the is-

cond feme ne serra jammes inheritable p force ô tiel done, ne auxy issue del second baron, si le prim Baron deuie.

sue of the second wife shall not inherit by force of this gift, nor also the issue of the second husband, if the first husband die.

(c) 21.H.6.7.

what the Law is in these cases. (c) As if a man in the premisses giue lands to another and the heires of his bodie, habendum to him and his heires for euer; in this case he hath an estate taile, and a fee simple expectant: And so (it is said) via verso, if lands be giuen to a man and to his heires in the premisses, habendum to him and to the heires of his bodie, that he hath an estate taile, and a fee simple expectant. (d) If lands be giuen to B. and his heires, to haue and to hold to B. and his heires, if B. haue heyres of his bodie, and if he die without heires of his bodie that it shall reuert to the donor, this is adiudged an estate taile, and the reuersion in the donor. (e) For, Voluntas donatoris in charta doni sui manifestè expressa obseruetur; and therefore in the case next precedent, if these or the like words be added, (and if he die without heires of his bodie, that the lands shall reuert to the donor) that then the habendum shall by authoritie of diuers Bookes bee construed vpon the whole deed, to be a limitation or a declaration, what heires are meant in the premisses, to inherit, and that in that case the reuersion is in the donor.

(d) 30.Ass.p.47. 35.Ass.p.14.37.Ass.15. 5.H.5.6.

(e) W.2.ca.21.

(f) If a man make a Charter of feoffement of an acre of land to A. and his heires, and another deed of the same acre to A. and the heires of his bodie, and deliuer seisin according to the forme and effect of both deeds: In this case he cannot take a fee simple onely, as some hold, for that liuerie was made according to the deed in taile, as well as to the Charter in fee, neither can the liuerie enure onely to the deed of estate taile with a fee simple expectant, for that liuerie was made as well vpon the deed in fee simple, as the deed in taile. Therefore others hold, That in that case it shall enure by mo'ties, that is, to haue an estate taile in the one moitie, with the Fee simple expectant, and a fee simple in the other moitie: And so the liuerie shall worke immediately vpon both deeds.

(f) 2.H.6.25. 45.E.3.20.

Section 17.

¶ E mesme le maner est lou tenements sont dones p vn home a vn auter oue vn feme, que est la file ou cousin al donour en frankmariage, p quel doñ ad vn enheritance per ceux parolx (frankmariage) a ceo annexe, coment que ne soit expresse-ment dit, ou reherce en le done, ceo salcauoir, que les donees auerõt les tenemẽts a eux & a lour heires penter eux deux engendres. Et ceo est dit especial taile, pur ceo que issue del se-

¶ IN the same manner it is, where tenements are giuen by one man to another, with a wife (which is the daughter or cousin to the giuer) in frankmariage, the which gift hath an enheritance by these words (frankmariage) annexed vnto it, although it bee not expressly said or rehearsed in the gift (that is to say) that the donees shall haue the tenements to them and to their heires betweene them two begotten. And this is called especiall taile, because

¶ A *Vn home oue vn feme.* Albeit the gift is made of the land to the man with his daughter, &c. yet is the gift good to them both in speciall taile, and therefore, that of Stephan de la More in (g) 5.E.3. is very remarkeable, where the case was, that Robert gaue the reuersion of lands which Agnes his wife did hold for her life to Stephen de la More, Habendum post mortem dictæ Agnetis in liberum maritagium cum Iohanna filia eiusdem Roberti, and it is adiudged that it is a good estate taile: wherein three things are to be obserued; First that Ioane the daughter tooke with her husband an estate in especiall taile, albeit she were named but vnder a cum, viz. cum Iohanna, &c. 2. That that cum doth come after the habendum, for that it is but all one sentence, 3. That these words, in liberum maritagiũ, doe create an estate of inheritance in speciall taile as Littleton

Vid.Sect.19.20.

5.E.3.17.

(g) This case is touched in Pl. Com 158. to bee in 4.E.3. which being not found in that yeare it is there so left without any further reference, but you shall finde it as aboue said in 5.E.3.17.

tleton ſaith, Le donee ad vn inheritance per reaſon de ceux parolz (frankmariage) a ceo annexe, coment que ne ſoit expreſſement dit, &c. But this had neede of ſome interpretation, for if lands be giuen by theſe words (in frankmariage) according to the rules of Law, then doe theſe words create an eſtate of inheritance in ſpeciall taile; for the conſideration of mariage is in that caſe more fauoured in Law than any other conſideration: But though the gift bee in theſe words, yet if it be not conſonant to the rules of Law in other things requiſite thereunto, there they create but an eſtate for life. And therefore to ſpeake once for all; Foure things bee incident to a frankmariage. First, that it bee giuen for conſideration of mariage either to a man with a woman or, as ſome haue held, to a woman with a man: For in (h) 6.E.3.33. in Peirs de Saltmarſh his caſe, a man gaue land to his ſonne in Frankmariage, and Fitz N.B.172. taketh the Law ſo alſo. And 7.E.4.12. per Moyle againſt a new opinion in temps H.8.Br.tit. Frankmariage the former bookes being not remembred. Secondly, that the woman or man, that is the cauſe of the gift (i) be of the blood of the Donor, but it may bee made aſwell after mariage as before, and it may be made with a widow, &c. Thirdly, if the gift be made of ſuch a thing as lyeth in tenure, that the Donees hold of the Donor at the time of the eſtate in Frankmariage made. A rent ſeruice (k) may be giuen in Frankmariage becauſe it may bee holden. And ſo may a Rent charge or Rent ſeeke as Fitz N.B. holdeth; and it appeareth in our bookes that a Common was granted in Frankmariage. Fourthly, that the Donees ſhall hold freely of the Donor till the fourth degree be paſt. And therefore if land be giuen to a woman, with a ſonne of the Donor in Frankmariage, there paſſeth an inheritance, but if the Donee that is the cauſe of the gift be not the blood of the Donor, then there paſſeth but an eſtate for life if Liuery be made. Alſo if (l) lands be giuen to a man with a woman of the blood of the Donor in liberum maritagium, the remainder in fee either to a ſtranger or to the Donees they haue no eſtate taile, becauſe there is no tenure of the Donor, but if (m) in that caſe, the remainder had beene limitted to another in taile reſeruing the reuerſion in fee to the Donor there the ſaid words (in liberum maritagium) create an inheritance becauſe the Donees hold of the Donor. And this is the cauſe that it is holden, That a man cannot deuiſe land in Frankmariage becauſe the Donee cannot hold of the Donor. And Ceſty que vſe before the ſtatute of 27.H.8. could not haue made a gift in Frankmariage becauſe the reuerſion was in the Feoffees. (n) And if the Donor doth giue lands in liberum maritagium reſeruing a rent, this reſeruation ſhall take no effect till the fourth degree be paſt, but the Frankmariage is good, for if the reſeruation ſhould be good, then could not the Donees haue an Eſtate taile for want of words of the heires of their bodyes.

cond feme ne poit inheriter, &c. the iſſue of the 2. wife may not inherite.

W.2.ca.1. 19.E.3.tit.taile.1.

(h) 6.E.3.33. Fitz.N.B.172. 7.E.4.12. 15.E.2. Cui in vita. Sect.22.

(i) 4.E.3.8. 31.E.1.taile.30. Bracton.lib.2.cap.7.

(k) 22.R.2.tit.diſcent.50. Fitz.N.B.212. 9.H.6.35.b. W.2.ca.1.acc.

(l) Temps H.8.Br.frankm.11 13.E.1. formdon 63. Vid.32.E.1.tail.25. 2.E.2.Feoffment & fait.9. 17.E.3.5.a.45.E.3.20.

(m) 20.E.2.aid 174. 31.E.3.Gard 216.

(n) Bracton.lib.2.cap.7. 32.E.1.taile.31. 13 H.4.74.4.H.6.17. 26.Aſſ.66.31.E.3.garr.29.

¶ *En Frankmariage.* Liberum maritagium, **Free mariage**; Maritagium is taken for Fee taile, and deuideth maritagium into liberum & ſeruitio obligatum: and herewith agreeth Bracton (o) lib.2.cap.34.& 39. Maritagium eſt aut liberum aut ſeruitio obligatum. & lib.2.ca.7.nu. 3.& 4. liberum maritagium dicitur, vbi donator vult quod terra ſic data quieta ſit & libera ab omni ſeculari ſeruitio. And ſo, before Bracton, ſaid Glanuill. lib.7. ca.18. Maritagium autem aliud nominatur liberum aliud ſeruitio obnoxium; liberum dicitur maritagium quando aliquis liber homo aliquam partem terræ ſuæ dat cum aliqua muliere in maritagium, ita quod ab omni ſeruitio terra illa ſit quieta, &c. And after both of them Fleta that followed them both, lib.3.cap.1. ſaith, Eſt autem quoddam maritagium liberum ab omni ſeruitio ſolutum donatori vel ejus hæredi, &c. Et eſt ſimiliter maritagium ſeruitio obligatum & onetatum, &c. And theſe words (in liberum maritagium) are ſuch words of art, and ſo neceſſarily required, as they cannot be expreſſed by words equipollent, or amounting to as much. As if a man giue lands to a man with his daughter in connubio ſoluto ab omni ſeruitio, &c. Yet there paſſeth in this caſe but an eſtate for life, for ſeeing that theſe words (in liberum maritagium) create an eſtate of inheritance againſt the generall rule of Law, the Law requireth that they ſhould be legally purſued. But then it may be demanded if a man had giuen lands at the Common law in libero maritagio, whether had the Donees a fee ſimple without theſe words (heires) for that it appeareth by that which hath beene ſaid before that all gifts in taile were fee ſimple at the Common Law, and that the ſtatute of W.2. did not create any eſtate in Fee taile but out of an eſtate in Fee ſimple. To this it is anſwered that theſe words (in liberum maritagium) did create an eſtate in fee ſimple at the Common law; and it is holden in 31.E.3. gard.116. Per ceux parolx in frankmariage les donees aueront les terres a eux & a lour heires parenter eux engendres, & ceo eſt dit eſpecial taile. But yet betweene Donees in Frankmariage and other Donees in ſpeciall taile there be many notable diuerſities. If the King giue land to a man and a woman, and the heires of their two bodies, and the woman die without iſſue, yet ſhall the man be tenant in taile apres poſſibilitie? But if the King giue land to a man with a woman of his kindred in a frankmariage and the woman dieth without iſſue the man in the Kings caſe ſhall not hold it for his life becauſe the woman was the cauſe of the gift, but otherwiſe

(o) Bract.lib.2 ca.34. & 39. & lib.2.ca.7.nu.3.& 4.

Glanuill,lib.7.ca.1.& ca.18.

Fleta.lib.3.ca.1.

30.E.1.tit.Formdon.66. admdg.acc.

31.E.3.tit.Gard.116. Mirror.cap.2.§.15.acc.

9.H.3.Dower 202.

wife it is in the caſe of a common perſon. If lands be giuen to a man and a woman in eſpeciall taile and they are diuorced cauſa præcontractus both ſhall hold the lands for their liues, But in (p) caſe of frankmartage if they be ſo diuorced, the woman ſhall enioy the whole land, becauſe ſhe was the cauſe of the gift. If lands holden in Socage (q) be giuen in eſpeciall taile and the Donees die the iſſue being within the age of 14. yeares, (r) the next of kinne of the part of the father or of the part of the mother which can hap the cuſtody ſhall haue it, but in caſe of frankmartage the heire of the part of the mother ſhall haue it, becauſe as it hath beene ſaid, ſhee was the cauſe of the gift.

7.H.4.16.

(p) 13.E.3.tit.Aſſ. 19.E.3.Aſſ.83. 12.Aſſ.12. 19. Aſſ.2. 8.E.Aſſ.45.

(q) Pl.Com.Carils caſe.

(r) 17.H.3.tit Gard.146. 27.E.379.

Section 18.

¶ ET nota, quod hoc verbum (Tallaire) idem eſt quod ad quandã certitudinem ponere, vel ad quoddam certum hæreditamentum limitare. **Et pur ceo q̃ eſt limit & mis en certaine, quel iſſue inheritera per force de tiels dones, & come longement lenheritance endurera. il eſt appelle en Latin,** feodũ talliatum, .i. hæreditas in quandam certitudinem limitata. **Car ſi tenant in general taile morust ſans iſſue, l'donor ou ſes heires poiẽt enter cõe en lour reuerſion.**

AND note that this word (*Talliare*) is the ſame as, to ſet to ſome certaintie, or to limit to ſome certaine inheritance. And for that it is limitted and put in certaine, what iſſue ſhall inherite by force of ſuch gifts, and how long the enheritance ſhall indure, it is called in Latine, *feodum talliatum, .i. hæreditas in quandam certitudinem limitata.* For if tenant in generall tayle dieth without iſſue, the Donor or his heires may enter as in their reuerſion.

¶ *Et nota.* This, in our Author throughout his three bookes, betokeneth ſome notable point of inſtruction worthy of more ſpeciall obſeruation which is often (t) vſed by him as you may perceiue by the Sections noted in the margent.

(t) *Sect.*18.37.42 43.47. 50.64.72.89 90 104 108. 114.116. 147.158.161. 168. 170.183.254. 279. 346.387.452.467.618. 619.637.642.670.982. 684.711.717.719.738.

¶ *Feodum talliatum .i. hæreditas in quandam certitudinem limitata.* Here our Author doth interpret what feodum talliatum is. Of all the eſtates tayle moſt coarcted or reſtrained that I finde in our bookes, is the eſtate taile in 39. Aſſ. Pl 20 where lands were giuen to a man and to his wife and to one heire of their bodies lawfully begotten and to one heire of the body of that heire only. This caſe being adiudged in the point is an exception (ſome ſay) out of the generall rule put before by Littleton. Sect 13, that all eſtates tailes were fee ſimple at the Common Law, for (ſay they) by

Weſt.2.cap.3. Pl.Com.251.a.

39. *Aſſ.pl.22.*

Sect.13. Vid.pl.com. fo.29.b.

this limitation (hæredi) in the ſingular number the Donees had not had a fee ſimple at the Common law. Vide regiſtrum iudiciale, fo.6. a gift made to a man & hæredi maſculo de corpore ſuo.

Regiſt iudic fo.6

Section 19.

¶ **Et meſm̃ le maner eſt del tenant en ſpecial taile, &c. Car en chaſcun done en le taile ſauns pluis ouſter dire, le reuerſion del fee ſimple eſt en le donor. Et les donees &**

IN the ſame manner it is of the tenant in eſpeciall taile, &c. For in euery gift in taile without more ſaying, the reuerſion of the fee ſimple is in the donor. And the donees and

¶ *En chaſcun done en taile ſans pluis ouſter dire, le reuerſion del fee ſimple eſt en le donor.* This is wrought by the conſtruction of the ſtatute of W.2. cap.1. which hath turned the fee ſimple of the Donee into a particular eſtate of inheritance, and the poſſibility of the Donor to a reuerſion in him expectant vpon the eſtate taile, ſo

(t) 12.E.4.23. 5.H.7.14. *West.*2.ca.13. *Pl.Com.*247. 248.251.562.2.E.2.*tit.reseit.*147. 33.H.6.27.39.E.3.18.45. E.3.20.

so as there be two inheritances of one land, yet this was doubted in our Bookes (t) & there resolued according to Littleton. But I see no cause wherefore that point should be drawne in question, for at the same Session of Parliament (in which the Statute de donis conditionalibus was made) viz. ca.3. it is expresselp said, vel per donum in quo reseruatur reuersio, so as by the iudgement of the same Parliament a reuersion was setled in the Donor.

¶ *Le reuersion del fee simple est en le donor.* A reuersion is where the residue of the estate alwayes doth continue in him that made the particular estate, or where the particular estate is derined out of his estate, as here in the case of Litt. Tenant in Fee simple, maketh a gift in taile, so it is of a Lease for life, or for yeares. If a man extend Lands by force of a statute Merchant, Staple, recognizance or Elegit,

lour issues ferront al donor & a ses heires autiel⁊ seruices, cõe le donor fait a son Seignior pchein a luy Paramont, forspris les donees in frankmarriage, les queux tiendront quietement de chescun maner de seruice, sinon que soit per fealtie tanque le quart degree soit passe, & apres ceo q̃ le quart degree soit pass. issue en le cinq degree, & issint oustr̃ lauks des issues apres luy, tiendrõt del doñ ou ses heires cõe ils teignõt ouster. cõe il est auãtd

their issue shall doe to the Donor, and to his heires the like seruices, as the Donor doth to his Lord next Paramont, except the Donees in Frankmarriage who shall hold quietly from all manner of seruice (vnlesse it bee for fealtie) vntill the fourth degree is past, and after the fourth degree is past, the issue in the fift degree, and so forth the other issues after him, shall hold of the Donor or of his heires as they hold ouer, as before is said.

he leaueth a reuersion in the Connsor. But since Littleton wrote, the description must be more large vpon the Statute of (a) 27.H.8. for at this day, if a man seised of lands in fee make a Feoffment in fee, (and depart with his whole estate) and limit the vse to his daughter for life, and after her decease, to the vse of his sonne, in taile, and after to the vse of the right heires of the Feoffor. In this case, albeit he departed with the whole fee simple by the feoffment, and limitted no vse to himselfe, yet hath he a reuersion (b) for whensoeuer the Ancestor takes an estate for life, and after a limitation is made to his right heires, the right heires shall not be purchasors. And here in this case when the limitation is to his right heires, and right heire hee cannot haue during his life (for non est heres viventis) the Law doth create an vse in him during his life, vntill the future vse commeth in esse, and consequently the right heires cannot bee purchasors, and no diuersitie when the Law creates the estate for life, and when the partie. And all this was adiudged betweene (c) Fenwick and Mitford in the Kings Bench; and if the limitation had beene to the vse of himselfe for life, and after to the vse of another in taile, and after to the vse of his owne right heires, the reuersion of the fee had beene in him, because the vse of the fee continued euer in him; and the Statute doth execute the possession to the vse in the same plight, quality and degree as the vse was limitted.

(a) 27.H.8.ca.10.

(b) 38.E.3.26.27.E.3.*age* 118.24.E.3.36. 40.E.3.

(c) *Tr.*31.*Eliz. inter Fenwicke & Mitford.* 32.H.8.*gard.*93. 28.H.8.*Dier.*8.9.10.&c. *Buckenhams case.* 5.*Marie. Dier* 163.

(d) If a man make a gift in taile or a lease for life, the remainder to his owne right heires, this remainder is void, & he hath the reuersion in him, for the Ancestor during his life, beareth in his bodie (in iudgement of law) all his heires, and therefore it is truly said that Hæres est pars antecessoris. And this appeareth in a common case, that if land be giuen to a man and his heires, all his heires are so totally in him, as he may giue the lands to whom he will.

(d) 1.H.5.8.4.H.6.20. 9.*Eliz.Dier.Bromleys case.*

(e) So it is if a man be seised of lands in Fee and by indenture make a Lease for life, the remainder to the heires male of his owne bodie, this is a void remainder, for the Donor cannot make his owne right heires purchasor of an Estate taile without departing of the whole Fee simple out of him: as if a man make a Feoffment in fee to the vse of himselfe for life, and then to the vse of the heires males of his bodie, this is a good Estate taile executed in himselfe, and the limitation is good by way of vse, because it is raised out of the state of the Feffees, which the Feffor departed with, and that is apparant, for a limitation of vse to himselfe had without question beene good.

(e) *Dier.*5.*Marie* 156. *Gresswolds case adiudge. Bendlowes Seriant in his report agreeth.*

(f) If a man make a Feoffment in fee to the vse of himselfe in taile, and after to the vse of the Feoffee in fee, the Feffee hath no reuersion, but in nature of a remainder, albeit the Feoffor haue the Estate taile executed in him by the Statute, and the Feoffee is in by the Common Law, which is worthy of obseruation.

(f) 20.*El.*&.*Dier.*

To conclude this point (g) whosoeuer is seised of land, hath not only the Estate of the land in him, but the right to take profits, which is in nature of the vse, and therefore when he makes a Feoffment in Fee without valuable consideration to diuers particular vses, so much of the vse, as he disposeth not, is in him, as his ancient vse in point of reuerter. As if a man be seised of two Acres, the one holden by Knights seruice, by priority, and the other by Knights seruice holden by posteriority, and maketh a feoffment in fee of both Acres to the vse of himselfe and his heires, the old vse continued in him, and the priority and posteriority remayne. So it is of lands of part of the mother, the vse shall goe to the heire of the part of the mother, which could not be, if it were not the old vse, but a thing newly created: the like law of lands, of the custome of Borough-english Gauelkind, &c.

(g) 13.H.7.6. 28.H.8.Dier.12.

¶ *Les dones & lour issues ferront al donor & a ses heires autiels seruices come le donor fait a son seignior procheine a luy paramount.* The reason of this is, that when by construction of the said Statute, there was a reuersion seised in the Donor for that the Donee had an Estate of inheritance, the Iudges resolued that hee should hold of his Donor, as his Donor held ouer: as if the Tenant had made a Feoffment in Fee at the Common Law, the Feoffee should haue holden of the Feoffor as he held ouer; and before the Statute of W.2. the Donee had holden of the Donor as of his person, and now of him as of his reuersion: but if a man make a Lease for life, or yeares, and reserue nothing, hee shall haue fealtie only and no rent, though the Lessor hold ouer by rent, &c. And this that Littleton saith, is regularly true, if the Donor maketh no speciall reseruation, for then the speciall reseruation excludes the tenure which the Law would create. As if Tenant by Knights seruice maketh a gift in taile reseruing Fealtie and Rent, the Donee shall hold in Socage, by Fealtie, and Rent, and not by Knights seruice. But if a man hold land of the King in grand Seriantie, and maketh a guift in taile generally, in this case the Donee shall not hold of the Donor by graund Seriantie, because no man can hold by graund Seriantie, but of the King only, as hereafter shall be said, and therefore seeing graund Seriantie doth include Knights Seruice, he shall in that case hold of the Donor by Knights Seruice. If a man seised of land in the right of his wife holden by Knights Seruice giueth the same lands in taile generally, the Donee shall not hold of him by Knights Seruice, because his wife held the land, and he had nothing but in her right. And in that case the Baron hath gained a new reuersion by wrong, and therefore such a Donee shall doe Fealtie only.

5.E.4.7. Lib.1.76.84.85.100.&c. Cudley. Lib.2.56.57.58.77.78. Lib.4.22. Lib.6.34.43.

A. seised of two acres of land, holdeth the one of B. by Knights Seruice, and twelue pence Rent, and the other of C. in Socage and one pennie Rent, and makes a gift in taile of both Acres without any expresse reseruation of any tenure, In this case the Donor hath but one reuersion. And yet he shall make seuerall auowries, because there be seuerall tenures created by Law, in respect of the seuerall tenures ouer: and the auowrie is made in respect of the tenures.

Lord, Mesne and Tenant, the Tenant holdeth by foure pence, and the Mesne by twelue pence, the Tenant makes a gift in taile without reseruing any thing, by reason whereof he holdeth by foure pence, in respect of the tenure ouer. Afterwards the reuersion escheate, now shall the Donee hold by twelue pence, for the Mesnaltie which was foure pence is extinct, and the law reserued the tenure vpon the gift in taile, in respect of the Mesnaltie, and when the Mesnaltie is extinct, the former Rent betweene the Donor and Donee is extinct also, and then by the same reason that the Donee shall take aduantage, if the Donor by release or confirmation had holden by lesser Seruices, by the same reason he shall be preiudiced, when he holdeth by greater seruices.

49.E.3.10.

¶ *Forspriſe les donees en Frankmarriage.* It is to bee vnderstood, that although the Land be giuen in liberum maritagium, in free marriage generally, yet first the Law doth make a limitation of this word (free) viz. till the fourth degree bee past, for the reason that our Author here yeelds. And 2. albeit it bee free marriage, yet the Donees and their issues vntill the fourth degree be past shall doe fealtie, for that is incident to euerie tenure (except Frankealmoigne) and cannot be separated from it, and therefore the Donees and their issues shall hold it as freely till the fourth degree be past, as the Donor can make it. See more of this in the Chapter of Frankalmoigne.

Bracton.lib.2.fol.21. Britton.cap.119 Fleta lib.3.cap.11.& lib.6. cap.2. Vide Sect.17.20.

Sect. 20.

¶ Tles degrees en frankmariage serrõt accõpts en tiel maner. Et de

And the degrees in frankmariage shal bee accounted in this manner, *viz.* from

¶ Where Littleton saith (a) that the Donees in frankmariage shall hold by fealtie only vntill the fourth degree

(a) *Vide Sect.*17.19.138. 268.269.271.733.

degree be paſt & then the iſſue in the fift degree ſhall hold of the Donor as the Donor holdeth ouer,(b) Vide Bracton vbi ſupra, Ita quod ille cui terra ſic data fuit, nullum inde faciat ſeruitium vſque ad tertium hæredem & vſque quartum gradum, ita quod tertius hæres ſit incluſus. And herewith alſo agreeth, Fleta vbi ſupra. And the (c) learning of degrees ſet out in the Ciuill and Canon Law (wherein I finde ſome difference) is worth the knowledge, to the end that Littleton and the law in this caſe may the better bee vnderſtood, which I will deuide into certain rules, whereof the firſt is; That a perſon added to a perſon in the line of Conſanguinitie maketh a degree. And it is to bee vnderſtood that a line is threefold, viz. the line aſcending, diſcending, and collaterall. And firſt for example, of the aſcending line, take the Sonne and adde the Father, and it is one degree aſcending, adde the Grandfather to the Father, and it is a ſecond degree aſcending

So as how many perſons there be, take away one, and you haue the number of degrees. If there be foure perſons it is the third degree, if fiue the fourth, for one muſt exceed, and then you haue the degree. Likewiſe by the diſcending, take the Father, and adde the ſonne, and it is one degree, then take the Sonne and adde the Grandchild, and it is the ſecond degree, and ſo likewiſe further, wherein obſerue that the Father, Sonne and Grandchild, albeit there are three perſons, yet they make but two degrees, becauſe (as it hath beene ſaid) one muſt exceed for making a degree.

It is to bee noted, that in euery line the perſon muſt be reckoned from whom the computation is made. And there is no difference betweene the Canon and Ciuill Law in the aſcending and diſcending line, for thoſe whom the Ciuillians doe reckon in the ſecond degree, the Canoniſts doe reckon in the firſt, and thoſe whom they place in the fourth, theſe place

(b) *Glanvill. lib 7. cap 18. Bract. lib 2 fol. 21. Britton. cap. 119. Fleta. l. 3. cap. 11. & lib. 6. cap. 2.*

(c) *Vide 10. E. 3. tit monstr. 157. 31. E. 3. ceſſauit 22. 31. E. 3, gard. 116. 21. H. 7, 30.*

1. Fulc.

2.

3.

le donor a les donees en frankmarriage, le primer degree, pur ē que la feme que eſt vn des donees couiēt eſtre file, ſoer, ou aut couſin a le donor. Et de les donees tanque a lour iſſue il ſerra accompt le ſecond degree, & de lour iſſue tanque a ſon iſſue, le tierce degree, & iſſint ouſter &c. Et la cauſe eſt, pur ē que apres chelē tiel done les iſſues queux veignont de le donor, & les iſſues queux veignont de les donees apres le quart degree paſſe de ambideux parties en tiel forme deſtē accompt, poyent enter eux per la ley de ſaint Egliſe entermarie. Et que le donee en frankmarriage ſerra dit le prime degree de les quart degrees hōe poit veier en vn plee ſur vn brē de Droit de Garde P. 21. E. 3. Lou le Pl. counta, que ſon treſaiel fuit ſeiſie de certē terre, &c. & ceo tenuſt dun autre per ſeruice de chiualer, &c. quel dona la terre a vn Rafe Holland oueſq; ſa ſoer ē frankmariage, &c.

the Donor to the Donees in frākmariage the firſt degree, becauſe the wife, that is one of the donees ought to be daughter, ſiſter, or other coſen to the Donor, & from the donees vnto their iſſue ſhall be accoūted the ſecōd degree, and from their iſſue vnto their iſſue the third degree, and ſo forth. And the reaſon is, becauſe that after euery ſuch gift, the iſſues of the Donor, & the iſſue of the Donees after the fourth degree paſt of both parties in ſuch forme to bee accounted may by the Law of the holy Church entermarrie. And that the Donee in frankmarriage ſhall be ſaid to bee the firſt degree of the foure degrees, a man may ſee in a plea vpon a Writ of Right of Ward, P. 21. *E.* 3. where the Pl. pleadeth that his great Grandfather was ſeiſed of certaine Lands, &c. and held the ſame of another by Knight Seruice, &c. who gaue the Land to one *Raphe Holland* with his ſiſter in Frankmarriage, &c.

in the ſecond. Therefore if we will know in what degree two of kindred doe ſtand according to the Ciuile Law, wee muſt begin our reckoning from one, by aſcending to the perſon from whom both are branched, and then by diſcending to the other to whom we doe count, and it will appeare in what degree they are. For example, In brothers & ſiſters ſonnes, take one of them and aſcend to his father, there is one degree from the father to the grandfather, that is the ſecond degree, then deſcend from the grandfather to his ſonne, that is the third degree, then from his ſonne to his ſonne, that is the fourth. But by the Canon Law there is another computation, for the Canoniſts doe euer begin from the ſtocke, namely from the perſon of whome they doe diſcend, of whoſe diſtance the queſtion is. For example, if the queſtion be, In what degree the ſonnes of two brothers ſtand by the Canon Law: wee muſt begin from the grandfather, and diſcend to one ſonne, that is one degree; then diſcend to his ſonne, that is another degree; then deſcend againe from the grandfather to his other ſonne, that is one degree; then diſcend to his ſonne, that is a ſecond degree, ſo in what degree either of them are diſtant from the common ſtocke, in the ſame degree they are diſtant betweene themſelues: And if they bee not equally diſtant, then we muſt obſerue another rule. In what degree the moſt remote is diſtant from the common ſtock, in the ſame degree they are diſtant betweene themſelues, and ſo the moſt remote maketh the degree. And albeit the donee be a Coſine in the third or fourth degree from the donor, yet in this computation it maketh the firſt degree: Gradus dicitur a gradiendo, quia gradiendo aſcenditur & diſcenditur. And thus much of the Ciuile and Cannon Law is neceſſarie to the knowledge of the Common law in this point: And herewith agreeth our Author in the words following:

¶ *Les iſſues queux veignont de le donor, & les iſſues queux veignont de les donees apres le 4. degree paſſe dambideux parties in tiel forme deſte accoũt poient enter eux per le Ley de Saint Eſgliſe entermarrier.* (De Saint Eſgliſe) (d) So as hereby it appeareth, That the computation of the degrees in this caſe, muſt bee according to the Cannon Law. But it is neceſſarie to bee knowne concerning marriages betweene perſons of kindred one to another, that it is enacted (e) by the Statute of 32. H. 8. that no reſeruation or prohibition (Gods Law except) ſhall trouble or impeach any marriage without the Leuiticall degrees.

(d) *Brit. ca.* 119. *Accord. Flet. lib.* 3. *ca.* 11. *& li.* 6. *c.* 2.

(e) 32. *H.* 8. *c.* 38.

The caſe vouched by Littleton in 31. E. 3. you ſhall find abridged by Fitzh tit. gard 116. And albeit this yeare of 31. E. 3. was neuer in print till Fitzhebert did abridge it and publiſh it in print anno 11 H. 8. and goeth vnder the name of broken yeares, yet heere it appeareth by our Author, that the ſame is of authoritie in Law, as hereafter alſo in other places ſhall bee obſerued.

Sect. 21.

¶ Et touts ceux tailes auãtdits, ſont ſpecifies en l'dit eſtatute de W. 2. Auxy ſont diuers auks eſtates en le taile, coment q̃ ne ſont ſpecifies per expreſſe parols in le dit eſtatuť, mes ils ſont priſes per le equitie de l'dit Statute. Sicome Terres ſont dones a vn home & a ſes heires males de ſon corps engendres, en

And all theſe Entailes aforeſaid be ſpecified in the ſayde Statute of *W.* 2. Alſo there bee diuers other eſtates in taile, though they bee not by expreſſe words ſpecified in the ſaid Statute, but they are taken by the equitie of the ſame ſtatute. As if lands be giuen to a man, and to his heires males of his bodie begotten; in this caſe his iſſue male ſhal

¶ *Et touts ceux Tailes auauntdits ſont ſpecifies en le dit Statute de Weſtminſter* 2. And ſo it appeareth by the ſayd Statute, Auxy ſont diuers auters eſtates en le taile, &c. And herewith agreeth Carbonels Caſe, 33. Edw. 3. titulo Taile 5.

That the caſes of the ſtatute are ſet downe but for examples of eſtates taile, generall and ſpeciall, and to exclude other eſtates taile. 3. E. 3. 32. 18. Aſſ. p. 5. 18. E. 3. 46. 1. Mar. Dyer 46. Pl. Com. Seignior Barkleys caſe, fo. 251. For, Exempla illuſtrant non reſtringunt legem.

3. *E.* 3. 32. 18. *E.* 3. 46. 18. *Aſſ. p.* 5. 1. *Mar. Dy.* 46. *Pl. Com.* 251.

¶ *Equitie*

¶ *Equitie* is a construction made by the Iudges, that cases out of the letter of a ſtat. yet being within the ſame miſchiefe, or cauſe of the making of the ſame, ſhall bee within the ſame remedie that the Statute prouideth: And the reaſon hereof is, for that the Law maker could not poſſibly ſet downe all caſes in expreſſe termes, Equitas eſt conuenientia rerum quæ cuncta coniquiparat, & quæ in paribus rationibus paria iura & iudicia deſiderat. And againe, Equitas eſt perfecta quædam ratio quæ ius ſcriptum interpretatur & emendat, nulla ſcriptura comprehenſa, ſed ſolum in vera ratione conſiſtens. Equitas eſt quaſi equalitas. Bonus judex ſecundum equum & bonum iudicat, & equitatem ſtricto iuri præfert. Et ius reſpicit æquitatem.

tiel caſe ſ̃ iſſue male inherita, & le iſſue femal ñ vnq̃ enherita pas, vncor in l'g aũc̃ tailes auantdits auterment eſt.

inherit, and the Iſſue female ſhall neuer inherit, and yet in the other entailes aforeſaid, it is otherwiſe.

Brall. lib. 4. fol. 186.
(b) *18. Aſſ. p. 5. 18. E. 3. 46. 33. E. 3. tit. Taile 5. 3. E. 3. 12. Pl. Com. Seignior Berkleys caſe, 1. Mar. Dy. 46. V. Sect. 24.*

¶ *Sicome terres ſont done a vn home & a les* (b) *heires males de ſon corps engendres, en tiel caſe ſon iſſue male inheritera, & liſſue female ne vnques inheritera, &c.* This ſhall be explained afterward, Sect. 24.

Sect. 22. & 23.

¶ These two Sections, or any thing therein, do neede no explanation, in reſpect they ſhall be alſo explaned hereafter in the next Section, ſauing onely theſe words (queux doient inheriter) are verie obſeruable, for they implie a diuerſity betweene a diſcent and a purchaſe. For when a man giueth lands to a man and the heires females of his body, and dyeth hauing iſſue a ſon and a daughter, the daughter ſhall inherit; for the will of the donor (the Statute working with it) ſhall bee obſerued. But in caſe (g) of a purchaſe it is otherwiſe: For if A. haue iſſue a ſonne and a daughter, and a leaſe for life be made, the remainder to the heires females of the bodie of A. A. dieth, the heire female can take nothing, becauſe ſhe is not heire; for ſhee muſt bee both heire and heire female, which ſhe is not, becauſe the brother is heire, and therefore the will of the giuer cannot be obſerued, becauſe heere is no gift, and therefore the ſtatute cannot worke thereupon. And ſo it is if a man hath a a ſonne and a daughter, and dieth, and lands bee giuen to the daughter, and the heires females of the bodie of her father, the daughter ſhall take

(g) *9. H. 6. 24. 11. H. 6. 13. 14 37. H. 8. Br. tit. Done 42. Tit. meſne 1. & 40. Dyer 23. El. 374. Shelleys caſe lib. 1. fo.*

C Mm̃ manner eſt, ſi tres ou tenemẽts ſoint doneʒ a vn hõe & a ſes hẽs females de ſon corpʒ engendʒes; en tiel caſe ſon iſſue female luy inherita p force & form de l'dit done, & nemy iſſue male, pur ceo que en tiels caſes de dones faits en le taile, queux doient enheriter, & q̃ nemi, la volunt̃ del donor ſerr̃ obſerue.

IN the ſame manner it is, if Lands or Tenements bee giuen to a man, and to his heires females of his bodie begotten; In this caſe his iſſue female ſhall inherit by force and forme of the ſaid gift, and not his iſſue male. For in ſuch caſes of gifts in taile, the wil of the Donor ought to bee obſerued, who ought to inherit, and who not.

C Et en le caſe q terr̃s ou tenements ſont doneʒ a vn hõe, & a ſes heires males d̃ ſ̃ corpʒ iſſuants, & il ad iſſue deux fitz, & deuy, & leign fitz entra come hẽ male, & ad iſſue file & deuy, ſ̃ frer aũa la t̃r, & nemi la file, pur

AND in caſe where lands or tenemẽts be giuen to a man, and to the heires of his bodie, and hee hath iſſue two ſonnes, and dieth, and the eldeſt ſon enter as heire male, and hath iſſue a daughter, and dieth; his brother ſhall haue the land, &

nothing

ceo que le frere eſt heire male. Mes auterñt ſera en auters tailes q̃ux ſont ſpecifies en le dit Statute.

not the daughter, for that the brother is heire male. But otherwiſe it is in the other entailes, which are ſpecified in the ſayd Statute.

nothing but an eſtate for life, becauſe there is no ſuch perſon, ſhe being not heire. But where a gift is made to a man, and to the heires female of his bodie, there the Donee being the firſt taker, is capable by purchaſe, and the heire female by diſcent, ſecundum formam doni: And therefore Littleton purpoſely added theſe words, Queux doient inheriter.

*Sect.*24.

¶ Auxy ſi tres ſoient doñs a vn hõe, a ſes hẽs males de ſon corps ingendres, & il ad iſſue file, q̃l ad iſſue fits & dye, & puis apres l' donee deuie, en ceſt caſe le fits de la file ne inheritera paſſe p force de le taile, pur ceo que quecunque que ſerra inherit per force dun done en le taile fait as hẽs males, couient conuciер ſon diſcent tout per les Heyres Males. Mes en tiel caſe le donor poet ent p c q̃ le donee e mort ſans iſſue male en la Ley, entaunt que l' iſſue del file ne poet conueyer a luy meſme le diſcent per Heyre male.

ALſo if lands be giuen to a man and to the heires males of his bodie, and he hath iſſue a daughter, who hath iſſue a ſonne, and dieth, and after the donee die; In this caſe, the ſon of the daughter ſhall not inherit by force of the entraile, becauſe whoſoeuer ſhall inherit by force of a gift in taile made to the heires males, ought to conuey his diſcent wholly by the heires males. Alſo in this caſe the donor may enter, for that the donee is dead without iſſue male in the law, inſomuch as the iſſue of the daughter cannot conuey to himſelf the diſcent by an heire male.

¶ *Quecunque ſerra enheriter per force dun done en Taile, &c.* Vide Tr. (h) 28. H.6. Tit. Deuiſe 18. (Which is not in the booke at large, but written verbatim out of Stathã) If a man deuiſe lands to a man, and to the heires males of his bodie, and hath iſſue a daughter, which hath iſſue a ſonne, this ſonne ſhall be inheritable, and notwithſtanding in a gift in taile the Law is otherwiſe, and that by the opinion of all the Judges, in the Exchequer Chamber. But I hold this caſe to be ill reported, vnleſſe you will refer the opinion of the Judges to the gift in taile laſt mentioned. For firſt, albeit a Deuiſe may create an Inheritance by other words than a gift can, yet cannot a Deuiſe direct an inheritance to diſcend againſt the rule of Law. Secondly, there is no intent of the deuiſor appearing, that the ſonne of the daughter ſhould, againſt the rule of Law, inherit, and the Statute prouideth, that voluntas Donatoris, &c. obſeruetur. And I haue heard this caſe often denied to bee Law, both in the Kings bench, and in the Common pleas, Vide

Vide Sect. 719.
(h) 1. *H.*6. 24 11. *H.*6. 13. 14 28 *H.*6. *tit.* Deuiſe 18. *Statham tit.* Deuiſe. *Pl. Com. in in Scholaſt. caſe*, 414. *b.* 20. *H.*6. 43. 37. *H.*8. *Br. tit.* Done & Rem. 61. *tit. noſtre* 1. & 40.

Pl. Coment. 414. b. And ſo it is (i) mutatis mutandis, when a gift in taile is made to a man, and to his heires females of his bodie, and he hath iſſue a ſonne, who hath iſſue a daughter, this daughter ſhall neuer inherit, becauſe ſhe muſt conuey by diſcent from females. And for the reaſon hereof, ſee a notable Caſe in 15. E. 2. tit. Corone 285. where it is adiudged (as before it had beene) That the ſonne of a female ſhould haue an appeale of the death of a coſine; and yet the daughter her ſelfe ſhould neuer haue had it. But there it is agreed, that the ſonne of a female (k) in a Libertate probanda, ſhould be no witneſſe or proofe againſt the iſſue of the male. And the reaſon of this diuerſitie is verie obſeruable: For by the Common Law the female

(i) 11. *H.*6. 13.

15. *E.* 2. *Tit. Cor.* 386.

(k) *Miror. c.* 2. §. 7. *Vi. Glanvile lib* 14. *cap.* 3.

*Vid.Seignor de la Ware caſe.lib.*11.*fo.*1.

might haue had an appeale as heire to any of her Anceſtors, as well as the male. But by the Statute of magna carta, cap.34. Nullus capietur aut impriſonetur propter appellam feminæ de morte alterius quam viri ſui, which reſtraineth not the ſonne of the female. And there Scrope ſaith Per tout le Serjant d'Angliterre, that is, by all the Iudges of the Coife in England, it was awarded, that the iſſue of the female ſhould haue an appeale for the death of his couſin. But in a libertate probanda, the iſſue of the blood female ſhall not be receiued to proue Villenage in the iſſue of the blood male, for the mother was diſabled by the Common law, & the mother might be a neife Deen & trene, that is of the Water and Whip of three corde, (meaning ſuch a bondwoman as is vſed to ſeruile workes and correction) and enfranchiſed by her huſband. All which appeareth in the ſaid booke. And it is holden in 17.E.4.1. that if a man bee ſlaine which hath no heire of the part of his father, that his vncle of the part of his mother ſhall haue the appeale, and yet he muſt of neceſſity make his conueyance by a woman. Vid.20.H.6. fo.33. the queſtion ſuddenly demanded and debated, and no conſideration or mention had of the ſaid former iudgements and authorities; there it is compared to a gift in taile to a man and to his heires males of his body, that the heire male of the daughter ſhall not inherit which hath no affinitie to it, and yet the authoritie of the booke is great, for it is by the aſſent of all the Iuſtices of the one bench and the other in the Exchequer chamber, and therefore I leaue the learned and iudicious reader to his owne iudgement. (l) Vid. Stanford.58.b.15.E.2. 384. If a man giue lands to a man and to the heires males of his body begotten, remainder to him and to his heires females on his body begotten, the Donee hath iſſue a ſonne who hath iſſue a daughter, who hath iſſue a ſonne, this ſonne is not inheritable to either of both theſe eſtates taile, becauſe as Littleton ſaith, The Male muſt make his conueyance only by males and ſo muſt the Females by Females. But in this caſe the land ſhall reuert to the Donor. And therefore the ſafeſt way when a man will entaile his lands to the heires males and females of his body, is to limit the firſt eſtate to him and the heires males of his body, the remainder to him and to the heires of his body, and then all his iſſues whatſoeuer are inheritable. But if A. hath iſſue a ſonne and a daughter and dieth, and the ſonne hath iſſue a daughter and dieth, and a Leaſe for life is made, the remainder to the heires females of the body of A. In this caſe the daughter of A. ſhall not take cauſa qua ſupra. But albeit the daughter of the ſonne maketh her conueyance by a male ſhe ſhall take an eſtate taile by purchaſe, for ſhe is heire and a female; but if lands be deuiſed to one for life, the remainder to the next heire male of B. in taile, and B. hath iſſue two daughters and each of them hath iſſue a ſonne and the father and daughters die, ſome ſay this remainder is voide for the vncertaintie, ſome ſay that the eldeſt ſhall take it becauſe he is worthieſt, and others ſay that both of them ſhal take for that they both make but one heire. If lands be giuen to a man and to his heires males or females of his body he hath an eſtate in generall taile in him.

(l) *Stanford*,58.6. 15.*E.*2.*Nt.Cron.*384.

11.*H.*6.13. 9.*H.*6.25.

Section 25.

¶ *Vn home, & a ſa feme.* But what if tenements be giuen to a man, and to a woman being not his wife, and to the heires males of their two bodies, they haue alſo an eſtate taile, albeit they bee not married at that time. And ſo it is if lands bee giuen to a man which hath a wife, and to a woman which hath a huſband, and the heires of their two bodies, they haue preſently an eſtate taile (m) for the poſſibility that they may marry. But if lands be giuen to two huſbands and their wiues, and to the heires of their bodies begotten (n) they ſhall take a ioynt eſtate for life and ſeuerall inheritances, viz. the one huſband and his wife the one moitie, and the other huſband and wife the other moitie, and no croſſe remainder or other poſſibility ſhall be allowed by law, where it is once ſettled and take effect. But if lands bee giuen to a man and two women and the heires of their bodies begotten, (o) In this caſe they haue a ioynt eſtate for life and euery of them ſeuerall inheritance, becauſe they cannot haue one iſſue of their bodies, neither ſhall there be by any conſtruction a poſſibility vpon a poſſibilitie, viz. that he ſhall marry the one firſt and then the other. And the ſame Law it is (p) when land is giuen to two men and one woman, and to the heires of their bodies begotten.

21.*E.*3.*Formdon.*25.

(m) 15 *H.*7.10. *Lib.*1.*Dilon & fremi caſe.* 40.*Aſſ.p.*13.

(n) 24.*E.*3.29.*a.*

(o) 7.*H.*4.16. 16.*E.*3.78. *Littleton fo.*66. 15.*Eliz.Dier.*326..

(p) 44.*E.*3.*tit.Taile.*13.

IN the ſame manner it is, where lands are giuen to a man and his wife, and to the heires males of their two bodyes begotten, &c.

CEſt meſme le maner eſt, lou tenements ſont done a vn hõe, & a ſa feme, & a les heires males de lour deux corps engendrez, &c.

Section 26.27.

26.27. These two Sections neede no explanation at all.

¶ Item ſi tenẽts ſoient dones a vn home & a ſa feme, & a les heires del corps del home engendres, en cẽ caſe le barõ ad eſtate en le taile generall, et la feme forſq; eſtate pur terme de vie.

ALſo if tenements be giuen to a man and to his wife, and to the heires of the body of the man; In this caſe the husband hath an eſtate in generall taile, and the wife but an eſtate for terme of life.

¶ Item ſi tres ſoient dones a le baron & ſa feme, & a les heires le baron, q̃r il engendra de corps ſa feme, en ceo caſe le baron, ad eſtate en le taile ſpecial, & la feme forſq; pur terme de vie.

ALſo if lands bee giuen to the husband and wife, and to the heires of the husband which hee ſhall beget on the body of his wife, In this caſe the husband hath an eſtate in eſpeciall taile and the wife but an eſtate for life.

Sect. 28.

¶ Et ſi le done ſoit fait al baron & a ſa feme, & a les heires la feme de ſa corps per le baron engendres, donq; la feme ad eſtate en ſpecial taile, & le baron forſq; pur terme de vie: Mes ſi terres ſont dones a le baron & a la feme, & a les heires que le baron engendra de corps la feme, en ceo caſe ambideux ont eſtate en la taile, pur ceo que ceſt parol (heires) neſt limit a lun pluis que a lauter.

AND if the gift be made to the husband and to his wife, and to the heires of the body of the wife by the husband begotten, there the wife hath an eſtate in ſpeciall taile, & the husband but for terme of life: but if lands be giuen to the husband & the wife, and to the heires which the husband ſhall beget on the body of the wife, in this caſe both of them haue an eſtate taile, becauſe this word (heirs) is not limitted to the one more then to the other.

¶ *Heires.* This word (heires) is nomen operatiuum, to which of the Donees it is limitted, it createth the eſtate taile, but if it incline no more to the one than to the other, then both doe take as here Littleton putteth the caſe. And therewith accordeth the caſe of (q) 3.E.3. where it appeareth, Quod Robertus de S. dedit Iohanni de Riperijs & Matildæ vxori eius, & hæredibus quos idem Iohannes de corpore ipſius Matildæ procrearet, &c. and this adiudged to be an eſtate in eſpecial taile in them both, becauſe the ſtate is equally tailed to the heires of the baron as to the heires of the wife. If lands be giuen to the husband and the wife, and to the heires of the body of the ſuruiuour, the gift is good, and the ſuruiuour ſhall haue an eſtate in taile generall, but the eſtate taile veſteth not till there be a ſuruiuour. And hereby it appeareth (r) that a gift made to a man and to the heires of his body, is as good as to his heires of his body.

19.H.6.75.a. *Regiſt.* 239. 17.E.2.*tit. Taile* 23. 3.E.3.32. 4.E 3.43. 5.E.3.29.b.& 34.a. 21.E.3.43. 12.H.4.1.

(q) 3.E 3 32. 21.E.3.43. 19.H.6.75.*per Holy.*

*Regiſt.*239.

(r) 20.E.3.*Brit.*377.

Section 29.

¶ This is euident by that which hath been ſaid and needeth no explanation. But it hath beene ſaid, (ſ) that if a man giue land to another and to his heires of the body of ſuch a woman lawfully begotten, that this is no eſtate taile for the vncertainty by whom the heires ſhall bee begotten, for that the brother of the Donee or other couſin may haue iſſue by the woman which may be heire to the Donee, and eſtates in taile muſt be certaine. Therefore our Author to make it plaine in all his caſes added to theſe words (his heires) which hee ſhall ingender. But that opinion is ſince our Author wrote ouer-ruled, and that eſtate adiudged to be an eſtate taile, and begotten ſhall be neceſſarily intended begotten by the Donee.

20.H.6.36.
(ſ) Lib.1.fo.140.b. Chauleighes caſe adiudge.

¶ Item ſi terre ſoit done a vn home & a ſes heires que il engendra de corps ſa feme, en ceo caſe le baron ad eſtate en eſpecial taile, & la feme nad riens.

ALſo if land bee giuen to a man and to his heires which he ſhall beget on the body of his wife, In this caſe the husband hath an eſtate in eſpeciall taile, and the wife hath nothing.

Section 30.

¶ *Si home ad iſſue fits & deuie, &c.* Iohn de Mandevile by his wife, Roberge had iſſue Robert and Mawde, Michael de Morevill gaue certaine lands to Roberge and to the heires of Iohn Mandeuile her late husband on her body begotten, and it was adiudged that Roberge had an eſtate but for life, and the fee taile veſted in Robert (heires of the body of his father being a good name of purchaſe) and that when he died without iſſue, Mawde the daughter was tenant in taile as heir of the body of her father per formam doni, and the Formedon which ſhee brought ſuppoſed,

17.E.2.Taile 23. 2.E.3.1. 11.Taile 7.4.& 5.Ph.& Mar.Dier 156. 22.H.4.2. 15.H.7.10.

¶ Item ſi home ad iſſue fits, & deuie, & terre eſt done al fits, & a les heires de corps ſon pier engendres, ceo eſt bone taile, & vncore le pier fuit mort al temps de la done. Et mults auters eſtates en taile y ſont per le equitie del dit eſtatute que icy ne ſont ſpecifies.

ALſo if a man hath iſſue a ſonne and dieth, and land is giuen to the ſonne, and to the heires of the body of his father begotten, this is a good entaile, and yet the father was dead at the time of the gift. And there bee many other eſtates in the taile by the equity of the ſaid ſtatute, which bee not here ſpecified.

Quod poſt mortem prefatæ Robergiæ & Roberti filij & hæredis ipſius Iohannis Mandauile & hæred' ipſius Iohannis de prefata Robergia per præfatum Iohannem procreat', prefat' Matilda filiæ predict' Iohannis de prefatâ Robergia per præfatum Iohannem procreata ſorori & hæredi predicti Roberti diſcendere debet per formam donationis predict'. And yet in truth the land did not diſcend vnto her from Robert but becauſe ſhe could haue no other writ, it was adiudged to be good. In which caſe it is to be obſerued that albeit Robert being heire tooke an eſtate taile by purchaſe, and the daughter was no heire of his body at the time of the gift, yet ſhe recouered the land per formam doni, by the name of heire of the body of her father, which notwithſtanding her brother was and he was capable at the time of the gift; and therefore when the gift was made ſhe tooke nothing, but in expectancie, when ſhe became heire per formam doni. But where a man by deede gaue lands to Emme late wife of Iohn Maſter, habendum & tenendum predict' Emme & hæredibus Iohannis Maſter de corpore eiuſdem Emme procreat'. In that caſe the ſonne and heire of Iohn Maſter begotten on the body of Emme tooke no eſtate with Emme in the lands becauſe he was named after the Habendum.

5.H.4.3.a.

If a man hath iſſue two daughters, and dieth ſeiſed of two acres of land in Fee ſimple, and the one Copercener giueth her part to her ſiſter, and to the heires of the body of her father, In this caſe the Donee hath an eſtate taile in the moity of the Donors part, for the Donee is not entire heire but the Donor is heire with the Donee, and ſhee cannot giue to the heires of her owne body, and the Donee hath the other moity of her ſiſters part for life. If a man hath iſſue a ſonne and a daughter, and dieth, and land is giuen to the daughter and to the heires females

of

of the body of the father, ſhe taketh but an eſtate for life becauſe ſhe is not heire females to take by purchaſe as before hath beene ſaid.

¶ *Et a les heires de corps le pier.* **Theſe words** (les heires) **are obſeruable**, for if they were (ſes heires) it cleerely altereth the caſe. And therefore if lands be giuen to the ſonne and to his heires of the body of his father, the ſonne cannot take as heire of the body of his father, becauſe the grant is to him and to his heires, &c. and conſequently he hath a Fee ſimple. But if there be Grandfather, Father and Sonne, and the father dieth, and lands bee giuen to the Sonne, and to the heires of the body of the Grandfather, this is a good eſtate taile in the Sonne, ſo as Littleton did put his caſe of the Father but for an example

¶ *Et mults auters eſtates en le tayle y ſont, &c.* **This needeth no explanation.**

Section 31.

¶ Mes ſi home done terres ou tenements a vn auter, a auer & tener a luy & a ſes heires males, ou a ſes heires females, il a que tiel done eſt fait ad fee ſimple, pur ceo que neſt my limit per le done de quel corps iſſue male ou female iſſera, & iſſint ne poit en aſcun maner eſtre priſe per lequitie del dit eſtatute & pur ceo il ad fee ſimple.

BVt if a man giue Lands or Tenements to another, To haue and to hold to him and to his heires males, or to his heires females, he to whom ſuch a gift is made, hath a Fee ſimple, becauſe it is not limited by the gift, of what bodie the iſſue male or female ſhall be, and ſo it cannot in any wiſe bee taken by the equitie of the ſaid Statute, and therefore he hath a Fee ſimple.

¶ *Terres on Tenements.* **This** rule extendeth but to Lands or Tenements, and not to the Inheritance that Noblemen and Gentlemen haue in their Armories or Armes. For where the Nobleman or Gentleman hath a Fee ſimple in his Armories or Armes, yet is the ſame diſcendible to the heires males lineall or collaterall. For albeit a Female be heire at the Common Law, yet the Shield, Armories and Armes diſcend vnto them that are able to beare them (farre exceeding the nature of Gauelkind, but with ſeuerall differences.) And all the females of that Family in reſpect that they be of the ſame bloud, may in a loſenge or vnder a Curtaine manifeſt of what Family they bee by expreſſing the Armories and Armes belonging to that Family, and the husband of them may impale them or quarter them with their owne as the caſe ſhall require. And for diſtinction and better explanation hereof. If the King by his Letters Patents giueth lands or Tenements to a man, and to his heires males; the grant is void, for that the King is deceiued in his grant, in aſmuch as there can be no ſuch inheritance of Lands or Tenements as the King intended to grant. But if the King for reward of ſeruice granteth Armories or Armes to a man, and to his heires males without ſaying (of the bodie) this is good, and as hath beene ſaid they ſhall diſcend accordingly. 18.*H.*8.tit.*Patents.* 81.104.

If a man by his laſt will deuiſe Lands or Tenements to a man and to his heires males, this by conſtruction of Law is an Eſtate taile, the Law ſupplying theſe words (of his bodie.) Vide the Princes (t) Caſe where it appeareth that an Act of Parliament may limit an Inheritance of Lands or Tenements, otherwiſe then Common Law would doe, and create a new Eſtate of Inheritance, and many Authorities in Law there cited worthy of note and obſeruation. Rot. Parliam. anno 1. E. 4. nu. 26. The (u) Duchie of Lancaſter is intailed to King Edward the fourth and his heires Kings of England. And King Henrie the firſt did by his Letters Patents grant Iohanni filio Iohannis Talbot quod ipſe & hæredes ſui Domini manerij de Kingſton Liſle in comitatu Berk. exnunc. Domini & Barones de Liſle Nobiles & Proceres regni habeantur, teneantur, & reputentur, &c. by this he had a Fee ſimple qualified in the Dignitie. 27.*H.*8.27.

(t) *Lib.*8.*fol.*1. *The Princes caſe.*
21.*E.*3.4. 22.*E.*3.3. 24.*E.*3.53. 9.*H.*6.25. 9.*E.*4.15. 1.*Marie. Dier.* 94.
(u) *Per literas patentes auctoritate Parliamenti.*

2. H. 5. fol. 1. A grant was made to a man, and to his heires Tenants of the Mannor of Dale. A man ſeiſed of Lands in Gauelkind, giue or deuiſe the ſame to a man and to his eldeſt heires, he cannot hereby alter the cuſtomarie Inheritance, but as in the caſe of our Au-

Mich.26.& 27.Eliz.in Com. Banco. Leonard Loueiace caſe.

thor, Vt res magis valeat, the Law reiecteth (Males) ſo in this caſe the Law reiecteth this Adiectiue (eldeſt.) And ſo it is if Lands be giuen to a man, and to the eldeſt heires females of his bodie, yet all his Daughters ſhall inherit as it hath beene reſolued.

¶ *Et iſsint ne poet eſte priſe per lequitie del dit ſtatute, &c.* For it is a certaine rule in law that in euery eſtate in taile within the ſaid ſtatute, it muſt be limited either by expreſſe words or by words equipollent of what bodie the heire inheritable ſhall iſſue. And it was (x) adiudged in Parliament, that where lands were giuen to a man, and to his heires males, that this was a Fee ſimple, and that as well the heires females as heires males ſhould inherit, for the grant of a ſubiect ſhall be taken moſt ſtrongly againſt himſelfe.

(x) 18.*Aſſ.p.*5.18.*E.*3.46.6 9.*H.*6.23.25.*lib.*8.*fol.*1. *The Princes caſe. Ancient temures f.*l.3.

¶ *Et pur ceo il ad Fee ſimple.* Littletons reaſon being ſhortly collected is this. Whoſoeuer hath an Eſtate of inheritance, hath either a Fee ſimple or a Fee taile, but where lands be giuen to a man and his heires males, he hath no Eſtate taile, and therefore he hath a Fee ſimple.

What actions tenant in taile may haue and cannot haue, vide Sect.595. What great alterations haue beene made ſince Littleton wrote concerning not only Leaſes to bee made by tenant in taile, but barres alſo of the Eſtate taile it ſelfe by force of certaine Acts of Parliament made ſince Littletons time, you ſhall read Sect.56. and 708.

Chap. 3. *Sect.* 32.

Tenant in taile apres poſsibilitie diſſue extinct.

Littleton hauing ſpoken of Eſtates of Inheritance, viz. Fee ſimple and Fee taile, now he treateth of tenants of freehold tantum, that is, for terme of life, and therein firſt of Tenant in taile after poſſibilitie of iſſue extinct, and hee giueth vnto him the firſt place becauſe this Tenant hath eight qualities and Priuiledges which tenant in taile himſelfe hath, and which Leſſee for life hath not. (a) As firſt he is diſpunishable for Waſte. Secondly, Hee ſhall not be compelled to atturne. Thirdly, He ſhall not haue aide of him in the reuerſion. Fourthly, Vpon his alienation, no Writ of entrie in conſimili caſu, lieth. Fiftly, After his death no Writ of intruſion doth lie. Sixtly, Hee may ioyne the miſe in a Writ of right, in a ſpeciall manner. Seuenthly, In a Præcipe, brought by him hee ſhall not name himſelfe tenant for life. Eightly, In a Præcipe brought againſt him hee ſhall not bee named barely tenant for life. And yet hee hath foure other qualities which are not agreeable to an

(a) *Temps E.*1.*waſt.*125. 39.*E.*3.16. 31.*E.*3 *aid* 35.42.*E.*3.22. 43.*E.*3-1.45.*E.*3.22. 28.*E.*3.96.46.*E.*3.13.27. 2.*H.*4.17.7.*H.*4.10. 11.*H.*4.15.21.*H.*6.56. 10.*H.*6.1.26.*H.*6.*aid* 77. 3.*E.*4.11. 13.*E.*2. *Entre Conge.*56. *Fitz. N.B.*203. *Lewes Bowles caſe lib.*11.*fo.*8.

¶ Tenant en fee taile apꝛs poſſibilitie diſſue extinct eſt, lou teneñts ſont dones a vn home & a ſa fée en eſpeciall taile, ſi lun de eux deuy ſans iſſue, celuy q̃ ſuruesquiſt eſt tenant en taile apꝛes poſſibilitie diſſue extinct. Et ſils auoyent iſſue, & lun deuie, coment q̃ durant la vie, iſſue celuy q̃ ſuruciſquiſt ne ſerra dit tenant en taile apꝛs poſſibilitie diſſue extinct, vncoꝛe ſi iſſue deuy ſans iſſue, iſſint que ne ſoit aſcun iſſue en vie que poit enheriter p̃ foꝛce de le taile, donque celuy que ſuruesquiſt

Tenant in Fee Taile after poſſibilitie, of iſſue extinct is, where Teneements are giuen to a man, and to his wife in eſpeciall taile, if one of them die without iſſue, the ſuruiuor is tenant in taile after poſſibilitie of iſſue extinct, and if they haue iſſue, and the one die, albeit that during the life of the iſſue, the ſuruiuour ſhall not bee ſaid tenant in taile after poſſibilitie of iſſue extinct, yet if the iſſue die without iſſue, ſo as there bee not any iſſue aliue which may inherit by force of the taile, then the ſuruiuing partie of the Do-

nees

de les donees eſt tenant en le taile apres poſſibilitie diſſue extinct.

nees is tenant in taile, after poſſibilitie of iſſue extinct.

Eſtate in taile, but to a bare Leſſee for life. (b) Firſt, if he maketh a feoffment in fee, this is a forfeiture of his Eſtate. Secondly, If an Eſtate in fee, or in fee taile in reuerſion, or remainder diſcend or come to this tenant, his Eſtate is drowned, and the fee or fee taile executed. Thirdly, He in the reuerſion or remainder ſhall be receiued vpon his default, as well as vpon bare tenant for life. Fourthly, an exchange betweene a bare tenant for life and him is good, for their eſtates in reſpect of their quantitie are equall, ſo as the difference ſtandeth in the qualitie, and not in the quantitie of the Eſtate. And as an Eſtate taile was originally carued out of a fee ſimple, ſo is the eſtate of this tenant out of an eſtate in eſpeciall taile. And he is called tenant in taile after poſſibilitie of iſſue extinct, becauſe by no poſſibilitie hee can haue any iſſue inheritable to the ſame Eſtate taile. But if a man giueth land to a man and his wife, and to the heires of their two bodies, and they liue till each of them be C. yeere old, and haue no iſſue, yet doe they continue tenant in taile for that the law ſeeth no impoſſibilitie of hauing children. But when a man and his wife bee tenant in eſpecial taile, and the wife dieth without iſſue, there the Law ſeeth an apparant impoſſibilitie, that any iſſue that the huſband can haue by any other wife ſhould inherit this eſtate. And let this tenant keepe his eſtate for he hath theſe priuiledges in reſpect of the priuity of his eſtate, and of the inheritance that was once in him. (c) For in the Caſe of Euens, Mich. 28. & 29. Eliz. it was adiudged that where tenant in taile after poſſibilitie of iſſue extinct granted ouer his eſtate to another, that his grantee was compelled to attorne in a quid iuris clamat, as a bare tenant for life, and ſo be named in the writ, for by the aſſignement the priuitie of the Eſtate being altered, the priuiledge was gone, and this iudgement was affirmed in a Writ of Error, and herewith agreeth 27. H. 6. tit. aid. Statham 29. E. 3. 1. b.

(b) 13. E. Entre Cong. 56. 45. E. 3. 22. 28. E. 3. 96. 27. Aſſ. p. 60. F. N. B. 159. 32. E. 3 Iii. 45. 55. 55. E. 3. 4. 9. E. 4. 17. 2. R. 2. reſcet. 147. 41. E. 3. 12. 20. E. 3. reſcet. 38. E. 3 33. Lewes Bowles caſe vbi ſupra.

(c) Lib. 11. fol. 83. Lewes Bowles caſe. 27. H. 6. 11 aid. Statham. 29. E. 3 1. b.

27. H. 6. 11 aid. 29. E. 3. 1. b.

Section 33.

¶ Item ſi tenemẽts ſont donez a vn home & a ſes heires que il engendra de corps ſa feme, en ceſt cas la feme nad rien en les tenements, & le baron eſt ſeiſie come donee en ſpecial taile. Et en ceo cas, ſi la feme deuy ſans iſſue de ſon corps engendres per ſon baron, donques le baron eſt tenant en taile apres poſſibilitie diſſue extinct.

ALſo if Tenements be giuen to a man and to his heires which hee ſhall beget on the bodie of his wife. In this caſe the wife hath nothing in the Tenements, & the husband is ſeiſed as Donee in eſpeciall taile. And in this Caſe if the wife die without iſſue of her bodie begotten by her husband, then the husband is Tenant in Taile after poſſibiltie of iſſue extinct.

¶ *Si la feme deuie ſans iſſue.* So as the eſtate of this tenantie muſt bee altered by the act of God, and that by dying without iſſue, for if a feoffment in fee be made to the vſe of a man and his wife for tearme of their liues and after to the vſe of their next iſſue male to bee begotten in taile, and after to the vſe of the husband and wife, and of the heires of their two bodies begotten they hauing no iſſue male at that time; In this Caſe the husband and wife are tenants in eſpeciall taile executed, and after they haue iſſue a ſonne in this caſe, they are become tenants for life, the remainder to the ſonne in taile, the remainder to them in ſpeciall taile, for albeit their Eſtate taile is turned to an Eſtate for life, yet they haue but a bare Eſtate for life, but if the iſſue die, and the husband die hauing no other iſſue, and then the ſonne die without iſſue, the wife ſhall haue the priuiledges belonging to a tenant in taile after poſſibilitie of iſſue extinct, as it appeareth in Lewes Bowles Caſe vbi ſupra. where it is ſaid, that the ſtate of this tenant muſt be created by the act of God, and not by limitation of the partie, ex diſpoſitione Legis, and not ex prouiſione hominis (d) If land be giuen to a man and to his wife, and to the heires of their two bodies, and after they are diuorced cauſa Præcontractus or Conſanguinitatis, or Affinitatis, their eſtate of inheritance is turned to a ioint Eſtate for life, and albeit they had once an inheritance in them, yet for that the Eſtate is altered by their owne act, and not by the act of God, viz. by the

Lewes Bowles caſe lib. 11. fo. 80

(d) 7. H. 4. 16. 8. E. 1. Aſſ. 415. 12. Aſſ. 22. 19. Aſſ. p. 2. 13. E. 3. Aſſ. 9 L. in fine.

the death of either partie without iſſue, they are not tenants in taile after poſſibilitie of iſſue extinct. Lands are giuen to the husband and wife, and to the heires of the bodie of the husband, the remainder to the husband and wife, and to the heires of their two bodies begotten, the husband die without iſſue, the wife ſhall not be tenant in taile after poſſibilitie, for the remainder in ſpeciall taile was vtterly void, for that it could neuer take effect, for ſo long as the husband ſhould haue iſſue, it ſhould inherit by force of the generall taile, and if the husband die without iſſue, then the ſpeciall Eſtate taile cannot take effect, in as much as the iſſue which ſhould inherit the eſpeciall, muſt be begotten by the husband, and ſo the generall which is larger and greater, hath fruſtrated the eſpeciall which is leſſer. And the wife in that Caſe ſhall be punished for waſte.

Section 34.

¶ If lands be giuen to a man with a woman in Frankmarriage, albeit the woman (which was the cauſe of the gift) dieth without iſſue, yet the Husband ſhall bee tenant in taile, apres poſſibilitie, &c. for that hee and his wife were Donees in eſpecial taile, and ſo within the words of Littleton, the reſidue of this Section is euident.

¶ Et nota q̄ nul poit eſtre teñt en le taile aps poſſibility diſſue extinct, forſq; vn des donees, ou le donee en le ſpecial taile. Car l' donee en generall taile ne poit eſtr̄ vnq; dit teñt en taile aps poſſibility diſſue extinct, pur ceo q̄ tout tẽps durant ſa vie, il poit per poſſibility auer iſſue que poit inheriter per force de meſme le taile. Et iſſint en m̄ le mañ, iſſue q̄ eſt heire a les donees en vn eſpecial taile, ne poit eſtre dit teñt ẽ taile aps poſſibilitie diſſue extinct, cauſa qua ſupra.

AND note that none can be tenant in taile after poſſibility of iſſue extinct, but one of the Donees, or Donee in eſpeciall taile. For the Donee in generall taile cannot be ſaid to bee tenant in taile after poſſibilitie of iſſue extinct, becauſe alwayes during his life, he may by poſſibilitie haue iſſue which may inherit by force of the ſame entaile. And ſo in the ſame manner the iſſue which is heire to the Donees in eſpeciall taile, cannot be tenant in taile after poſſibilitie of iſſue extinct, for the reaſon aboueſaid.

* This and that which follow, is not in the firſt Edition (which I haue.) And therefore (that I may ſpeake it once for all) it was wrong to the Authour to adde any thing, (eſpecially in one Contert) to his worke.

* Et nota que tenant en taile aprés poſſibility diſſue extinct ne ſerra vnq; puny de waſt, pur l'enheritance que fuit vn foits en luy, 10. *Hen.6.* 1. * Mes ceſtuy en le reuerſion poit enter ſil alien en fee, 45. E. 3. 22.

And note that tenant in taile after poſſibilitie of iſſue extinct ſhall not be puniſhed of waſte, for the inheritance that once was in him. 10. *H.6.* 1. But he in the reuerſion may enter if hee alien in fee, 45. *E.* 3. 22.

Chap. 4. *Sect.*35.

Curteſie Dengleterre.

Tenant p̄ la Curteſie Dēgleꝛe eſt, lou home pꝛēt feme ſeiſie en fee ſimpl', ou en fee tail' general, ou ſeiſie come heire de le taile ſpecial, & ad iſſue per meſme la feme, male ou femal', oyes ou vife, ſoit liſſue apꝛes moꝛt ou en vie, ſi la feme deuie, le baron tiendꝛa la terre durant ſa vie, per la ley Dangleterre. Et eſt appel tenant per le Curteſie Dengleterre pur ceo que ceo eſt vſe en nul auter realme, foꝛſq̄ tantſolement en Engleterre.

Et aſcuns ont dit, queil ne ſerra tenant p̄ le curteſie, ſinon q̄ lenfant quil ad p̄ ſa feme ſoit oye crie, car p̄ le crie eſt pue q̄ le enfant fuit nee vife: Ideo quære.

TEnant by the curteſie of England is where a man taketh a wife ſeiſed in fee ſimple, or in fee taile generall or ſeiſed as heire in taile eſpeciall and hath iſſue by the ſame wife, male or female borne aliue, albeit the iſſue after dieth or liueth, yet if the wife dies, the huſband ſhall hold the land during his life by the law of England. And he is called Tenant by the curteſie of England, becauſe this is vſed in no other realme but in England only.

And ſome haue ſaid, that he ſhall not be tenant by the curteſie, vnleſſe the childe which he hath by his wife be heard crie; for by the cry it is proued that the childe was borne aliue. Therfore Quere.

Priſt feme ſeiſie. And firſt of what ſeaſon a man ſhall be tenant by the curteſie. (e) There is in Law a two fold ſeiſin, viz. a ſeiſin in Deed, and a ſeiſin in Law; whereof more ſhalbe ſaid, Sect 468. & 681. And here Littleton intendeth a ſeiſin in Deed if it may be attained vnto. (f) As if a man dieth ſeiſed of lands in Fee ſimple or fee taile generall, and theſe lands diſcend to his daughter, and ſhe taketh a huſband and hath iſſue, and dyeth before any entry, the huſband ſhall not be tenant by the curteſie and yet in this caſe ſhee had a ſeiſin in Law, but if ſhe or her huſband had during her life entred, he ſhould haue beene tenant by the Curteſie. (g) A man ſeiſed of an Aduowſon or rent in fee hath iſſue a Daughter, who is married, and hath iſſue, and dieth ſeiſed, the wife before the rent became due, or the Church became voide, dieth ſhee had but a ſeiſin in Law, and yet hee ſhall bee tenant by the Curteſie, becauſe hee could by no induſtrie attaine to any other ſeiſin, Et impotentia excuſat legem. But a man ſhall not be tenant by the Curteſie of a bare right, title, vſe, or of a reuerſion or remainder expectant vpon any eſtate of free hold, vnleſſe the particular eſtate be determined or ended during the couerture.

(e) F.N.B.194

(f) 1.Mar.Dar.95.

(g) 7.E.3 66. 3.H.7.5.

At the Coronation of King R. 2. ſaith the Record, (h) Iohannes Rex Caſtiliæ & leg onis Dux Lancaſtriæ, coram dicto domino rege & conſilio ſuo comparens clamauit vt comes Leiceſtriæ officium Seneſchalciæ Angliæ, & vt dux Lancaſtriæ ad gerendum principalem gladium domini Regis vocat' Curtana die coronationis eiuſdem regis, & vt comes Lincoln ad ſcindendum & ſecandum coram ipſo domino Rege ſedente ad menſam dicto die coronationis, & quia fact' diligenti examinatione coram peritis de conſilio regis de premiſſis ſatis conſtabat eidem conſilio, quod ad ipſum ducem tanquam tenentem per legem Angliæ poſt mortem Blanchiæ quondam vxoris ſuæ pertinuit officia predict' prout ſuperius clamabat exercere, conſideratum fuit per ipſum regem & conſilium ſuum predictum, quod idem Dux officia predicta per ſe & ſufficientes deputatos ſuos faceret & exerceret, & feoda debita in hac parte obtineret. Qui quidem dux

(h) *Proceſſ. fact ad Coronationem R. 2. Anno Regni ſui primo rot. claſſ. m. 45.*

dux officium Seneſchalciæ predict' perſonaliter adimpleuit, &c. And euery man that claymed to hold by graund Seriantie to doe any ſeruice to the King at his Coronation exhibited his petition to the ſaid Duke as Steward of England, who vpon hearing the proofes either allowed or diſallowed the ſame.

Pat. Patent. Anno 20. H. 6.

In Letters patents made by King H.6. to Richard Earle of Salisbury you ſhall finde this clauſe, Quodque charissimus conſanguineus noſter Richardus nunc comes Sarum qui Aliciam filiam & hæredem Thomæ nuper comitis Sarum adhuc ſuperſtitem duxit in vxorem, & cum eadem Alicia prolem tempore mortis predictæ Thomæ habuit & habet ſuperſtitem de preſenti, eoque pretextu idem Richardus nunc comes Sarum nomen, ſtatum & honorem comitis Sarum, &c. habet, & pro tempore, vitæ ſuæ de jure pretextu premiſſorum habere debet. The name of the iſſue which the ſaid Richard Earle of Salisbury had by the ſaid Alice was Richard, who married with Anne the ſiſter and heire of Henry Beauchamp Earle of Warwicke, who was Earle of Warwicke to him and to his heires, and Duke of Warwicke to him and to the heires males of his body. And Richard the ſonne hauing then no iſſue by his wife, King H. 6. in 27. yeare of his raigne granted to him that he ſhould be Earle of Warwicke Licet ipſe & predicta Anna exitum inter eos ad præſens non habent. Theſe and many more I haue read concerning this matter, and only ſay to the reader, Vtere tuo judicio, nihil enim impedio.

Rot. Patent. de anno 27. H. 6. m.

(i) Vid. 1. E. 3. 6. 5. E 3. 26.

(i) If an eſtate of freehold in Seignories, Rents, Commons, or ſuch like be ſuſpended, a man ſhall not be tenant by the curteſie, but if the ſuſpenſion be but for yeares, he ſhall bee tenant by the curteſie. As if a tenant make a Leaſe for life of the tenancie to the Seignorſſe, who taketh a husband, and hath iſſue, the wife dieth, he ſhall not be tenant by the curteſie, but if the Leaſe had beene made but for yeares he ſhall be tenant by the curteſie.

¶ *En Fee ſimple ou en Fee taile generall, ou ſeiſie come heire de la taile ſpeciall & adiſſue per la feme male ou female.* **Secondly of what eſtate.** If lands be giuen to a woman and to the heirs males of her body ſhe taketh a husband and hath iſſue a daughter and dieth, he ſhal not be tenant by the curteſie, becauſe the daughter by no poſſibilitie could inherite the mothers eſtate in the land, and therefore where Littleton ſaith, iſſue by his wife male or female, it is to be vnderſtood, which by poſſibility may inherite as heire to her mother of ſuch eſtate. Littleton himſelfe explaneth this by expreſſe words Cap. Dower. fo. 10. Sect. 52. And therefore if a woman tenant in taile generall maketh a Feoffment in fee, and taketh backe an eſtate in fee, and take a husband and hath iſſue, and the wife dieth, the iſſue may in a Formedon recouer the land againſt his father, becauſe he is to recouer by force of the eſtate taile as heire to his mother and is not inheritable to his father.

W. 2. ca. 1. Litt. cap Dower fo. 10. Sect. 52. Paines caſe lib. 8. fo. 34.

¶ *Et adiſſue.* 3. **The time of hauing the iſſue.** 4. **What kinde** of iſſue. If a man ſeiſed of Lands in fee hath iſſue a daughter, who taketh husband and hath iſſue, the father dieth, the husband enter, hee (a) ſhalbe tenant by the curteſie, albeit the iſſue was had before the wife was ſeiſed. And ſo it is albeit the iſſue had died in the life time of her father before any diſcent of the land, yet ſhall he be tenant by the curteſie. If a woman (b) ſeiſed of lands in fee taketh husband, and by him is bigge with childe, and in her trauell dieth, and the childe is ripped out of her body aliue yet ſhall he not be tenant by the curteſie, becauſe the childe was not borne during the marriage nor in the life-time of the wife, but in the meanetime the land diſcended, and in pleading he muſt alledge, That he had iſſue during the marriage.

(a) Old tenures 21. H. 3. tit. Dower 198.

(b) Vid. Paines caſe. vbi ſupra.

If the wife be (c) deliuered of a Monſter which hath not the ſhape of mankinde, this is no iſſue in the Law, but although the iſſue hath ſome deformity in any part of his body, yet if hee hath humane ſhape this ſufficeth. Hij qui contra formam humani generis conuerſo more procreantur (vt ſi mulier monſtruoſum vel prodigioſum fuerit enixa) inter liberos non computentur, partus tamen cui natura aliquantulum ampliaverit vel diminuerit non tamen ſuperhabundantur, vt ſi ſex digitos vel niſi quatuor habuerit benè debet inter liberos commemorari. Si inutilia natura reddidit membra, vt ſi curvus fuerit aut gibboſus vel membra tortuoſa habuerit non tamen eſt partus monſtruoſus. Item puerorum alij ſunt maſculi alij feminæ alij hermophraditæ, hermophradita tam maſculo quam feminæ comparatur ſecundum prævaleſcentiam ſexus incaleſcentis.

(c) Bract. lib. 5. 437. 438. Britt. ca. 66. & ca. 83. Fleta lib. 1. ca. 5. & lib 6. ca. 54.

If the iſſue be borne deafe or dumbe or both, or be borne an Ideot, yet is it a lawfull iſſue to make the husband Tenant by the curteſie and to inherite the land.

(d) 28. H. 8. 25. Dier. Paines caſe vbi ſupra.

¶ *Oyes ou vine.* **If it be borne aliue** (d) **it is ſufficient though it** be not heard crye; for peraduenture it may be borne dumbe. And this is reſolued cleerely in Paines caſe Vbi ſupra. For the pleading (as hath beene ſaid) is, That during the marriage he had iſſue by his wife, and vpon that point the triall is to be had, and vpon the euidence it muſt be proued, that the iſſue was aliue, for motus exitus, non eſt exitus, ſo as the crying is but a proofe that the childe was borne aliue, and ſo is motion ſtirring and the like. And it is ſaid by an ancient Author (e) that it was ordeyned in the raigne of King H. 1. Que touts que ſurvequiſ-

(e) Mirr. cap. 1. §. 3.

ſent

ſent lour femes dount ils vſſent conceiue tenuiſſent les heritages lour fems pur lour vies.

By the cuſtome of Gauelkinde (f) a man may be Tenant by the curteſie without hauing of any iſſue.

(f) 9.E.3.38. 16.E.3. aid.129. Stat. de Conſuetudinibus Kancie.

¶ *Soit leiſſue apres mort ou en vie.* And therefore (g) if a woman Tenant in taile generall taketh a huſband and hath iſſue, which iſſue dieth and the wife dieth without any other iſſue, yet the huſband ſhall be tenant by the curteſie albeit the eſtate in taile be determined, becauſe he was intitled to be tenant Per legem Angliæ before the eſtate in taile was ſpent and for that the land remaineth. But if a woman maketh a gift in taile and reſerue a Rent to her and to her heires, and the Donor taketh huſband and hath iſſue, and the Donee dieth without iſſue, the wife dieth, the huſband ſhall not be tenant by the curteſie of the Rent for that the rent newly reſerued is by the act of God determined and no ſtate thereof remaineth. But (h) if a man be ſeiſed of a Rent and maketh a gift in taile generall to a woman, ſhe taketh huſband and hath iſſue, the iſſue dieth, the wife dieth without iſſue, he ſhall be Tenant by the curteſie of the Rent, becauſe the rent remaineth. The diuerſitie appeareth.

(g) 21.H.3.tit.Dower 198. Layers caſe. Vbi ſupra.

(h) Breke, pis per la Curteſie 86. 10.E.3.29.

¶ *Si la feme deuie le baron tiendra la terre, &c.* Foure things doe belong to an eſtate of Tenancy by the curteſie, viz. Marriage; Seiſin of the wife; Iſſue, and death of the wife. But it is not requiſite, that theſe ſhould concurre all together at one time: And therefore if a man taketh a woman ſeiſed of Lands in fee and is diſſeiſed, and then haue iſſue, and the wife die, he ſhall enter and hold by the curteſie. So if he hath iſſue which dieth before the diſcent as is aforeſaid.

And albeit the ſtate be not conſummate vntill the death of the wife, yet the ſtate hath ſuch a beginning after iſſue had in the life of the wife as is reſpected in law for diuers purpoſes.

Firſt, after iſſue had, he ſhall doe homage alone, and is become tenant to the Lord, and the auowry ſhall be made only vpon the huſband in the life of the wife, as ſhall bee ſaid hereafter when we come to the apt place. Secondly, if after iſſue (i) the huſband maketh a Feoffment in fee, and the wife dieth, the Feoffee ſhall hold it during the life of the huſband, and the heire of the wife ſhall not during his life recouer it in Sur cui in vita; for it could not be a forfeiture, for that the eſtate, at the time of the feoffment, was an eſtate of Tenancie by the curteſie initiate and not conſummate. And it is adiudged in 29.E.3. that the tenant by the Curteſie cannot claime by a Deuiſe, and value the ſtate of his tenancie by the Curteſie, becauſe ſaith the booke, the freehold commenced in him before the Deuiſe for terme of his life.

(i) 34.E.2. Cui in vita 13. 2.E.2. Cui in vita 26. 10.E.3.12. Dier.21.Eliz.363.

29.E.3.

¶ *Et eſt appel tenant per le curteſie dengliterre pur ceo que neſt vſe en auter realme forſque tantſolement en Engliterre.*

¶ *Per le Curteſie.* In Latyn Per legem Angliæ.

¶ *Tantſolement en Engleterre.* It is alſo vſed within the realme of Scotland, and there it is called Curialitas Scotiæ. And ſo it is in the Realme of Ireland.

¶ *Et aſcuns ount dit qui il ne ſerra tenant per le curteſie ſinon que lenfant que il ad per ſa feme ſoit oye crie, car per le crie eſt proue que le enfant fuit nee vife.* Our Author hauing deliuered his owne opinion before, viz. Oyes ou vife, now he ſheweth the opinions of others: for ſo it is ſaid in the (k) Statute De tenentibus per legem Angliæ: and of that opinion is Glanuile (l) lib.7.cap.8. Bracton lib.5. tract 5. cap.30. Britton cap.50 fo.132. Fleta lib.6.ca.50. &c. But the reaſon is againſt their opinion; For by the crye it is proued, &c. ſo as it is but an euidence to proue the life of the enfant.

(k) Vet.mag.cat.part 1. fol.70.

(l) Glanuil.lib.7.cap.8. Bract.lib.5.tract 5.ca.30. Britton.ca.50.fo.132. Fleta.lib.6.cap.54.

¶ *Aſcuns ont dit.* But theſe and the like ſpeeches our Author intendeth that the point had beene controuerted, but thereby except it be in this Section where formerly he deliuered his opinion as hath beene ſaid, hee tacitely inſinuateth his owne iudgement which in all the reſt holdeth for good Law and warranted by good Authority throughout his three bookes, which kinde of ſpeach and the like I haue collected together as it appeareth by the Sections in (l) the margent.

(l) Sect.40.319.132.136. 137.138.141.145.148.156. 170.179.192.202.227.234. 269.336.339.357.400.435. 436.440.443.460.462.478. 501.503 506.522.523.524. 534.576.601.633.634.640. 642.643.644.646.658.675. 689.721.723.726.730.731. 733.734.

¶ *Ideo quære.* This Quære is not in the originall edition of Littleton, and therefore to be reiected.

And ſome haue ſaid that in diuers caſes a man ſhall by hauing of iſſue be tenant by the Curteſie where a woman ſhall not be endowed. And therefore they ſay if lands bee giuen to two women and to the heires of their two bodyes begotten, and one of them take huſband and haue iſſue and die, the inheritances being ſeuerall the huſband ſhall be tenant by the Curteſie as it is adiudged 7.E.3. and in other bookes (m) this iudgement is cited and allowed. But certaine it is, That if land be giuen to two men and to the heires of their two bodyes begotten, and the one taketh wife and dieth, ſhe ſhall not be endowed for no eſtate in the land is altered by that marriage. But I leaue the reader to his owne opinion or rather to ſuſpend it vntill he come

7.E.3.6.

(m) 17.E.3.51.

to the proper place in the next Chapter. If lands holden of the King by Knights ſeruice in capite diſcend to a woman, and after office found ſhe entrude and taketh husband and hath iſſue. In this caſe the husband ſhall be tenant by the Curteſie; And yet if the heire Male after office in the like caſe intrudeth and taketh wife, his wife ſhall not be endowed, for ſo it is prouided by the ſtatute of Prerogatiua reg. 8, cap. 13. that in that caſe there accrue to the heire no freehold nor Dower to the wife, which by interpretation is as much to ſay that the heire ſhall haue no freehold as to this reſpect to giue any dower to his wife. If a man marrie the niece of the King by licence and hath iſſue by her, and after lands diſcend to the niece and the husband enter, the neiſe dieth, he ſhall be tenant by the curteſie of this land, and the King vpon any office found ſhall not euict it from him, becauſe by the marriage, the niece was infranchiſed during the couerture. But if a free woman marrie the Villaine of the King by licence, and lands diſcend to the Villaine, the Villaine dieth, the wife ſhall not be endowed, but vpon an office found the King ſhall haue the land, for the Villaine remained ſtill a Villaine to the King. A woman (n) taketh husband, and hath iſſue, lands diſcen to the wife, the husband enters, and after the wife is found an Ideot by office, the lands ſhall be ſeiſed by the King, for the title of the tenancie by the curteſie, and of the King begin at one inſtant, and the title of the King ſhall be preferred. A man ſhall be tenant by the curteſie of a Caſtle (o) which ſerueth for the publike defence of the Realme, but a woman ſhall not be endowed thereof, as ſhall be ſaid more at large hereafter.

A man ſhall be tenant by the curteſie of a common ſauns nomber, but a woman ſhall not be endowed thereof, becauſe it cannot be deuided. A man ſhall be tenant by the curteſie (p) of a houſe that is Capue Baroniæ, or Comitatus: But it appeareth by 4. H. 7 Dower 180. that a woman ſhall not be endowed of it. For the Law reſpecteth Honour and Order. A man is entitled to be tenant by the curteſie, and maketh a feoffment in fee vpon condition, and entreth for the condition broken, and then his wife dieth, he ſhall not be tenant by the curteſie, becauſe albeit the ſtate giuen by the feoffement, be conditionall, yet his title to be tenant by the curteſie was incluſiuely abſolutely extinct by the feoffment, for the condition was not annexed to it. As if the Lord diſſeiſe the Tenant, and maketh a Feoffment in fee of the land vpon condition, and entreth for the condition broken, yet the Seigniorie is extinct for that was incluſiuely extinct by the feoffment. See more of Tenant by curteſie. Section 52.

Prærog. Regis ca. 13.

33. *E.*3. *ti. Trauers* 36.

(n) *Pl. Com. Dame Hales Caſe.*263.

(o) *Magna Carta.*30. *E.*1. *Dower* 81. *b.* 19. *H.*3. *Dower. Bract. lib.*2. *fol.*46. *&* 314.

(p) 4 *H.*3. *Dower* 180. *Bract. fol.*93. *Fleta lib.*5. *ca.*23. 2. *E.*2. *Dower* 123. 3. *E.*3. *Dower. B.*102. 9. *H.*7. 1. 30. *E.*3.

Chap. 5. *Sect.* 36.

Dower.

Tenant en dower. Tenens in dote. Dos Dower in the Common Law (q) is taken for that Portion of Lands or Tenements which the wife hath for terme of her life of the Lands or Tenements of her husbands after his deceaſe for the ſuſtenance of her ſelfe, and the nurture and education of her children. Propter onus matrimonij & ad ſuſtentationem vxoris & educationem liberorum cum fuerint procreati ſi vir præmoriatur: & hoc proprie dicitur Dos mulieris ſecundum conſuetudinem Anglicanam. And Dos is deriued ex donatione, & eſt

(q) *Lib. rub. ca.*70. *Glanuil. lib.*6. *cap.*1. *Bract lib.*2 *fol.*92. *Britton. cap.*101. *Fleta lib.*5. *cap.*22.

Tenãt en Dower eſt lou hõe eſt ſeiſie de certaine terres on Tenements en fee ſimple, taile generall, ou come heire de le taile ſpeciall, & prent feme, & deuie, la feme apres le deceſſe de la baron ſerra endow de la tierce part de tiels terres & tenements que fueront a ſa Baron en aſcun temps du-

Tenant in Dower is where a man is ſeiſed of certaine Lands or Tenements in fee ſimple, fee taile generall, or as heire in ſpeciall taile, and taketh a wife, and dieth, the wife after the deceaſe of her husband ſhall bee endowed of the third part of ſuch Lands and tenements as were her husbands at any time during the couerture.

rant

rant le couerture, a auer & tener a meſme la feme en ſeueraltie per metes & bounds pur terme de ſa vie, le quel el auoit iſſue per ſa baron ou nemy & de quel age que la feme ſoit iſſint que el paſſe lage de neuf ans al temps de le mort ſa baron, car il couient que el ſoit paſſe lage de neuf ans al temps del mort ſa baron, ou auterment el ne ſerra my endow.

To haue and to hold to the ſame wife in ſeueraltie by metes and bounds for terme of her life, whether ſhee hath iſſue by her huſband or no, and of what age ſoeuer the wife be, ſo as ſhee bee paſt the age of nine yeeres at the time of the death of her huſband, for ſhe muſt bee aboue nine yeeres old, at the time of the deceaſe of her huſband otherwiſe ſhee ſhall not be endowed.

In Domeſday, Dos is called Maritagium.

quaſi donarium, becauſe either the Law it ſelfe doth (without any gift) or the husband himſelf giueth it to her as ſhal be ſaid hereafter. And at this day Dos or Dower is not taken by the profeſſors of the Common Law, either for the land which the wife bringeth with her in marriage to her husband, for then it is either called in Frankmarriage or in marriage as hath beene ſaid, nor for the portion of money or other goods or chattels, which ſhe bringeth with her in marriage, for that is called her marriage Portion. And yet of ancient time (r) Dos mulieris, the Dower or Dowrie of the woman was alſo applyed to them. But it is commonly taken for her third part which ſhe hath of her husbands lands or tenements.

(r) *Britton.ca.*102. *Fraſton.lib.*2.*fol.*92. *Glanuil.lib.*6.*ca.*1.*lib.*7.*ca.*1. *Lib.*2.*fol.*93.*Bingham's caſe.* 4.*H.*3.*Dower* 179.

To the conſummation of this Dower three things are neceſſarie. Viz. marriage, ſeiſen and the death of her husband.

Dos (ſ) the very name doth import a freedome, for the Law doth giue her therewith many freedomes: Secundum conſuetudinem regni mulieres viduæ &c. debent eſſe quietæ de tallegiis &c. And tenant in Dower ſhall not bee diſtreyned for the debt due to the King by the husband in his life time in the lands which ſhe held in Dower. And other priuiledges ſhe hath; Of all which Ockam yeelds the reaſon, Dotis eius parcatur quia præmium pudoris eſt.

(ſ) *Clauſ.*11.*H.*3.*nu.*17. *Regiſt.*142.143. *F.N.B.*150 *Ockham. fol.*40.

¶ *Lou home.* **If the husband be an alien** (t) **the wife ſhall not be** indowed. So if the husband be the Kings Villaine, the wife ſhall not bee endowed (as hath beene ſaid) but if the husband be a Villaine to a common perſon, the wife ſhall bee indowed if ſhe be intitled to Dower before the entrie of the Lord. And ſo if a free man take a nieſe to wife and dieth ſhe ſhall be indowed. The wife of an Ideot, non Compos mentis, outlawed or attainted of Felonie or treſpaſſe, attainted of hereſie, præmunire or the like) ſhall bee indowed. But if the husband be attainted of treaſon, albeit it bee treaſon done after the title of Dower ſhe ſhall not be indowed as ſhall be ſaid hereafter.

(t) *Bract.fol.*298.19.*E.*2. *Dower* 171. *Dame Halet caſe.* 13.*E.*3.*Dower. Statham.* 13.*E.*1.*tit. Dower.*

The wife of one attainted of Felony ſhall not be Endowed vid: Sect: 747.

¶ *Seiſie.* **Here this word (ſeiſed) extendeth it ſelfe alwell to a** ſeiſon in law, or a ciuill ſeiſon, as to a ſeiſon in deed, which is a naturall ſeiſon: but ſeiſed hee muſt be either the one way or the other during the couerture. For a woman ſhall bee indowed of a ſeiſon in law. As where lands or tenements diſcend to the husband, before entrie, he hath but a ſeiſon in Law, and yet the wife ſhall be endowed, albeit it bee not reduced to an actuall poſſeſſion, for it lieth not in the power of the wife to bring it to be an actuall ſeiſon, as the husband may doe of his wiues land, when he is to be tenant by curteſie, which is worthy the obſeruation. And yet of euery ſeiſon in Law, or actuall ſeiſon of lands or Tenements, a woman ſhall not be indowed. For example, If there be grandfather, father, and ſonne, and the grandfather is ſeiſed of three Acres of land in fee, and taketh wife and dieth, this land diſcendeth to the father, who dieth either before or after entrie, now is the wife of the father dowable. The father dieth and the wife of the grandfather is indowed of one acre and dieth, the wife of the father ſhall be endowed only of the two Acres reſidue, for the Dower of the grandmother is paramount, the title of the wife of the father, and the ſeaſon of the father which diſcended to him (be it in law or actuall) is defeated, and now vpon the matter the father had but a reuerſion expectant vpon a freehold, and in that caſe, Dos de dote peti non debet; although the wife of the grandfather dieth liuing the fathers wife. And here note a diuerſitie (w) betweene a Diſcent and a Purchaſe. For in the caſe aforeſaid, if the grandfather had infeoffed the father, or made a gift in taile vnto him, there in the caſe aboueſaid, the wife of the father, after the deceaſe of the grandfathers wife ſhould haue beene endowed of that part aſſigned to the grand-

(u) 43.*E.*3.32. 45.*E.*3.13. 9.*E.*3.4. *F.N.B* 149. 8.*E.*3.*tit. Aſſ.*393. 19.*E.*2.*Dower* 170. 23.*E.*3.*Dower* 30.

(w) 5.*F.*3.*tit. Voucher.* 249. *Perk caſe.* 9.*E* 3.4

mother, and the reaſon of this diuerſitie is, for that the reaſon that diſcended after the deceaſe of the grandfather to the father is auoided by the indowment of the grandmother whoſe title was conſummate by the death of the grandfather. But in the caſe of the purchaſe or guift that toke effect in the life of the grandfather (before the title of Dower of the grandmother was conſummate) is not defeated but only quoad the grandmother, and in that caſe there ſhall be Dos de dote. And yet there is another diuerſitie (x) where the wife of the Father, is firſt indowed, and where the wife of the grandfather, for in the ſame caſe after the deceaſe of the grandfather and father the ſonne entreth and indoweth his mother of a third part, againſt whom the grandmother recouereth a third part and dieth, the mother ſhall enter againe into the land recouered by the grandmother, becauſe ſhe had in it an eſtate for terme of her life, and the eſtate for the life of the grandmother is leſſer in the eye of Law, as to her then her owne life. Alſo the huſband (y) may be ſeiſed in his Demeſne, as of the fee abſolutely, yet the woman ſhall not be indowed, as ſhe ſhall not be indowed both of the land giuen in exchange, and of the land taken in exchange, and yet the huſband was ſeiſed of both, but ſhee may haue her election to be endowed of which ſhe will.

(x) 8.E.3.tit.Aſſ.393. 13.R.2.Dower.55. 22.E.3.5 8.E.3.3.7.H.6.4.

(y) 6.E.3.50. F.N.B.149.

Alſo of a ſeiſon for an inſtant a woman ſhall not be indowed. As if Ceſty que vſe (z) after the Statute of 1.R.3. and before the Statute of 27.H.8. had made a feoffment in fee, his wife ſhould not be indowed.

(z) 27.H.8.23. F.N.B. 17.H.3.Dow r 192.

Likewiſe if two ioynt tenants be in fee, and the one maketh a feoffement in fee, his wife ſhall not bee indowed. And ſo if the Conuſee of a fine doth grant and render the land to the Conuſor, the wife of the Conuſee ſhall not be indowed; for it is not poſſible that the huſband could haue indowed his wife of ſuch an eſtate as the vſuall pleading is, Lib intrat 225. Quia dicit quod W. quondam vir ſuus nunquam fuit ſeiſitus de tenementis prædictis de tali ſtatu ita quod eandem A. inde dotaſſe potuit.

*Vid.Sect.*242.

¶ *Des terres ou tenements.* Of a Caſtle that is maintained for the neceſſarie defence of the Realme, a woman ſhall not be endowed, becauſe it ought not to be diuided, and the publique ſhall be preferred before the priuate. But of a Caſtle that is only maintained for the priuate vſe and habitation of the owner, a woman ſhall bee endowed. And ſo it was adiudged in the Court of (a) Common Pleas, where in a writ of Dower, the demand was, De tertia parte Caſtri de Hilderker in Comitatu Northampt: And the Statute of Magna Charta cap.7. whereby it is prouided, niſi domus illa ſit Caſtrum, is to be vnderſtood, a Caſtle maintained for the neceſſarie and publique defence of the Realme. And this agreeth with antient Records, (b) (albeit in the argument of the ſaid caſe they were not vouched) the effect whereof be, Non debent mulieribus aſſignari in dotem caſtra quæ fuerunt virorum, ſuorum & quæ de guerra exiſtunt vel etiam homagia & ſeruicia aliquorum de guerra exiſtent. Wherein it is to be obſerued, That the Law is not ſatisfied with the names of things, or nominatiues, but with things reall and ſubſtantiall. But of the principall Manſion, or capitall Meſſuage, the wife ſhall be endowed, (c) ſi non ſit caput Comitatus, ſiue Baroniæ, for the honour of the Realme, or (as hath beene ſaid) a Caſtle for the publique defence of the Realme. And ſo are the old bookes to be intended, as it was reſolued Tr' 17.Eliz. in the Court of Common pleas, which I heard and obſerued. And of an eſtate taile in lands determined, a woman ſhall bee endowed in the like manner and forme as a man ſhall bee Tenant by the Curteſie Mutatis mutandis.

(a) *Paſc.*23.*Eliz.in Com. Banco. Bract.fol.*96. *Brit.ca.* 103. *Flet.li.*5.*c.*23. 30.*E.*1.*tit.Dower* 81.*b.* 30.*E.*1.*Vouch.*298. 17.*H.*3.192.8.*Hen.*3.*Dower* 196. 8.*H.*3.*ib.*194.

(b) *Pas.*1.*E.*1.*part.*1.*m.*17. *Eſch.*4.*E.*1.*m.*88.

(c) *Bract.l.*2.*f.*93. *Brit.c.*103. *Fleta lib.* 5.*ca.* 22. *Trin.*17.*El.in Com.Banco.*

¶ *En fee ſimple, fee taile general, &c.* If a man be Tenant in fee taile generall, (d) and make a feoffement in fee, and taketh backe an eſtate to him and to his wife, and to the heires of their two bodies, and they haue iſſue, and the wife dieth, the huſband taketh another wife, and dieth, the wife ſhall not be endowed, for during the couerture, hee was ſeiſed of an eſtate taile generall, and yet the iſſue which the ſecond wife may haue, by poſſibilitie may inherit.

(d) 41.*E.*3.30. 44.*E.*3.26. 30.*H.*8.*Dyer* 41.

The ſame Law it is, if in this caſe he had taken backe an eſtate in fee ſimple, and after had taken wife and had iſſue by her; yet ſhe ſhall not bee endowed, for that the fee ſimple is vaniſhed by the remitter, and her iſſue hath the land by force of the entaile. But in that caſe the Tenant cannot plead, that the huſband was neuer ſeiſed of ſuch an eſtate whereof the demandant might be endowed, but he muſt plead the ſpeciall matter.

30.*H.*8.*Dyer* 41.

¶ *Et prent feme.* If a man ſo ſeiſed as is aforeſaid, taketh an Alien to wife, and dieth, ſhe ſhall not be endowed: but if the King take an alien borne, & dieth, ſhe ſhall be endowed by the law of the Crowne. And Edmond the brother of King Edward the firſt, married the Queene of Nauarre, and died, and it was reſolued (e) by all the Iudges, that ſhe ſhould be endowed of the third part of all the lands whereof her huſband was ſeiſed in fee.

(e) *Pa.Parl.*26.*E.*1.*rot.*1.

If a Iew borne in England taketh to wife a Iew borne alſo in England; the huſband is conuerted to the Chriſtian Faith, purchaſeth lands, and infeoffeth another, and dieth, the wife

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brought a writ of Dower, and was barred of her dower, and the reason yelded in the record (f) is this, Quia verò contra justiciam est, quod ipsa dotem petat vel habeat de Tenemento quod fuit viri sui ex quo in connersione sua noluit cum eo adherere & cum eo conuersi.

(f) *D. fol. claus.* 18. *H.* 3. *m.* 17

¶ *Del tierce part de tiels Terres & Tenements per seueraltie per metes & bonds.* Albeit of many Inheritances that bee entire, whereof no diuision can be made by metes and bonds, a woman cannot be endowed of the thing it selfe, yet a woman (g) shall be endowed thereof in a spectall and certaine manner. As of a Mill a woman shall not be endowed by Mets and Bounds, nor in common with the heire; but either she may be endowed of the third tolle dish, or de integro molendino per quemlibet 3. mensem. And so of a Milleine, (h) either the third dayes worke, or euerie third weeke or moneth. A woman shall be endowed of the third part of the profit of Stallage, of the third part of the profits of a faire, of the third part of the profits of the office of the Marshalsie, of the (i) third part of the profits of the keeping of a Parke. Of the third part of the profit of a Doue house; and likewise of the third part of a Piscarie, (k) viz. tertium piscem, vel iactum retis tertium. Of the third presentation to an aduowson. A writ of Dower lieth de 3. parte exituum prouenientium de custodia gaolæ Abbathiæ Westm. And herewith agreeth reuerend antiquitie, De (l) nullo quod est sua natura indiuisibile, & secationem, siue diuisionem non patitur nullam partem habebit, sed satisfaciat ei ad valentiam. Of the third part of profits of Courts, (m) fines, heriots, &c. Also a woman shall be endowed of tithes. And the surest endowment of tithes, is of the third sheafe, for what land shall be sowne is vncertaine.

(g) *Bract lib.* 2. *fol.* 97. *b.* 23. *H.* 3. *tit. assf.* 415 *F. N. B.* 149. 45. *E.* 3. *Dower* 50.

(h) 2. *H* 6. 11. *Bract lib* 2. *fol.* 97. *Brit.* 247. 11. *E.* 3. *tit. Dower* 85. 15. *F.* 1. *ibid.* 81. 2. *F.* 3. 57 *F N B.* 8. *I.*

(i) 4. *E.* 2. *T.* 233. 26. *E.* 3 58 45. *E.* 3. *Dower* 50.

(k) *Bract.* 98. 208 *Brit* 247. *Flet. lib.* 5. *cap.* 23. 17. *Fo.* 2. *Dower* 104. 163. 19. *Edw.* 3. *Quar. Imp.* 154. 7. *E.* 3. 7

(l) *Bract.* 97. *Brit.* 146. 147.

(m) *Lib. Intr. Indeme.* 18. *fo.* 230. *Lib.* 11. *fo.* 25. 26. *Harpers case.*

But in some cases of lands and tenements which are diuisible, and which the heire of the husband shall inherit, yet the wife shall not be indowed. As if the husband (n) maketh a lease for life of certaine lands, reseruing a rent to him and his heires, and he taketh wife and dieth, the wife shall not be endowed, neither of the reuersion (albeit it is within these words Tenements) because there was no seisin in deed or in law, of the freehold, nor of the rent, because the husband had but a particular state therein, and no fee simple. But if the husband maketh a lease for yeares, reseruing a rent, and taketh wife, the husband dieth, the wife shall bee endowed of the third part of the reuersion by metes and bonds, together with the third part of the rent, and execution shall not cease during the yeares. And herewith agreeth the common experience at this day. But if the husband maketh a gift in taile, reseruing a rent to him and to his heires, and after the donor taketh wife and dieth, the wife shall be indowed of this rent, because it is a rent in fee, and by possibilitie may continue for euer.

(n) 28. *Ass* 3. 8 *R.* 2. *Dower* 184. 1. *E.* 6. *Dow. B.* 89. *acc.*

Of a Common certaine a woman shall be indowed, but of a Common sauns nomber en grosse she shall not be endowed, as hath beene said before. And so of a rent seruice, rent charge, and rent seeke, she shall be endowed: but of an annuitie that chargeth onely the person, and issuet h not out of any lands or tenements, she shall not be endowed. But if the freehold of the rents common, &c. were suspended before the couerture, and so continue during the couerture, she shall not be endowed of them. If after the couerture the husband doth extinguish them by release or otherwise, yet she shall be endowed of them; for as to her dower they in the eye of the Law haue continuance.

Vid. 1. *E.* 6. *B.* 89.

Lib. 7. *fo* 38. *Hillingstons case. Lib.* 6. *fo.* 78. *Sorg. Abingamies case.*

If the wife be entituled to haue dower of three acres of marsh, euerie one of the value of twelue pence, the heire by his industrie and charge maketh it good Meadow, euerie acre of the value of ten shillings, the wife shall haue her dower according to the improued value, and not according to the value as it was in her husbands time: for her title is to the quantitie of the land, viz. one iust third part.

And the like law it is, if the heire improue the value of the land by building: And on the other side, if the value be impaired in the time of the heire, she shall be indowed according to the value at the time of the assignement, and not according to the value as it was in the time of her husband.

V. 30. *E.* 1. *Vouch.* 298.

¶ *Ascuns temps durant le couerture.* For the better vnderstanding whereof it is to be knowne, that (as hath beene said) to dower three things doe belong, viz. marriage, seisin, and the death of the husband. Concerning the seisin, it is not necessarie that the same should continue during the couerture, for albeit the husband alieneth the lands or tenements, or extinguisheth the rents or commons, &c. yet the woman shall be endowed. But it is necessarie that the marriage doe continue during the couerture, for if that be dissolued, the dower ceaseth, vbi nullum matrimonium, ibi nulla dos. But this is to bee vnderstood when the husband and wife are diuorced à vinculo matrimonij, as in case of precontract consanguinitie, affinitie, &c. and not à mensa & thoro onely, as for adulterie. And yet it is said, that if the assignement of dower ad hostium eccl' bæ specified, viz. That notwithstanding any diuorce shall happen, yet that she shall hold it for her life, that this is good.

Bract. 92. *Brit. cap.* 101. *Brit cap. eodem.*

If the wife elope (o) from her husband, that is, if the wife leaue her husband, and goeth away and tarrieth with her adulterer, she shal lose her dower until her husband willingly with-

(o) *W.* 2 *ca.* 34. *Lib. Intr.* 284. *Flets lib.* 5. *c.* 22. *Brit. c.* 109. *Mirror. cap.* 5. *§.* 5.

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out coertion eccleſiaſticall be reconciled vnto her, and permit her to cohabit with him; all which is comprehended ſhortly in two Hexameters, Sponte virum mulier fugiens, & adultera facta, dote ſua careat, niſi ipſo niſi ponte retracta. And (p) if ſhe goeth willingly with or to the auowtrer, this is a departure and a tarrying, albeit ſhe remaineth not continually with the auowtrer, or if ſhe tarrieth with him againſt her will, or if he turne her away, or if ſhe cohabit with her huſband, by the cenſures of the Church, in all theſe caſes ſhe loſeth her dowrie. But ſee notable matter hereof, in the expoſition vpon the Statute of W.2.cap.34.

(p) 3.E.3.2.6.E.3.29. 9.E.3.29.19.E.3.Dower. 94.41.E.3.19. Vid.Fitz.N.B.150.h. 8 E.2.Dower 153.

¶ *En ſeueraltie per metes & bonds.* And yet in ſome caſes where the huſband was ſole ſeiſed, the wife ſhal not be endowed in ſeueraltie by metes and bonds. As for example, (q) If a man ſeiſed of lands in fee, tooke a wife and infeoffed eight perſons, a writ of Dower was brought againſt theſe eight perſons, and two confeſſe the Action, and the other ſixe plead in barre, and diſcend to iſſue, the demandant ſhall haue iudgement to recouer the third part of two parts of the land, in eight parts to be diuided, and after the iſſue being found for the demandant againſt the ſixe, the demandant ſhal haue iudgement to recouer againſt them the third part of ſixe parts of the ſame lands, in eight parts to be diuided, which is worthie the obſeruation. But of this more ſhall be afterwards ſaid in this chapter.

(q) M.2.& 3.Eliz.Dier 187.b. 10.Aſſ.p.2. 17.E 3.4. Tr 10.H.5.Rot.447.

But regularly Littletons words are to be intended, where the huſband was ſole ſeiſed, for where he was ſeiſed in Common, there ſhe cannot be endowed by metes and bonds, as it appeareth in this chapter, Sect.44. Nota, the endowment by metes and bonds, according to the common right, is more beneficiall to the wife, than to be endowed againſt common right, for there ſhe ſhall hold the land charged, in reſpect of a charge made after her title of dower.

26.E.3.Dower 133. 10 E.3.31. 17.E.2.Dower 164. 19.E.3 qua.Imp.154. 12.E.2.2. 18.H.6.27.per Paſton.

¶ *Le quel el auoit iſſue per ſa baron ou nemy.* Herein the tenant in Dower, as in many other, is preferred before the tenant by the Curteſie; But yet this great diſaduantage the wife hath, that ſhe cannot enter into her Dower by the Common Law, but is driuen to her Writ of Dower to recouer the ſame, wherein ſometimes great delayes are vſed, and therefore the well aduiſed friends of the wife will prouide for a toynture to be made to her as ſhalbe ſaid hereafter; for by the ſtatute of (r) Magna carta cap.7. ſhee ſhall tarrie in the chiefe houſe of her huſband but by the ſpace of 40. dayes after the death of her huſband, within which time dower ſhall be aſſigned vnto her, vnleſſe it were formerly aſſigned, &c. but of little effect was that act, for that no penaltie was thereby prouided if it were not done: which terme of 40. dayes is in law called Quarentena. But if ſhe marry within the 40 dayes ſhe loſeth her Quarenten. But ſome haue ſaid that by the ancient Lawe of England the woman ſhould continue a whole yeare in her huſbands houſe within which time if Dower were not aſſigned, ſhe might recouer it: and this certainly was the Law of England before the Conqueſt (ſ) Mulieres viduæ bis ſenos menſes viduas exiguntò, atque tum demum cui velint nubant, ſin quæ ante annum nupſerit ſore mulctata fortunis omnibus à priore marito relictis priuatur. But for the reliefe of the widow it was prouided by the Statute of Merton made in Anno 20.H.3.cap.1. (which by (t) Bracton is called Noua conſtitutio) that the wife ſhall recouer damages in her Writ of Dower from the time of the death of her huſband. But herein diuers things are obſeruable. Firſt in what kinde of Writ of Dower ſhe ſhall recouer her damages. In a Writ for a Dower ad oſtium Eccleſiæ, or ex aſſenſu patris ſhe ſhall recouer no damages becauſe ſhe may enter, and the words of the Statute be Et dotes ſuas habere non poſſunt ſine placito. Alſo I haue read in an ancient and learned reading vpon this Statute, that it extendeth only to a Writ of Dower, Vnde nihil habet, and not to a Writ of right of Dower, for in no Writ of right damages are to be recouered. 2. She ſhal recouer damages only when her huſband die ſeiſed, (that is) ſeiſed of the freehold & inheritance, (u) for albeit the huſband before the title of Dower had made a Leaſe for yeares reſeruing a Rent the wife ſhall recouer the third part of the reuerſion with a third part of the rent and damages, for the words of the Statute be, De quibus viri ſui obierunt ſeiſiti. 3. Some ſay that the Demandant in a Writ of Dower, that delayeth her ſelfe ſhall not recouer damages, therefore let the Demandant take heed thereof. 4. It is neceſſary for the wife after the deceaſe of her huſband as ſoone as ſhee can to demand her Dower before good teſtimony, for otherwiſe ſhe may by her owne default loſe the value after the deceaſe of her huſband and her damages for deteyning of her Dower. For if ſhe bring a Writ of Dower againſt the heire, and the heire commeth into the Court vpon the ſummons the firſt day, and pleade that he hath beene alwayes ready and yet is to render Dower, &c. If the wife haue not requeſted her Dower, ſhee ſhall loſe the meane values and her damages, but if ſhe hath requeſted her Dower ſhee may pleade it and iſſue may be thereupon taken.

(r) Magna carta cap.6. Fleta lib 5 cap.23. Bracton lib.2.fol.96. Britton ca.103. 19.H.6.14.6.E.6. Dyer 76. F.N.B. 161. Regul.orig 175. 1.Marie Dower 101.

(ſ) Lamb.fol.130.71.& diuers antient Manuſcripts, See the 2.part of the inſtitutes cap.7.

(t) Bract.lib.4.312. & lib.2.96. Britton cap.103. Fleta lib.5.cap.23.

(u) Regiſt.iudic.4. Origin.173. Dier 11.El.284. Reſt.pl.fo.226.&c. 16.E.3. 11.Damages.83. 8.E.2.ibid.11.

But it is holden in ſome bookes (w) that a requeſt in Pays is not ſufficient, and that it is the folly of the wife, that ſhe brought not her Writ of Dower ſooner. But the Law and many (x) bookes be againſt it, and the words of the plea (that he hath beene alwayes ready, &c.) proue the ſame, and the words of the Statute alſo proue this, Et dotes ſuas habere non poſſunt ſine placito.

(w) 5.E.3.1.47.E.2. Dower 46. and not in the booke at large.

(x) 6.E.3.Dower 59. 2.H.4.7.9.H.4.4.111.iſſue 133.11.H.4.40. 13.E.4.7.14.H.8.25.b.

And

And the reaſon why tout temps priſt is a good plea in a writ of Dower brought againſt the heire to barre her of the meane values and damages is, becauſe the heire holdeth by title, and doth no wrong till a demand be made. But in a writ of Riell, Coſinage, &c. where the land and damages are to be recouered, there ſuch a plea is not good, for there the tenant of the land hath no title, but holdeth the land by wrong. And the Feoffee of the heire cannot at the firſt day plead Tout temps priſt, becauſe he had not the land all the time ſince the death of the Anceſtor. 5. It is to be obſerued that the meane values and damages are to be recouered againſt the tenant in a writ of Dower, as it appeareth in a notable Record (y) betweene Belfield and Rowſe, the Tenant as to parcell pleaded Non-tenure, and for the reſidue, Deteynment of Charters, vpon which pleas they were at iſſue, and both iſſues found by the Jury againſt the Tenant, and found further that the husband died ſeiſed ſuch a day and yeare, and had iſſue a ſonne; and that the Demandant and the ſonne by 6. yeares after the deceaſe of the husband together tooke the profits of the land, and after the ſonne ſuch a day and yeare died without iſſue, after whoſe deceaſe the land diſcended to the Tenaunt as vncle and heire to him, by force whereof hee entred and tooke the profits vntill the purchaſing of the originall writ, and found the value of the land by the yeare, and aſſeſſed damages for the deteyning of the Dower, and coſts, and vpon this verdict, after oftendebating the demandant had iudgement to recouer her damages for all the time frō the death of her husband without any defalcation. In which caſe many things apparāt therein are obſeruable. Let the Tenant therefore take heede how he plead falſe pleas. 6. That this Statute of Merton doth extend to Coppiholds (z) where the cuſtome is that women be dowable. 7. That if the wife hath Dower aſſigned to her in Chauncery ſhe ſhall haue no damages (a) for the words of the ſtatute be Et viduæ per placitum recuperauerint, &c. So it is if the heire or his feoffee aſſigne Dower, and the wife accepteth it ſhe loſeth her damages.

(y) *Mich.*8.&9.E. 2. rot.904.*in Communi banc*

(z) *Tr.*37.*Eliz.lib.*4. *fo* 30.*b. Shawes caſe.*

(a) 43.*Aſſ.pl.*32.

A man ſeiſed of lands in fee taketh a wife and granteth a rent charge and after maketh a Feoffment in fee, and taketh backe an eſtate tayle and dieth, the wife recouereth Dower againſt the iſſue in tayle by reddition, the wife maketh a ſurmiſe that her husband died ſeiſed, and prayeth a writ to enquire of the damages, and that is granted to her. In this caſe ſhe hold the land charged with the rent charge, for by her prayer ſhe accepteth her ſelfe dowable of the 2. eſtate, for of the firſt eſtate whereof ſhee was dowable her husband died not ſeiſed, and ſo ſhee hath concluded her ſelfe, wherefore if the rent charge be more to her detriment then the damages beneficiall to her, it is good for her in that caſe to make no ſuch prayer.

14.*H.*8.28.

¶ *De quel age que la fee ſoit, iſſint que el paſſe lage de neufe ans al tēps del mort ſon barō.* Fee, wife, here Lit. ſpeaketh of a wife generally, & generally it is to be vnderſtood aſwel of a wife de facto as de jure. Therefore if the wife bee paſt the age of 9. yeres (b) at the time of the death of her husbād ſhe ſhalbe endowed, of what age ſoeuer her husband be, albeit he were but 4 yeres old. Quia juñ non poteſt dotē præmeī neq; victū ſuſtiñ; nec obſtabit mulieri petenti minor ætas, viz. Wherein it is to be obſerued, that albeit Conſenſus non concubitus facit matrimonium, and that a woman cannot conſent before twelue, nor a man before fourteene, yet this inchoate and imperfect mariage (from the which either of the parties at the age of Conſent may diſagree) after the death of the husband ſhall giue Dower to the wife, and therefore it is accounted in law after the death of the husband legittimum matrimonium, a lawfull mariage, quoad dotem. If a man taketh a wife of the age of ſeuen yeares, and after alien his land, and after the alienation the wife attayneth to the age of 9. yeares, and after the husband dieth, the wife ſhall be indowed, for albeit ſhe was not abſolutely dowable at the time of the marriage yet ſhe was conditionally dowable, viz. if ſhe attained to the age of 9. yeares before the death of the husband, for ſo Littleton here ſaith, ſo that ſhe paſſe the age of 9. yeares at the death of her husband, for by his death the poſſibilitie of Dower is conſummate.

(b) 13.*E.*1.*Dower. Itin. North.* 8.*E.*2.*Dower.*122. 7.*E.*2.*Dower.*147. 12.*E.*2.*ibid.*159. 21.*E.*3.28. 15.*E.*3.*Dower.*67. 12.*R.*2.*Dower.*54. 12.*H.*4.3.35.*H.*6.40. 7.*H.*6.11 12.12.*H.*4. *Doct.& Stud. Fitz N.B.*149.*b.* 32.*Eliz Dower* 369. *Bract.f.*1.92. *Fleta lib.*5.*ca.*22. *Lib.Intrat fo.*123.

And ſo it is if the husband alien his land and then the wife is attainted of felony now is ſhe diſabled, but if ſhe be pardoned before the death of the husband ſhe ſhal be indowed. If the ſonne indow his wife at her age of ſeuen yeares ex aſſenſu patris if ſhe before the death of her husband attaine to the age of 9. yeares the Dower is good. But otherwiſe it is of an originall abſolute diſabilitie, as if a man take an Alien to wife, and after the husband alien the land, and after ſhe is made Denizen, the husband dieth ſhe ſhall not be indowed becauſe her capacitie and poſſibility to be indowed came by the denization, otherwiſe it is if ſhee were naturalized by act of Parliament whereof ſee more in the chapter of Villinage.

And the Biſhop vpon an iſſue ioyned in a writ of Dower, Quod nunquam fuerunt copulati legitimo matrimonio, ought to certifie that they were coupled in lawfull marriage, albeit the man were vnder fourteene, or the wife aboue nine, and vnder twelue. So it is if a mariage de facto, be doſdable by Diuorce, in reſpect of Conſanguinitie, Affinitie, Precontract, or ſuch like, whereby the marriage might haue beene diſſolued, and the parties freed à vinculo matrimonij, yet if the husband die before any diuorce, then for that it cannot now be auoyded, this wife de facto ſhall bee endowed (c) for this is legitimum matrimonium (as in the other caſe

(c) 10.*E.*3.35. *Fleta.lib.*5.*ca.*22. *Britt.cap.*107.

when the wife is infra annos nubiles) quòad dotē. And ſo in a Writ of dower the Biſhop ought to certifie, that they were legitimo matrimonio copulati, according to the words of the Writ. And herewith agreeth 10.E.3.35. And (d) Bracton: quamdiu durauit matrimonium, durauit dotis exactio, ea deficiente deficit dotis petitio, &c. poterit tamen replicare contra exceptionem illam, quod ſi aliquando fuit matrimonium propter conſanguinitatem, &c. inter eos accuſatum nūquam tamen fuit in vita viri ſui ſolutum nec diuortium celebratum But if they were diuorced à vinculo matrimonij in the life of her husband ſhe loſeth her Dower: Otherwiſe it is if they were diuorced (e) Cauſa adulterij, which is but à menſa & thoro, and not à vinculo matrimonij, as it was adiudged. But ſome doe hold that a wife de facto ſhall not haue an appeale of the death of her husband, but only ſhe that is a wife, De iure in fauorem vitæ. Vide 50.E.3.fol. 15. 28.E.3.92.27 Aſſ. Stanford Pl.Cor.59. and that there vnques accouple in loyall matrimonie ſhall be taken de iure ſtrictly. And ſo in ſome caſe a wife ſhall haue Dower where ſhee cannot haue an appeale, (f) and in other Caſes ſhe ſhall haue an appeale, where ſhe cannot haue a Writ of Dower, as if ſhe elope &c. ſhe is barred of her Dower, but not of her appeale: and the reaſon is for that the Statute (g) barreth her of her Dower, but not of her appeale. So if the husband be attainted of treaſon, &c. his wife ſhall not bee endowed, and yet if any doe kill him, the wife ſhall haue an appeale, the reaſon of the diuerſitie ſhall appeare hereafter in this Chapter.

(d) *Bract.lib.4.fol.304. Britton.ibidem. Fleta lib.5.cap.23. 32.E.1.Dier 156.*

(e) *Tr.2.Ia.Rot.2815. in Communi Banco. Inter Stowell & Wikes in Dower.*

(f) *50.E.15.b.*

(g) *W.2.cap.34.*

¶ *Apres le mort le Baron.* (h) mortuo viro hinc confirmatur Dos.

This is intended of a naturall, not of a ciuill death. For if the husband entred in religion, (i) the wife ſhall not be endowed vntill he be naturally dead.

(h) *Britton.cap.106. Bracton.lib.4.fol.301.*

(i) *32.E.3.tit.collusion 29.*

And in this Chapter Littleton deuideth Dower into fiue parts, viz. Dower by the Common Law. Secondly, Dower by the Cuſtome. Thirdly, Dower ad oſtium Eccleſiæ. Fourthly, Dower ex aſſenſu patris. And fiftly, Dower De la pluis beale. And all theſe Dowers were inſtituted for a competent liuelihood for the wife during her life. (k) Propter onus matrimonij & ad ſuſtentationem vxoris & educationem liberorum cum fuerint procreati ſi vir præmoriatur.

(k) *Bract.lib.2.cap.39.fol. 92. &c. Fleta, lib.5.cap.22. Britton.cap.101.*

Section 37.

¶ *Nota per le common ley la feme nauera pur ſa dower forſque* (l) *la tierce part, &c.* This third part is called rationabilis dos, or Dos legitima, becauſe it is the Dower that the Common Law giueth rationabilis autem Dos eſt cuiuſlibet mulieris de quocunque tenemento tertia pars omnium terrarum, & tenemētorum quæ vir ſuus tenuit in dominico ſuo vt de feodo, &c.

¶ ET nota, que per le common ley la feme nauera pur ſa Dower forque la tierre part des tenements que fueront a ſa Baron durant le eſpouſels, mes per cuſtome dalcun pais el auera le moitie, & per le cuſtome en aſcun Ville & Burgh, el auera lentiertie. Et en touts tiels caſes, el ſerra dit tenāt en Dower.

AND note, that by the common law, the wife ſhall haue for her Dower, but the third part of the Tenements which were her husbands during the Eſpouſals, but by the cuſtome of ſome countie ſhee ſhall haue the halfe, and by the cuſtome in ſome Towne or Borough, ſhee ſhall haue the whole. And in all theſe Caſes ſhee ſhall be called Tenant in Dower.

(l) *Glanuil.lib.6.cap.1. Bracton.vbi ſupra. Britton.vbi ſupra. Fleta vbi ſupra. Mirror.cap.1.§.3. Magna Carta cap.7.*

Fitz.N.B.150.c.

(m) *21.E.4.53.54. 7.H.6.26. 22.H.6.14. 21.H.7.17. 40.Aſſ.27.41. 16.E.2.preſcription 53. 43.E.3.32.45. Aſſ.8. Dier.363.39.E.3.2.10. 14.E.3.Barre 277. 13.E.3.tit.Dower.65.*

(n) *Vide le ſtatute de conſuetud. Kancia. &c. Trin.17.E.3.coram Rege Kan. in Theſaur. in which record Sentencia ſignifieth Widdowhood.*

Section 38.

This shall be explained by that which shall be said in the two Sections next ensuing.

¶ Aury sont deux auters manners de dower, cestasçauoir, dower que est appelle dowment ad ostium Ecclesiæ, & dower appelle dowment ex assensu patris.

ALso there bee two other kinds of Dower, *viz.* Dower which is called Dowment at the Church doore, and Dower called Dowment by the fathers assent.

Section 39.

¶ DOwment ad ostium Ecclesiæ, est lou home de pleine age seisi en fee simple que serra espouse a vn feme, quãt il vient al huis del monastery ou delglise destre espouse, & la apres affiance enter eux fait, il endowe la feme de sa entier terre, ou de la moitie, ou dautre meindre parcel & la ouertment declare le quãtitie & la certainty de la terre que el aura pur sa dower, in ceo case la feme, apres le mort le baron, poit enter en le dit quantitie de terre dont le baron luy endowa, sans auter assignement de nulluy.

DOwment at the Church doore, is where a man of full age seised in Fee simple, who shall be married to a woman, and when he commeth to the Church doore to be married, there, after affiance & troth plight betweene them, he endoweth the woman of his whole land or of the halfe or other lesser part thereof; and there openly doth declare the quantitie and the certaintie of the land which shee shall haue for her Dower. In this case the wife after the death of the husband, may enter into the said quantitie of land of which her husband endowed her, without other assignement of any.

¶ If this dower bee made ad ostium castri siue mesuagij it is not good, but ought to be made, ad ostium Ecclesiæ siue Monasterij.

10.H.3.Dower 200.

Et sciendum est (o) quod hæc constitutio fieri debet in facie Ecclesiæ, & ad ostium Ecclesiæ, non enim valet facta in lecto mortali, vel in camera, vel alibi vbi clandestina fuere coniugia. For the law require that this and like matters bee done publikely and solemnely.

(o) Bracton.lib.2.cap.18. Mirror.cap.1.§.3.& cap 5. 10.H.3. Dower 201. F.N.B 150.m.n. Fleta.lib.5.cap.22.&c. Britton.cap.101.108.&c.

¶ *Ou home de pleine age.* That is of one and twentie yeares. Anno 9. H.3. Dower 197. A man of the age of eightene yeeres tooke a wife, and by assent of his garden endowed her, ad ostium Ecclesiæ, and it was adiudged a good endowment, albeit, the husband died before the age of one and twentie yeares; but I hold Littleton's opinion to be good Law.

9.H.3.Dower. 197.

¶ *La apres affiance enter eux.* Affidare est fidem dare Affiance or sponsalitie, and is deriued of this word spondeo, because they contract themselues together, & ideo sponsalia dicuntur (p) futurarum nuptiarum conuentio, & repromissio. But this Dower is euer after marriage solemnized, and therefore this Dower is good without deed, because he cannot make a Deed to his wife. For no assignement of dower ad ostium Ecclesiæ, can be made before marriage, for that before marriage the woman is not intitled to haue dower.

(p) Glanvill lib 6. cap.1. 40.E.3.43. Vide Virnam case.lib.4.fo.1.2

¶ *De sa entier terre ou de le moitie.* In ancient time (q) as it appea-

(q) Glanvill.lib.6.cap.1. Bract.lib.2.cap.38.39.& lib.4.tract.6.cap.1.&6. Britton cap.101.&c. Fleta lib.5.cap.22.&c.

appeareth by Glanuill, lib.6.cap.1. It was taken that a man could not haue endowed his wife ad ostium Ecclesiæ, of a more then a third part, but of lesse he might. But at this day (r) the Law is taken as Littleton here holdeth. An assignement of dower (s) where the husband was sole seised, cannot bee made of the third or fourth part in common, but ought to bee in seueralte.

(r) F.N.B.150.
(s) 20.E.3.Barre 132. 45.E.3.6. Fleta. lib.5.23.

¶ *Et la ouertment* (t) *declare le quantitie & certeintie del terre.* Here be two things that the Law doth delight in, viz. first, to haue this and the like openly and solemnely done. Secondly, to haue certaintie, which is the mother of quiet and repose. And this word (moitie) aboue said is to be entended of the halfe in certaintie, and not of the moitie in Common, which plainely (u) appeareth in that here Littleton saith, the quantitie and certaintie of the land.

(t) Britton.cap.101. Bracton.lib.2.cap.18.

(u) Vide 14.H.3.Dower 189 9.H.3.Dower 150. 8.H.3.Dower 195. F.N.B.150. 40.E.3.43.

¶ *En ceo case la feme poet enter en le dit quantitie del terre.* And afterwards Sect. 43. he saith, Nota, que en touts cases lou le certaintie appeirt queux terres ou tenements feme auera pur sa dower la fem poet enter apres la mort son Baron. It was instituted in fauour and relefe of wiues, that a man after marriage might assigne to his wife certaintie of Dower, to the end that the widow should not bee driuen to a long and chargeable suit wherein delay might be vsed, and in the meane time her life spent, together with her money also. For albeit the (w) law hath prouided, Quod vidua post mortem mariti sui non detur aliquid pro dote sua & maneat in capitali messuagio mariti sui per quadraginta dies post obitum mariti sui infra quos dies assignetur ei dos sua, nisi prius ei assignata fuerit, &c & habeat rationabile estouerium suum interim in Communi, yet because there was no penaltie or punishment inflicted, the tenant of the land may driue her to sue for her Dower. And this continuance of the widow in the capitall Messuage is in Law called a Quarentine, Quarentina, for that it is by the space of fortie dayes, as is aforesaid. And if the heire or other tenant of the land put her out, she may haue her writ, De quarentina habenda. If the wife marrie within the fortie dayes she loseth her Quarentine for her habitation in the house is personall to her, and only giuen to her in iudgement of Law during her widowhood, albeit the words of the Law bee generall. And therefore to the end that Widowes might haue certaintie of estate, and that they might enter and not be driuen to suit, the Law hath prouided Dower ad ostium Ecclesiæ, and as it shall appeare hereafter, Dower ex assensu patris, And lastly, by making of a ioynture, of which (being no Dower but made in satisfaction of Dower either before or after Marriage) it is necessarie that some thing should be said hereafter in his apt place, for that this now falleth out to be the surest way.

(w) Magna Carta cap.7. See the second part of the Institutes, cap.7. Fleta lib.5.cap.23. Britton.cap.103. Bract.lib.2.cap.40. Regist.175. Vide Dier 6.E.6.76.b.& 161.a. F.N.B.161. 1.Marie. Br.101.

Nota. surest way.

¶ *En touts cases quant le certeintie appeirt &c. la feme poet enter apres le mort del Baron.* This is to be intended where the certaintie appeareth vpon an assignement of dower, ad ostium Ecclesiæ, or ex assensu patris For if a woman bring a writ of dower of six pound rent charge, & she hath iudgement to recouer the third part, albeit it be certain that she shal haue fortie shillings, yet she cannot (x) distreine for 40. shillings before the Sheriffe doe deliuer the same vnto her: for whersoeuer the writ demand land, rent, or other things in certaine, the demandant after iudgement may enter or distreine before any seasō deliuered to him by the Sheriffe vpon a writ of habere facias seisinam. But in Dower where the writ demandeth nothing in certaine, there the demandant after the iudgement cannot enter or distreine vntill execution sued, by which execution the Sheriffe is by the Kings writ to deliuer the third part in certaintie to the demandant. And so it is when the wife of one tenant in common demand a third part of a moitie, yet after iudgement she cannot enter vntill the Sheriffe deliuer to her the third part, albeit the deliuerie of the Sheriffe shall reduce it to no more certaintie then it was.

(x) 45.E.3.26. 48.E.3.36.22.Ass 87. 39.E.3.12.37.H.6.38. 39.H.6.25. 1.8.5.8.Brew 199. 30.E.3.30.21.E.4.3. Vide lib.1. Shelleys case. 40.E.3.22.

¶ *Sans auter assignement de nulluy.* For as concerning Dower at the Common law, there must be assignement either by the Sheriffe (as hath beene said) by the Kings writ, or else by the heire or other tenant of the land by consent and agreement betweene them. To a perfect assignement of Dower eight things are to be obserued: (a) First regularly the assignement must be certaine, as our Author here saith.

(a) 8.E.2.Bnt.75.40.E.3.21 45.E.3 5,6.

Secondly, It (b) must be either of some part of the land whereof she is dowable, or of a rent or some other profit issuing out of the same, either before iudgement or after, which Rent may be assigned to her by parol. But an assignement of other land whereof she is not dowable, or of a rent issuing out of the same, is no barre of her dower.

(b) 1.Mar.Dyer 91. 2.E.2.Dower 146.28.H.6.2. Dier 9.El 263.26.Ass.41. 31.E.3.Scir.fa.99.33.H.6.2 Vernons case 5.li.4.f.1. 5.E.4.22.

Thirdly, The assignement must be absolute, and not conditionall, or subiect to any limitation.

Fourthly, It must be made by him that is Tenant of the land; but herein certaine diuersities are to be obserued.

(c) 7.H.6.34. 10.E.2. Dower 169. 10.E.3.38.

If two or more be Ioyntenants of lands, (c) the one of them may assigne Dower to the wife,

wife of a third part in Certaintie, and this ſhall binde his companions, becauſe they were compellable to doe the ſame by Law. But if one of them aſſigne a rent out of the land to the wife, this ſhall not binde his companion, becauſe hee was not compellable by the Law thereunto. If the husband make ſeuerall Feoffments of ſeuerall parcels, and dieth and the one Feoffee aſſigne Dower to the wife of parcell of land in ſatisfaction of all the Dower which ſhee ought to haue in the land of the other feoffees, the other feoffees ſhall take no benefit of this aſſignement, becauſe they are ſtrangers thereunto, and cannot pleade the ſame. But in that caſe if the husband dieth ſeiſed of other lands in fee ſimple and the ſame diſcend to his heire, and the heire indoweth the wife of certaine of thoſe lands in full ſatisfacton of all the Dower that ſhee ought to haue aſwell in the lands of the feoffees as in his owne lands, this aſſignement is good, and the ſeuerall feoffees ſhall take aduantage of it. And therefore if the wife bring a writ of Dower againſt any of them, they may vouch the heire, and hee may pleade the aſſignment which he himſelfe hath made in ſafetie of himſelfe, leaſt they ſhould recouer in value againſt him, (d) ſo as there is a priuity in this reſpect betweene the heire and the feoffees, and by this meanes the ſame may be pleaded by the heire that made it. And ſo it is adiudged in our bookes, which is a notable caſe for many purpoſes.

(d) 33.E.3.Tit.Iudgm.254. 8.E.3.69. 17.E.3.58.b. 3.E 3 tit.Dower 76. 3.E.3.Vouch.196. See the ſecond part of the Inſtit. W.1. cap.49.

Fiftly, If aſſignement be made (e) by any diſſeiſor, abator, intruder, or any wrong doer, of lands or tenements, if they came to that eſtate by collusion and couin betweene the widdow and them, albeit the widdow hath iuſt cauſe of action and the aſſignement bee indifferently made after iudgement by the Sherife of an equall third part, yet ſhall the Diſſeiſee, &c. auoyd it, for couin in this caſe ſhall ſuffocate the right that appertained to her, & ſo the wrongfull manner ſhal auoyd the matter that is lawfull.

(e) 25.Aſſ.p.1.44.Aſſ.29. 44.E.3.46. 27.Aſſ.74. 11.H.4.60. 15.E.4.4. 19.H.8.12. Lit.83.151.

Sixtly, An aſſignement by (f) a diſſeiſor, abator, intrudor, &c. if there be no couin, is good, vnleſſe it be preiudiciall to the diſſeiſee, &c. As if the husband (g) infeoffeth the younger ſonne with warrantie, the eldeſt ſonne diſſeiſe the youngeſt ſonne, and endow the widdow, in this caſe the younger ſonne ſhall auoyd this aſſignement, for otherwiſe he ſhall loſe his warrantie: but a diſſeiſor, abator, intrudor, &c. cannot aſſigne a rent out of the land to her for her dower, to bind the diſſeiſee, &c.

(f) 12.Aſſ.p.20.21.E.3.12.
(g) 3.E.3.tit.Dower 77. 16.E.2.tit.Dower Statham.

Seuenthly, No aſſignement can be made, but by ſuch as haue a freehold, (as hath bin ſaid) or againſt whom a writ of Dower doth lie, and therefore (h) an aſſignement by a gardein in ſocage is void, but a gardein in chiualrie may aſſigne dower, as ſhall be ſaid hereafter, becauſe a writ of dower lieth againſt him, and not againſt a gardein in ſocage.

(h) 31.E.1.Dower 151. 29.Aſſ.68. 15.E.3.Dower 67.

Eightly, And before the gardein in chiualrie enter, the heire within age (i) may aſſigne dower, for the gardein may waiue the wardſhip. And ſo briefely haue you heard, of what, by whom, and to whom the aſſignement muſt be made. But there needeth neither liuerie of ſeiſin, nor writing, to any aſſignement of Dower, becauſe it is dus of common right.

(i) 7.R.2. admeaſurement 4. F.N.B.148.f.

Section 40.

¶ DOwment ex aſſenſu Patris **eſt lou le pier eſt ſeiſie de Tenements en fee, & ſon fits & heire apparẽt, quant il eſt eſpouſe, endowe ſa feme al huys del Monaſterie ou del Eſgliſe, de parcel de Terres ou Tenements ſon pier, ỏ aſſent ſon pier, & aſſigñ la quantitie & les parcels. En ceo caſe apres le mort le fits,**

DOwmẽt by aſſent of the father is, where the father is ſeiſed of Tenements in fee, and his ſonne and heire apparent when he is married, endoweth his wife at the Monaſterie or Church doore, of parcel of his fathers lands or Tenements with the aſſent of his Father, and aſſignes the quantity and parcels; In this caſe after the death of the

Brit.c.109.Flet.li.5.c.22.23 Bract.li.5.305. 6.E.3.34. F.N.B.150.

¶ *Lou le piere eſt ſeiſie de Tenements en fee.* **Tenant for** life of a Carue of Land, the reuerſion to the father in fee, the ſonne and heire apparent of the father endoweth his wife of this Carue, by the aſſent of the father, the Tenant for life dieth, the husband dieth, the reuerſion was a Tenement in the father, and yet this is no good endowment ex aſſenſu patris, becauſe the Father at the time of the aſſent had but a reuerſion expectant vpon a freehold, whereof hee could not haue endowed his owne wife; and albeit the tenant for life died, liuing the husband, yet, quod initio non valet tractu temporis non conualeſcet.

ualeſcet. And for the moſt part, Dower ad oſtium Eccleſiæ, and ex aſſenſu patris, enſue the nature of a Dower at the Common Law. And for theſe the wife may haue a writ of Dower, albeit they be certaine, as for the third part at the Common Law.

¶ *Et ſon fits & heire apparent.* It muſt be ſuch a ſonne and heire apparent, as muſt continue an heire apparent, and therefore the youngeſt ſonne and heire apparent cannot endow his

la feme entera en meſme le parcell ſaung auter aſſignement de nulluy. Mes il ad eſte dit en ceſt caſe, que il couient a la feme dauer vn fait de le Pier prouant ſon aſſent & conſent de cel endowment. M.44.E.3. fol.45.

ſonne, the wife ſhal enter into the ſame parcell without the aſſignement of any. But it hath beene ſaid in this caſe, That it behoueth the wife to haue a Deed of the father, to proue his aſſent and conſent to this endowment. *M. 44.E.3.f.45.*

wife ex aſſenſu patris, of lands whereof the father is ſeiſed in fee of the nature of Borough Engliſh, becauſe the father may haue another ſonne, and then the huſband is not heire apparent: and it is in reſpect of the conſtant and perpetuall apparance, that the ſonne and heire apparant may endow his wife of his fathers land. And ſo it is of lands in Gauelkind: (k) and this is the reaſon that Dower ex aſſenſu fratris, or conſanguinei, is not good, for that albeit he is heire apparant at that time, yet for the common poſſibilitie that hee may haue iſſue, and euery iſſue that the brother or coſine ſhould haue afterwards, ſhall exclude him, hee is no ſuch heire apparent as the Law intendeth. (l) But an endowment ex aſſenſu matris, is as good as ex aſſenſu patris, becauſe there is an apparance of a conſtant and perpetuall heire. And ſome haue ſaid, that if the father after his aſſent be attainted of treaſon or felonie, that the wife in that caſe loſeth her dower; becauſe her huſband doth not continue heire.

(k) 8.H.3. *Dower* 193. 9.H.3. *Dow.* 191. 11.H.3. *Dower.F.N.B.*150.*l.* 29.E.3. *Dower* 134.

(l) *F.N.B.*150.*e. Flet.lib.*5. *cap.*22. *Bract.lib.*4.305. *Ambr. Gorges caſe.li.*6 *fo.*22.

¶ *Quant il eſt eſpouſe, endow ſa feme.* (m) In this caſe, albeit the Freehold and Inheritance is in the father, yet in reſpect (as hath been ſaid) of the conſtant and perpetuall appearance of the heire, the heire apparent doth endow, and the father doth but aſſent. And therefore where the father did endow the wife of his ſonne and heire apparent, that endowment was holden void, becauſe the huſband in that caſe muſt endow, and the father aſſent.

(m) 2.H.3. *Dower* 199. 6.E.3.34. 8.E.2. *Dow.* 154.

And it is holden in 2.H.3. Dower 199. That if the heire apparent be within age, yet the endowment ex aſſenſu patris is good. Note, Littleton in the caſe of Dower ad oſtium Eccleſiæ, doth put the huſband of full age, but here of the dower ex aſſenſu patris, he ſpeaketh generally.

2.H.3. *Dower* 199.

¶ *Et aſſigne le quantitie & les parcels.* So as both in Dower ad (n) oſtium Eccleſiæ, & ex aſſenſu patris, the certaintie muſt be expreſſed. And therefore where Bookes ſpeake of a moitie, it is intended, (as hath beene ſaid) of an haife in certaine.

(n) 9 H.3. *Dower* 190. *F.N.B.*150.*m.*

¶ *Apres la mort le fitz ſa feme entera:* In this caſe after the death of the huſband the wife ſhall enter, or haue a writ of Dower albeit the father be aliue.

8.E.2. *Dower* 154.

¶ *Que il couient al feme dauer vn fait prouant ſont aſſent a cel endowment.*

¶ *Vn fait*, a Deed factum, this word (Deed) in the vnderſtanding of the Common Law is an Inſtrument written in parchment or paper, (o) whereunto ten things are neceſſarily incident: Viz. Firſt, writing. Secondly, in Parchment or Paper. Thirdly, a perſon able to contract. Fourthly, by a ſufficient name. Fiftly, a perſon able to be contracted with. Sixtly, by a ſufficient name. Seuenthly, a thing to be contracted for. Eightly, apt words required by Law. Ninthly, Sealing. And tenthly, Deliuerie. A Deed cannot be written vpon wood, leather, cloath, or the like, but onely vpon parchment or paper, for the writing vpon them can be leaſt vitiated, altred, or corrupted.

(o) *Bract.li.*2.*fol.*33. *&c. & li.*5.*fol.*396. *Brit.fol* 34. 65.66.101. *Flet.li.*3.*ca.*14. *& li.*6.*c.*32. *& li.*3 *c.*3,4,5.6

If a deed (p) be alledged in Court or Plea, regularly it muſt be ſhewed to the Court, to the end the Court may iudge whither there be apt words to make it a good contract according to the rule of Law, whereof more ſhall be ſaid in the chapter of conditions. But if non eſt factum be pleaded, becauſe thereby the ſealing, deliuerie, or other matter of fact is denied, it ſhal be tried by the Countrie. Of Deeds ſome be indented, and ſome be Deeds poll. Of indented, ſome be bipartite, ſome tripartite, ſome quadripartite, &c. whereof more ſhall be ſaid in the Chapter of Conditions. Alſo of Deeds, ſome be inrolled, and ſome (q) be not inrolled; if it bee inrolled according to the Statute of 27.Hen.8.cap.10. it muſt be inrolled in parchment for the ſtrength and continuance thereof, and not in paper, and ſo was it reſolued in Parliament by the Iudges

(p) 4.E.2. *Fines* 116.14.E 2 *Ley* 79.4.E.2. *Ley* 78. 27.H.6. 0.27.H.8.22. *F.N.B.*122.*I.*

(q) *Bris.fo.*101. *Bract.li.*2. *fol.*33. *Flet.lib.*3.*ca.*14.

goe in anno 23.Eliz. Now for the reſt of the parts of a Deed, you ſhall read thereof plentifully in our Bookes, and in my Reports, which by this ſhort inſtruction you ſhall eaſily vnderſtand.

¶ *Vn fait de feoffement.* **It is properly called** Charta feoffamenti, and yet if ſuch a deed be denied, the plea is non eſt factum. So as of deeds, ſome concerne the realtie, as here a deed of feoffement; ſome the perſonaltie, as a Deed of gift of goods, Obligations, Bills, &c. And ſome mixt, whereof more ſhall bee ſaid in the Chapter of Releaſes.

If a man deliuer a writing ſealed, to the partie to whom it is made, as an eſcrow to be his Deed vpon certaine conditions, &c. this is an abſolute deliuerie of the Deed, being made to the partie himſelfe, for the deliuerie is ſufficient without ſpeaking of any words, (otherwiſe a man that is mute could not deliuer a Deed) and Tradition is onely requiſite, and then when the words are contrarie to the act which is the deliuerie, the words are of none effect, non quod dictum, ſed quod factum eſt inſpicitur. And hereof though there hath beene (r) barietie of opinions yet is the Law now ſettled agreeable to iudgements in former times, and ſo was it reſolued by the whole Court of Common-pleas. But it may be deliuered to a ſtranger, as an eſcrowe, &c. becauſe the bare act of deliuery to him without words worketh nothing. And this is the ancient diuerſitie (ſ) in our bookes the record whereof I haue ſeene agreeable with the reaſon of our old bookes. And as a Deed may be deliuered to the partie without words, ſo may a Deed be deliuered by words without any act of deliuery, as if the writting ſealed lyeth vpon the table, and the feoffor or obligor ſaith to the feoffee or obligee, Goe and take vp the ſaid writting, it is ſufficient for you; or it will ſerue the turne, or take it as my Deede, or the like words, it is a ſufficient deliuery.

35.*Aſſ.Pl.11.*
Tr.29.H.8. Dier 95.
(r) *Tr.43.Eliz. inter Hanſeby & Locher in the Kings bench.*
Hill.12.Ia.R. in the Common place.
(ſ) *13.H.8. 19 H.8.8.*
4.E.3.18.13.H.4.8.

Of Deeds and their diſtinctions you ſhall reade excellent matter in Antiquitie. (t) Cartarum, alia regia, alia priuatorum, & regiarum, alia priuata, alia communis, & alia vniuerſitatis. Priuatarum, alia de puro feoffamento & ſimplici, alia de feoffamento conditionali ſiue conuentionali, alia de recognitione pura, vel conditionali, alia de quiete clamantia, alia de confirmatione, &c. Verba intentioni non é contra debent inſeruire.

(t) *Britt.lib.2.fo.33.b.*
Plac.lib.3.ca.14.

Carta non eſt (u) niſi veſtimentum donationis. Carta non eſt niſi veſtimentum orationis. Nemo tenetur armare aduerſarium ſuum contra ſe. Scriptum eſt inſtrumentum ad inſtruendum quod mens vult. Carta eſt legatus mentis. (w) Benignæ ſunt faciendæ interpretationes cartarum propter ſimplicitatem laicorum vt res magis valeat quam pereat. Nihil tam (x) conueniens eſt naturali equitati quam voluntatem domini volentis rem ſuam in alium transferre ratam habere.

(u) *Flet.lib.6.ca.28.*
Bracton.
Bracton lib.2.fo.34.
(w) *Bracton lib 2.fo.94.95.*
(x) *Idem lib.2.fo 18.*

Re, verbis, ſcripto, conſenſu, traditione
Iunctura veſtes ſumere pacta ſolent.

(y) *Pl.Com. in Throgmorton caſe fo.161.b.*

Verba cartarum fortius accipiuntur contra proferentem. Generale dictum generaliter eſt intelligendum. Verba debent intelligi ſecundum ſubiectam materiam. Carta de non ente non valet.

Note, the father may (a) make a Deede to the wife of his ſonne, and ſo is the Law holden for that the fathers land by his aſſent is charged with a future freehold whereunto a Deede is requiſite, but to a Dower Ad oſtium Eccleſiæ no Deede is requiſite. And here it is not well done (of him that made the addition to our Author) to vouche 44.E.3.fo.45. becauſe the Author himſelfe vouched it not, for if he (b) meant to haue vouched authorities, hee would haue vouched more then one in this caſe, and thoſe that (c) hee vouched hee would haue cited truly, but this caſe is miſtaken both in the yeare and in the Leafe, for where it is cited in 44.E.3. it is in 40.E.3. and where he ſaith it is fo.45. it is fo.43.

(a) *3.E.2.Dower 126.*
8.E.2.Dower 154.
6.E.3.34. 40.E.3.43.

(b) *21.H.3. Dower 186.*
14.H.3. Dower.
(c) *2.E.2.Dower 125.*
Vid.Statut.Wallie anno 12.E.1.fo.18. in veteri magna carta.
47.H.3.Dower 174.

An aſſignment of Dower (d) either ad oſtium Eccleſiæ or ex aſſenſu patris may be made of more than a third part. But the ancient Law was that no greater aſſignement could bee made in thoſe caſes but of a third part, but leſſe he might, as it appeareth in Glanuill.

(d) *F.N.B.150.p.*
Glanuil.lib.6.ca.1.2.3.

Section 41.

¶ Et ſi apres le mort le baron el enter & agree a aſcun tiel dower de les dits dowers ad oſtium eccleſiæ, &c. donque

And if after the death of her husband ſhe entreth, and agree to any ſuch dower of the ſaid dowers at the Church dore, &c. then

¶ *El eſt conclude a claimer aſcun anter dower per la common ley.* Wherein a diuerſitie is be obſerued betweene a Dower ad oſtium Eccleſiæ, or ex aſſenſu patris, and a ioynture

Vernons case lib.4.fo.1.
1.Mar. Dier 91.
31.E.3. Scite fac.99.
20.E.4.3.

ſoynture or eſtate made to the wife in ſatisfaction of her Dower, for one of thoſe Dowers being aſſented vnto is a barre of the Dower at the Common Law, but a ſoynture was no barre of her Dower at the Common law. For a right or title that one hath to a freehold cannot bee barred by acceptance of collaterall ſatisfaction. But a woman cannot haue a double dower, viz. ad oſtium Eccleſiæ, &c. and at the Common law, for the wife of one husband can haue but one dower. But ſince Littleton wrote by the Statute of

el eſt conclude de claimer aſcun auter dower per le common ley, daſcungs terres ou tenements quex fuerent a ſa dit baron. Mes ſi el voit, el poit refuſer tiel dower ad oſtium eccleſiæ, &c. **& dongz el poit eſtre endow ſolongz le cours del common ley.**

ſhe is concluded to claime any other dower by the Common law of any the lands or tenements which were her husbands, but if ſhee will, ſhee may refuſe ſuch dower at the Church dore, &c. and then ſhe may bee endowed after the Courſe of the Common law.

27.H.8. cap.10.
(a) 12.E.2.Dower.158.
27.H.8.ca.10.verſus finem.

27.H.8. if a ſoynture be made to (a) the wife according to the purview of that ſtatute it is a barre of her dower ſo as the woman ſhall not haue both ſoynture and dower, and to the making of a perfect ſoynture within that ſtatute ſixe things are to be obſerued. Firſt, her ſoynture by the firſt limitation is to take effect for her life in poſſeſſion, or profit preſently after the deceaſe of her husband, Secondly, that it be for the tearme of her owne life, or greater eſtate. Thirdly, it muſt be made to her ſelfe, and to no other for her. Fourthly, it muſt be made in ſatisfaction of her whole dower, and not of part of her dower. Fiftly, it muſt either be expreſſed, or averred to be in ſatisfaction of her dower. And ſixtly, it may be made either before or after mariage.

Concerning the firſt, if a man make a Feoffment in fee of Lands or Tenements either before or after mariage to the vſe of the husband for life, and after to the vſe of A. for life, and then to the vſe of the wife for life in ſatisfaction of her dower, this is no ſoynture within the ſtatute, becauſe by the firſt limitation it was not to take effect in poſſeſſion or profit preſently after the death of her husband, And albeit in that caſe A. ſhould dye liuing the husband, and after the death of the husband the wife entreth, yet this is no barre of her dower, but ſhe ſhall haue her dower alſo becauſe it is not within the ſaid ſtatute, and (as it hath beene ſaid) by the Common law it was no bar of her dower. 2. It muſt be either in fee taile, or for term of her own life, for an eſtate for life or liues of one or many other, [redacted] or to her for a C. or 1000. yeares, &c. if ſhe liue ſo long, or without ſuch limitation is no barre of her dower, albeit they be expreſſely made in ſatisfaction of her dower, cauſa qua ſupra. 3. If an eſtate bee made to others in fee ſimple, or for her life vpon truſt ſo as the eſtate remaine in them, albeit, it be for her benefit, and by her aſſent, and by expreſſe words to be in full ſatisfaction of her dower, yet is this no barre of her dower. The fourth is ſo plaine as it needeth not any example. 5. A deuiſe by will cannot be averred to be in ſatisfaction of her dower, vnleſſe it bee ſo expreſſed in the will. 6. If the ſoynture be made before marriage, the wife cannot waiue it and clayme her dower at the Common law, but if it be made after mariage, ſhe may waiue the ſame and claime her dower. I haue touched theſe points the more ſummarily, becauſe they are reſolued at large with the reaſons thereof in Vernons caſe vbi ſupra. So as to comprehend all in few words, a ſoynture (which in common vnderſtanding extendeth as well to a ſole eſtate as to a ſoynt eſtate with her husband) is a competent liuelihood of freehold for the wife of Lands or Tenements, &c. to take effect preſently in poſſeſſion or profit after the deceaſe of the husband for the life of the wife at the leaſt if ſhe her ſelfe be not the cauſe of determination or forfeiture of it. Which ſee more at large in Vernons caſe vbi ſupra. If a ſoynture bee made to a wife of lands before the Couerture, and after the husband and wife Alien by fine thoſe lands ſo conueyed for her ſoynture, ſhe ſhall not be endowed of any of the other lands of her husband. But if the ſoynture had beene made after mariage notwithſtanding the alienation by the husband and wife thereof by fine, yet ſeeing her eſtate was originally waiuable, and the time of her election came not till after the deceaſe of her husband ſhe may claime her dower in the reſidue of her lands. But in the other caſe, the ſoynture of the wife made before mariage was not waiueable at all, now as the dower ad oſtium Eccleſiæ and ex aſſenſu patris is better for the wife, becauſe in reſpect of the certainty, ſhe may enter, then the dower at the Common Law, where ſhee is driuen to her reall action, and therefore Britton calleth Dower ad oſtium Eccleſiæ and ex aſſenſu patris eſtabliſhment of dower by the husband and aſſignement of Dower after his deceaſe (for nothing that is vncertaine is eſtabliſhed.) So a ſoynture that hath the force of a barre of Dower by the ſaid act of 27.H.8.) is as hath beene ſaid more ſure and ſafe for the wife then either Dower

Leake & Rardal's caſe, lib.4.fol.4.

Vid.Vernons caſe vbi ſupra, fo.2.b.

Dier, 19.Eliz.358.

Britt.cap.102.103.

ad

ad oſtium Eccleſiæ or ex aſſenſu patris, for beſides it is as certaine as thoſe others, and ſhee may enter into it, after the death of her husband and not be driuen to her action. She ſhall not be barred of her ioynture albeit her husband cõmit treaſon or felonie, as ſhe ſhalbe both of her Dower ad oſtium Eccleſiæ and ex aſſenſu patris by the Common Law. But now at this day by the ſtatutes of 1.E.6.cap.2. and 5.E.6.cap.11. a wife ſhall not loſe any title of Dower which to her was accrued by the attainder of her husband for any manner of murder or other felony whatſoeuer. But (a) if the husband be attainted of high treaſon or petie treaſon ſhe ſhalbe (b) barred of her dower at this day, ſo long as that attaindre ſtandeth in force.

*Bract.*311.*lib.*4. *Britton.ca.*15.

1.*E.*6.*ca.* 6. 5.*E.*6.*ca.*11.

(a) *Stanford* 195.*b*
(b) *Vid.in the chapter of Carranty. Sect.*

¶ *Concludo*, commeth of the (c) verbe concludo which is deriued of con and claudo to determine, to finiſh, to ſhut vp, to eſtoppe, or barre a man to pleade or clayme any other thing, Vid. Eſtoppell.

(c) *P. Com.*276.*b. per Walſh. Vid. Sect.*693.695. 607.679.

Section 42.

CEt nota que nul feme ſerra endow ex aſſenſu patris en le forme auantdit, mes lou ſa baron eſt fits & heire apparant a ſon pier. Quære de ceux deux caſes de dowment ad oſtium Eccleſiæ, &c. ſi la feme al temps del mort ſa baron, ne paſſe lage de ix. ans, ſrel auera dower ou non.

AND note that no wife ſhall bee endowed *ex aſſenſu patris* in forme aforeſaid, but where her husband is ſonne and heire apparant to his father. *Quære* of theſe two caſes of dowment *ad oſtium eccleſiæ, &c.* if the wife at the time of the death of her husband bee not paſt the age of 9. yeares, whither ſhee ſhall haue dower or no.

CN *vl feme ſerra endowed, &c.* Of this ſufficient hath beene ſaid before.

¶ *Quare de ceux deux caſes de dowment ad oſtium Eccleſiæ, &c.* And it ſeemeth that theſe Dowers being made by aſſent, &c. that the ſame are good albeit the wife bee within the age of Nine yeares, for Conſenſus tollit errorem. But without queſtion, a ioynture made to her vnder or aboue the age of Nine yeares, is good.

Section 43.

CEt nota que en touts caſes lou le certainty appiert queux tres ou tenements feme auer pur ſa dower, la le feme poit entrer aps la mort ſa baron, ſans aſſignement de nulluy. Mes lou le certaintie ne appiert, ſi come deſtre endow de la tierce part dauer en ſeueraltie, ou del moitie ſolonque le cuſtome de tener

AND note that in all caſes, where the certaintie appeareth what lands or tenements the wife ſhall haue for her dower, there the wife may enter after the death of her husband without aſſignement of any. But where the certaintie appeares not, as to be endowed of the 3. part to haue in ſeueralty, or the moity according to the cuſtom

CEt *nota que en touts caſes, &c.* In all caſes where the demaund of the Dower is certaine as in caſe of Dower ad oſtium Eccleſiæ or ex aſſenſu patris, there the wife after the death of the husband may enter. But where the demaund is vncertaine as in writs of Dower at the Common Law, there albeit the thing it ſelfe be certaine, yet ſhall ſhe not take it without aſſignement, As if a woman bring a writ of dower of three ſhillings rent; albeit ſhee ought to bee endowed of one ſhilling, yet cannot ſhee after iudgement diſtreine for twelue pence before aſſignement, becauſe the demaund was vncertaine

40.*E.*3.22.43.43.*E.*3.4. 20.*E.*3.*barre.*132. 8.*E.*2.*Entry* 75.

taine. And ſo it is if two tenants in common bee, and the wife of one of them bring a writ of dower to be endowed of a third part of a moitie, and haue iudgement to recouer, yet cannot ſhee enter without aſſignement, albeit the aſſignement cannot giue her any certaintie becauſe her husbands ſtate was incertaine. See more of this before Section 29.

en ſeueraltie, en tielz caſes il couient que ſa dower ſoit a luy aſſigne aps le mort del baron, pur ē que non conſtat deuant aſſignemēt quel part des terres ou tenements el auera pur ſa dower.

to hold in ſeueraltie. In ſuch caſes it behoueth that her Dower bee aſſigned vnto her after the death of her husband, becauſe it doth not appeare before aſſignement what part of the lands or tenements ſhe ſhall haue for her dower.

Sect. 44.

Of this ſufficient hath beene ſaid before, and that in this caſe, the wife cannot enter without aſſignement.

¶ Mes ſi ſoient deux iointenants de certaine terre en fee, & lun alien ceo que a luy affiert a vn auter en fee, que prent feme & puis deuie; en ceo cas la feme pur ſa dower auera le tierce part de la moitie que ſa baron ad purchaſe, a tener en common (come ſa part amountera) ouesque lheire ſa baron, & ouesque lauter iointenant que ne aliena pas, pur ceo que en tiel cas ſa dower ne poit eſtre aſſigne per metes & bounds.

BVt if there be two ioyntenants of certaine land in fee, and the one alieneth that which belongeth to him, to another in fee, who taketh a wife, and after dieth. In this caſe the wife for her dower ſhal haue the third part of the moitie which her husband purchaſed, to hold in common (as her part amounteth) with the heire of her husband, and with the other iointenant, which did not alien. For that in this caſe, her dower cannot be aſſigned by metes and bounds.

Sect. 45.

¶ The reaſon of this diuerſitie is for that the iointenāt which ſuruiueth, claymeth the land by the feoffment, and by ſuruiuorſhip, which is aboue the Title of Dower, and may plead the feoffment, made to himſelfe without naming of his compagnion that died, as ſhall bee ſaid hereafter in his proper place, but Tenants in common haue ſeuerall Freeholds and Inheritances, and their moities ſhall diſcend to their ſeuerall heires, & therefore their wiues ſhall be indowed.

¶ Et eſt aſcauoir, q̄ la feme ne ſerā my endow de terres ou tenements q̄ ſa baron tient iointment ouesque vn auter al temps de ſon mort: mes lou il tient en common autrement eſt, come en le caſe prochein auantdit.

ANd it is to be vnderſtood that the wife ſhall not bee endowed of lands or tenemētswhich her huſband holdeth iointly with another at the time of his death: but where hee holdeth in common, otherwiſe it is as in the caſe next aboueſaid.

Sect.

Sect. 46.

¶ Cest ascauoir que si tenant en le taile endowa sa feme ad ostium Eccleſiæ, come est auantdit, ceo seruera pur petit ou rien al feme, pur ceo que apres la mort sa baron, lissue en le taile puit entrer sur le possession la feme: Et issint puit celuy en le reuersi. si ne soit issue en le taile en vie &c.

AND it is to bee vnderstood, that if tenant in taile endoweth his Wife at the Church doore, as is aforesaid, this shall little or nothing at all auaile the wife, for that, that after the decease of her husband, the issue in taile may enter vpon her possession, and so may he in the reuersion, if there bee no issue in taile then aliue.

¶ The Reason of this is, for that tenant in taile is restrained by the said statute of 13. E 1. De donis conditionalibus. And so did our Authour take the law in his Learned reading. Here our Authors reason is à fine, *Vide Sect.* 194.

and therefore such an Endowment is not to bee made because it is to ends.

Sect. 47.

¶ Auxy si home seisi en fee simple esteant deins age endowa sa feme al huis del monasterie ou degliſe, & deuie, & sa feme enter, en ceo cas lheire la baron luy puit ouster. Mes auterment est (come il semble) lou le pier est seisie en fee, & le fits deins age endow sa feme ex assensu patris, le pier donque esteant de pleinage.

ALSO if a man seised in Fee Simple beeing within age endoweth his wife at the Monasterie or Church doore, and dieth, and his wife enter, in this case the heire of the husband may out her. But otherwise it is, (as it seemeth) where the father is seised in fee, and the sonne within age endoweth his wife *ex assensu patris*, the Father being then of full age.

¶ The reason of this diuersitie is for that in the first case the husband within age is seised and therefore hee beeing within age cannot by a voluntarie act bind himselfe: otherwise it is where he doth an act whereunto hee is compellable by law, but in the latter case the Father which giueth the assent, is seised of the freehold and Inheritance, and the Sonne therein hath nothing, *Vid.* 9. H. 3. *tit. dower* 197.

and therefore his Heire shall not auoide it in respect of his Infancie.

Section 48.

¶ Auxy il y ad vn auter endowment, que est appel dowment de la pluis beal. Et ceo est come en tiel case, que home seisie de xl. acres de terre, & il tient vint

ALSO there is another dower which is called dowment *de la pluis beale*. And this is in case where a man is seised of fortie acres of land, and hee holdeth twentie acres of

¶ Et *le Seignior de que le terre est tenus en Chiualrie enter en les vint acres tenus de luy*. For hee is not possessed as a Garden against whom a Writ of Dower lieth, vntill hee doth enter: of the wardship of the bodie hee is possessed before seisure, because it

it is transitorie, but hee is not possessed of the land vntill hee enter because it is permanent. And therefore if hee doth not enter, the heire within age may assigne Dower as hath beene said, and as it appeareth afterwards.

Vid. le Statut. de bigamis cap. 3.

¶ *Si en tiel case el port breue de dower enuers le Garden en Chiualrie.* Albeit (a) the Garden in Chiualrie or the Grantee of the King of a Wardship hath but a chattle during the minoritie of the heire, and the woman shall recouer a freehold in her Writ of Dower, yet after the Garden as is aforesaid, hath entred into the land, that Writ lieth against him, and not against the heire who is tenant of the freehold, because the law hath trusted the Garden to plead for the heire within age, and that is in his custodie, and also for his owne particular interest, and by this diuersitie all the Bookes bee reconciled. So likewise if the Garden dieth, the wife shall haue a Writ of Dower against his Executors, and if there bee two Executors, and one of them alone take the profits, the Writ of Dower shall bee maintained against him only. If a man bee possessed of the wardship of certaine land, either ioyntly with his wife or in the right of his wife, yet the Writ of Dower lieth against the husband only. Garden in Socage shall not endow herselfe de la pluis beale without iudgement, as shall be said hereafter.

(a) 44 E. 3. 13. 4. H. 6 11. Sta. f. pier. 13. 6. E. 3. 15. 16. E. 3. breue 657. Temps E. 1. breue 863. 11. E. 3. b eue 473. 45. E. 3. 5. 17. E. 3. 70. 1. H. 7. 17. 4. H. 7. 1. 4. H. 7. aid le Roy 33. 38. E. 3 13. 9. H. 6. 6. b. 39. E. 3. 8. 8. E. 2. Dower 169. 8 E. 2. b e ie 809. 22. E. 4. Dower 16.

8. E. 3. 52.

¶ *Le Garden en Chialrie poit pleader.* The authoritie of Littleton is direct that the Garden may plead this plea. But hereof ariseth two questions. First, whither if the heire bee vouched by the tenant in the Writ of Dower in the gard of the Garden, whither he comming in as Vouchee may plead that plea. The second is, whither if the Garden in socage haue

2. E. 3. 15. & 31. 38. E. 3. 37. 47 E. 3. 9. b.

acres de les dits xl. acres de terre dun p seruice de chiualrie, & les autres vint acres de terre dun auter en socage, & pret feme, & oūt issue fits, & morust, son fits esteant deins lage de xiiij. ans, & le Seigniour de que la terre est tenus en chiualrie, entre en les xx. acres tenus de luy, & eux ad come gardein en Chiualrie durāt le nonage lenfant, & la mere de lenfant enter en le remnant, & ceo occupie come gardein en socage: si en tiel case le feme port briefe de dower enūs le gardein en chiualrie, destre endow de les tenements tenus per seruice de chiualer en le Court le Roy, ou en auter Court, le gardein en chiualrie puit plede en tiel case tout cest matter & monstre coment la feme est gardein en socage, coment deuant est dit, & prie q̄ serra adiudge per la Court que le feme luy meisme endowera de le pluis beale de les tenements que el ad come gardein en socage solonque le value de le tierce part

the said fortie acres of one by Knights Seruice, and the other twentie acres of another in Socage, and taketh wife, and hath issue a sonne, and dieth, his sonne being within the age of fourteene yeeres, and the Lord of whom the Land is holden by Knights Seruice entreth into the twentie acres holden of him, and holdeth them as Garden in Chiualrie, during the nonage of the infant, and the mother of the infant, entreth into the residue, and occupieth it as Garden in Socage. If in this case the Wife bringeth a Writ of dower against the garden in Chiualrie to be endowed of the tenements holden by Knights Seruice, in the Kings Court or other Court, the Garden in Chiualrie may pleade in such case all this matter, and shew how the wife is Garden in Socage, as aforesaid, and pray that it may bee adiudged by the Court, that the wife may endow her selfe *de le pluis beale* .i. of the most faire, of the tenements which shee hath as Garden in So-

que

que el claime dauer de les tenements tenus en chiualrie per ſa briefe de Dower. Et ſi la feme ceo ne puit dedire, donq̃ le iudgement ſerra fait, que le gardeine en chiualrie tiendra les terres tenus de luy durant le nonage lenfant, quit de la feme, &c.

cage, after the value of the third part which ſhee claimes by her writ of dower, to haue the tenements holden by Knights Seruice. And if the wife cannot gainſay this, then the iudgement ſhall be giuen, that the Garden in Chiualry ſhall hold the Lands holden of him during the nonage of the infant, quite from the woman, &c.

not ſufficient, as if the Land holden by ſeruice of Chiualrie be thirtie Acres, and the lands holden in Socage but fiue Acres, whereyer ſhe ſhall be endowed by parcels, viz. to recouer fiue Acres againſt the Garden in Chiualrie, and to retaine fiue Acres. And as to the firſt the Garden ſhall aſwell plead it, when he come in as Vouchee, as when he is tenant. And as to the ſecond ſome ſay that the demandant in the writ of Dower muſt haue Aſſets in her hands to the value of her Dower, ſo as ſhe ſhal not be partly endowed againſt the Garden, and partly retaine in her owne hands. And they ſay, that the iudgement ſhould be in part, that is, as to the land in Socage in ſeueraltie, and as to the land in Chiualrie to recouer the third part, and compare it to the Caſe in 8.E.4.3. that damages ſhall not be recouered, partly againſt the defendant in an appeale, and partly againſt the Abettors, but entirely either againſt the one or the other. And Littleton here putteth his Caſe that the Garden in Socage hath Aſſets in value, and ſeing it is a Dower againſt common right, they hold that ſhe muſt be intirely endowed either by her ſelfe againſt common right, or againſt the Garden according to common right. But (a) yet by the Booke in 21.E.3.52.b and others it appeareth that ſhe may in this very caſe retaine for part, and recouer againſt the Garden for part.

5.E.3.60. 2.E.3.31. Lib.Intrat. Dower fol.225.a. 18.E.3.4.b.

14.H.7.26. Keble.

(Gardein in Chiualrie (b) ſhall plead in barre of her dower, detainment, or cloigning of the bodie of the Ward, becauſe his marriage doth appertaine vnto him: And if the heire come in (c) as vouchee, hee ſhall plead the ſame plea. But he ſhall not plead detainment of the Charters, (d) becauſe the Charters concerning the inheritance of the heire, belong not to the gardein. The gardein in Chiualrie (e) may aſſigne dower of the lands and tenements he hath in Ward, or if he aſſigne a rent out of thoſe lands in allowannce of her dower, it is good. If the Gardein in Chiualrie aſſigne too much for her dower, the heire ſhal haue a writ of Admeſurem̃t by the Common Law. And ſo (f) if the heire within age aſſigne before the gardeine enter, to the wife too much in the dower, the Gardein ſhall haue a writ of Admeſurement, by the ſtatute of Weſt.2.cap.7. And if the heire within age, before the gardein enter into the land, aſſigne too much in dower, he himſelfe ſhall haue a writ of Admeſurement at full age: and ſome haue ſaid, that in that caſe he may haue it within age. (g) But if the heire (before the gardein enter) endow the wife of more than ſhe ought, and the gardeine aſſigne ouer his eſtate, his aſſignee ſhall haue no writ of Admeſurement, becauſe it was a thing in action. Alſo the heire ſhall haue an (h) Admeſurement for the aſſignement in the life of his anceſtor, by the Common Law, (i) and a writ of Admeſurement lieth vpon an aſſignement in Chancerie.

(a) *25.E.3.52.b. 4.E.2. 1st.diſſim 10. Regist.iudic.26. Lib.Intrat.22. 16.E.3.breue 657. 20.E.3.iugement 175.*
(b) *7.E.3.57 8.E.3.71.*
(c) *17.E 3.58.*
(d) *10.E.3.50.6.El.Dy.230*
(e) *3.E.3.Dow.75. 8.Ed.2. Dower 155. W.2.cap.7.*
(f) *Brall.li.4.314. Reg. originin.171. Flet.li.5.ca.22. 7.E 2.1st.Admeſ.13. F.N.B.149.*
(g) *7.R.2.Admeſ.4 F.N.B.148.i.*
(h) *7.R.2 vb.ſu.F.N B.149.c*
(i) *7.R.2.vbiſup 12.H.6. Admeſ.9. F.N.B.149.*

¶ *Donques le judgement ſerra fait que le gardein en Chiualrie tiendra les Terres tenus de luy durant le nonage lenfant, quite de la feme, &c.*

¶ *Iudgement.* Iudicium quaſi iuris dictum, **the verie voyce of Law** and right, and therefore, iudicium ſemper pro veritate accipitur. The antient words of Iudgment are verie ſignificant, Conſideratum eſt, &c. becauſe that Iudgement is euer giuen by the Court vpon due conſideration had of the Record before them: and in euerie Iudgement there ought to be three perſons, Actor, Reus, and Iudex. Of Iudgements, ſome be finall, and ſome not finall, whereof you ſhall read more hereafter. And now to returne to our Author, it is materiall that theſe words (& cætera) be explaned at large, viz. Et quod prædicta A. (the Demandant) capiat de terris hæred̃ prædicti in cuſtodia ſua exiſten̄ ad valentiam p̄d̄. 3.partis cum pertinen̄ tenend̄ nomine dotis ſuæ pro præd̄ 3.parte ſuperius per eam petit̄. Now ſome are of opinion, that vpon this iudgement the demandant may not in any ſort endow her ſelfe of the land, becauſe ſhe cannot doe an act to her ſelfe, but he ſhall recoupe the third part of the profits vpon her account, and be endowed againſt the heire at his full age. But obſerue what Littleton ſaith in the next Section: but before you come to that, obſerue what priuiledge the common Law giueth to the land holden by Knights ſeruice, viz. that it ſhall not be diſmembred, but the

22.E.4.Dow.16. 16.E.3. Waſt.120. 45.E.3.6.

Whole dower taken of the lands holden in Socage, and the reason is, for that Knights seruice is for the defence of the Realme, which is pro bono publico, and therefore to be fauoured.

Section 49.

ET nota, que apres tiel iudgement done, la feme puit prender ses Vicines, & en lour presēce endower luy meisme p metes & Bonds, de la pluis beale part de les teneīts que el ad cōe gardein en Socage, dāū et tener a luy pur terme de sa vie, & tiel Dower est appel Dower de la pluis beale.

AND note, That after such a Iudgement giuen, the wife may take her Neighbours, and in their presence endow her selfe by Metes and Bonds, of the faireſt part of the Tenements which shee hath as Gardein in Socage, to haue and to hold to her for terme of her life: & this Dower is called *Dower de la pluis beale.*

And the iudgement, viz. Tenend' noīe dotis, proueth, that she may haue it for terme of her life, for euerie dower is for terme of life.

Section 50.

15.E.3.Dow.69.
16.E.3.tit.Waſt.100.

¶ *Ou le iudgement est fait, &c.* For without such a iudgement, as appeareth before, Gardeine in Socage cannot endow her selfe, as likewise hath bin said before.

Brack.li.5.329.F.N.B.7,8.

¶ *Ou en auter court.* That is by Writ of Right of Dower in the Court of the heire, if he haue any, or of the Lord of whome the Land is holden.

CET nota, q̄ tiel Dowment, ne puit este, mes lou le iudgement est fait en le court le Roy, ou en auter court, &c. et ceo est pur saluation del estate del Gardeine in Chiualrie durant le nonage le Enfant.

AND note, that such dowment cannot be, but where a iudgement is giuen in the Kings Court, or in some other Court, &c. And this is for the preseruation of the estate of the gardein in Chiualrie, during the nonage of the Infant.

¶ *Et ceo est pur saluation del estate del gardein en Chiualrie, durant le nonage de lenfant.* For the heire (before the entre of the Gardein) cannot plead the said plea, that the demandant should endow her selfe de la pluis beale. And the reason of this dower de la pluis beale to be all of the Socage land, was for aduancement of Chiualrie for the defence of the Realme.

Sect. 51.

This is manifest of it selfe, and therefore nœdeth no explanation.

CET issint poyes veier cinque manners de dower, s̄, Dower per le common Ley, Dower per le custome, Dower ad ostium Eccleſiæ, Dower ex assensu patris, & Dower de la pluis beale.

AND so you may see fiue kinds of Dower, *viz.* Dower by the Common Law, Dower by the custome, Dower *ad ostium Eccleſiæ*, Dower *ex assensu Patris*, and Dower *de la pluis beale.*

Sect. 52.

¶ Et memorandū que en cheſcun caſe lou home prent feme ſeiſie de tiel eſtate de teneñts, &c. iſſint que liſſue que il ad per ſon feme poit p poſſibilitie enheriter meſmes les tenements de tiel eſtate que la feme ad cõme heire al feme, en tiel caſe apres le mort la feme il auera meſmꝭ les Tenements per le curteſie de Angleterre, & autrement nemy.

AND *memorañ*, that in euerie caſe where a man taketh a wife ſeiſed of ſuch an eſtate of Tenements, &c. as the iſſue which he hath by his wife may by poſſibilitie inherit the ſame Tenements of ſuch an eſtate as the wife hath, as heire to the wife; In this caſe after the deceaſe of the wife, he ſhall haue the ſame tenements by the curteſie of England, but otherwiſe not.

M *Emorandū*, This woꝛd doth euer betoken ſome excellēt point of learning, which our authoꝛ hath vſed in other places, as appeareth in the margent.

Sect. 234. 301. 335.

The matter hereof hath bin partly explaned in the Chapter of Tenant by the curteſie. If a man (a) taketh a wife ſeiſed of lands oꝛ tenements in fee, and hath iſſue, and after the wife is attainted of felonie, ſo as the iſſue cannot inherit to her, yet he ſhall be tenant by the Curteſie, in reſpect of the iſſue which he had beſoꝛe the felonie, and which by poſſibilitie might then haue inherited. But if the wife had beene attainted of felonie beſoꝛe the iſſue, albeit hee hath iſſue afterward, he ſhal not bee tenant by the Curteſie.

(a) 21. E. 3. 9. 11. H. 7. 3. H. 7. 17. *Stamf.* 195. 27. E 3. 77. 46. E. 3. *Pet.* 20 26. *Aſſ. p.* 2. 13. H. 4. 8.

¶ *Come heire al fee.* This doth implie (b) a ſecret of Law, foꝛ except the wife be actually ſeiſed, the heire ſhall not (as hath been ſaid) make himſelfe heire to the wife: and this is the reaſon that a man ſhall not be Tenant by the Curteſie, of a ſeiſin in Law.

(b) *Li.* 8. *fo.* 34. *in Paines caſe.*

Section 53.

¶ Et auxy en cheſcun caſe lou le feme prent baron ſeiſie ô tiel eſtate des tenements, &c. Iſſint q̃ ſi p poſſibilitie il puiſſoit happer q̃ ſi le feme auoit aſcun iſſue p ſa barõ, & que ñ liſſue puiſſoit per poſſibilitie enheriter meſmes les Tenements de tiel eſtate que l baron ad, come heire a l baron, de tiels Teneñts el auer̃ ſa dower, & autrement nemy. Car

AND alſo in euerie caſe where a woman taketh a husband ſeiſed of ſuch an eſtate in tenements, &c. ſo as by poſſibilitie it may happen that the wife may haue iſſue by her husband, and that the ſame iſſue may by poſſibilitie inherite the ſame Tenements of ſuch an eſtate as the husband hath, as heire to the husband. Of ſuch tenements ſhee ſhal haue her dower, & otherwiſe not. For

¶ *Iſſint que ſi per poſſibilitie il puit happer que le feme auoit aſcun iſſue per ſon baron.* Albeit the wife bee a hundꝛed yeares old, oꝛ that the husband at his death was but foure oꝛ ſeuen yeares old, ſo as ſhee had no poſſibilitie to haue iſſue by him, yet ſeeing the Law ſaith, That if the wife be aboue the age of nine yeares at the death of her husband, ſhe ſhall be endoẅed, and that women in antient times haue had children at that age, whereunto no woman doth noẅ attaine, the Law cannot iudge that impoſſible, which by nature was poſſible. And in my time, a woman aboue threeſcoꝛe yeares old hath had a child, and ideo non definitur

12. H. 4. 2. 7. H. 6. 11, 12.

in

in iure. And for the husbands being of such tender yeres, he hath habitum, though hee hath not potentiam at that time, and therefore his wife shal be endowed.

¶ *Et que mesme lissue puissoit per possibilitie inheriter mesmes les tenements, &c.* A man seised of land in generall taile, taketh wife, & after is attainted of felonie, before the said Statute of 1. E. 6 the Issue should haue inherited, and yet the wife should not haue been endowed: For the Statute of W. 2. ca. 1. relieueth the issue in taile, but not the wife in that case. But at this day, if the husband be attainted of felonie, the wife shall be endowed, and yet the issue shall not inherit the Lands which the father had in fee simple. If the wife elope from her husband, &c. shee shall bee barred of her dower, as hath been said, and yet the Issue shall inherit.

si tenemts sont doñs a vn hõe & a les hẽs que il engendra de corps sa feme, en tiel case la feme nad riẽs en les tenements, & le baron ad estate forsque come Donee en especiall taile; uncore si le baron deuy sans issue, mesme la feme serra endow de mesmꝭ les tenemts, pur ceo que lissue que el p possibilitie puissoit auer per mesme l baron, puissoit enheriter mesmes les tenements. Mes si la feme deuiast, viuant sa baron, & puis l baron prist auter feme, & morust, sa second feme ne serra my endowen cest case, causa qua supra.

if tenements be giuen to a man, and to the heires which hee shall beget of the bodie of his wife, in this case the wife hath nothing in the tenements, and the husband hath an estate but as donee in speciall taile; yet if the husband die without issue, the same wife shall bee endowed of the same tenements, because the issue which shee by possibilitie might haue had by the same husband, might haue inherited the same tenements. But if the wife dieth, liuing her husband, & after the husbād takes another wife & dieth, his 2. wife shall not be indowed in this case for the reasō aforesaid

Section 54.

5. E. 3. *Voucher* 249.
8. E. 3. *Ass.* 393.
4. H. 6. 24. F. N. B. 149.

¶ You may easily perceiue by the context that this shaft came neuer out of Littletons quiuer of choice arrowes, And therefore I will leaue it. Only for Students sake I will referre them to 5. E. 3. Voucher 249. 8. E. 3. Ass. 393. 4. H. 6. 24. F. N. B. 149.

¶ NOta si vn home soit seisie de certaine terres & prist vn feme, et puis aliena mesme la terre ove garrantie, & puis le feoffor, & le feoffee deuiont, & le feme de le feoffor port vn action de dower envers le issue le feoffee, & il vouch lheire le feoffor, & pendant le voucher & nient termine, la feme le feoffee port son action de dower envers le heire le feoffee, & demaunda la tierce part de ceo

NOte if a man be seised of certaine lands, and taketh wife, and after alieneth the same land with warrantie, and after the feoffor and feoffee dye, and the wife of the feoffor bring an action of dower against the issue of the feoffee, and he vouch the heire of the feoffor, and hanging the voucher and vndetermined, the wife of the feoffee brings her action of dower against the heire of the feoffee,

de que ſa baron fuit ſeiſie, & ne voile demaunder le tierce part del eux deux parts de que ſa baron fuit ſeiſie, fuit adiudge, que el nauera iudgement tanque lauter plee fuit determine.

feoffee, & demand the third part of that wherof her husband was ſeiſed, and will not demand the third part of theſe two parts of which her husband was ſeiſed, It was adiudged, that ſhe ſhould haue no iudgement vntill ſuch time as the other plea were determined.

Section 55.

CEt nota que Vauiſour dit, Que ſi vn home ſoit ſeiſie de terre et fait felonie, & puis alien, & puis eſt attaint, la feme auera bone action de Dower enuers le feoffee: Mes ſi ſoit eſchete al Roy, ou al ſeignior, el nauera bē de dower. Et ſic vide diuerſitatem, & quære inde legem.

AND note *Vauiſor* ſaith that if a man be ſeiſed of land and cõmitteth felony, and after alieneth, and after is attaint the wife ſhall haue a good action of dower againſt the feoffee: but if it be eſcheated to the King, or to the Lord, ſhe ſhal not haue a writ of dower. And ſo ſee the difference, and inquire what the law is herein.

¶ This is alſo of the new addition, & exploſa eſt hæc opinio, for it is cleere in Law that the wife at the Common law ſhould not haue bene endowed againſt the feoffee. For to deterre and retaine men from committing of treaſon or felony, the Law hath inflicted fiue punithments vpon him that is attainted of treaſon or felony. 1. Hee ſhall loſe his life and that by an infamous death of hanging betweene heauen and the earth as vnworthy in reſpect of his offence of either. 2. His wife that is a part of himſelfe (Et erunt animæ duæ in carne vna) ſhall loſe her Dower. 3. His blood is corrupted, and his children cannot be heires to him, and if he be noble or gentle before, he and all his poſteritie are by this attainder made ignoble. 4. He ſhall forfeit all his lands and tenements; And fiftly all his goods and chattels, and all this is included by the Law in the iudgement Quod ſuſpendatur per collum. But this is not intended of all felonies but of felony by ſtealing of goods aboue the value of xii. pence, and not of petit larceny vnder the value. So as the woman ſhall loſe her dower aſwell againſt the feoffee as againſt the Lord by eſcheate. And ſo it was reſolued in a writ of Dower brought by Mary Gates late wife of Iohn Gates, who after the couerture had infeoffed Wiſman in fee, and after committed high treaſon, and was thereof attainted, that the wife ſhould not be endowed againſt the feoffee, and in that caſe it was reſolued, that ſo it was at the Common Law in caſe of felony. And it is to be vnderſtood, that the wife ſhall not only loſe her reaſonable Dower at the Common Law for the felony of her husband; but alſo her dower ad oſtium Eccleſiæ and ex aſſenſu patris for felony done after the Dower aſſigned, and dower by cuſtome alſo. And the reaſon of all this is yeelded by Littleton himſelfe in the chapter of warranties, Section 746. to the end that men ſhould be affraid to commit felony. But at this day the wife of a man attainted of felony (as often hath beene ſaid) ſhalbe endowed by force of the Statutes in that caſe prouided.

Vid. Sect. 746. *Britton, cap.* 109. *lib.* 1. *Bracton title euidens, lib.* 4. *fol* 397. 30. 311. *Stanf. pl. cor.* 194. 195.

Britton fol. 15. *cap.* 5.

Vid. Sect. 746.

M. 3. & 4. *Ph. & Mar. Ro.* 760. *in com. banco. S. F.* 3. 20. 12. *H.* 4. 30.

Bracton lib. 4 *fo.* 311.

And it appeareth by Britton Que feme de homicide ne teigne nul dower de tenants que lour fuit aſſigne per lour barons, ſo as the wife of a felon attainted by the Common Law was diſabled to recouer dower ad oſtium Eccleſiæ and ex aſſenſu patris, as well as her reaſonable dower which the Common Law gaue her. See in Bracton many barres of dower as the Law was then held.

Vid. Sect. 746. *Britton cap. de homicide, fol.* 15. *Bracton, lib.* 4. *fol.* 308. & *Fleta vbi ſupra* & *Britton vbi ſupra.*

CHAP. 6. *Sect.*56.

Tenant a Terme de vie.

Bract lib.2.ca 5.& cap.9. fol.26.Flet.lib.3.ca.12. Britton fol.83. Bracton 4.fol.270. Vid Sect.381.

CEV pur terme de vie dun auter home. Now it is to be vnderstood that if the lessee in that case dieth liuing cesty que vie, (that is he for whose life the Lease was made) hee that first entreth shall hold the land during that other mans life, and hee that so entreth is within Littletons words, viz. tenant pur auter vie, and shalbe (a) punished for waste as tenant pur auter vie, and subiect to the payment of the rent reserued, and is in law called an occupant (occupans) because his title is by his first occupation. And so if tenant for his owne life grant ouer his estate to another, if the grantee dieth there shalbe an occupant. In like manner it is of an estate created by Law, for if tenant by the curtesie or tenant in dower grant ouer his or her estate, and the grantee dieth there shalbe an occupans. But against the King there shalbe no occupant, because nullum tempus occurrit regi. And therefore no man shall gaine the Kings land by priority of entrie. There can be no occupant of any thing that lyeth in grant, and that cannot passe without Deede, because euery occupant must claime by a que estate and auerre the life of Ce' que vie. It were (c) good to preuent the incertaintie of the estate of the occupant to adde these words, (to haue and to hold to him and his heires during the life of Ce' que vie) and this shall preuent the occupant, and yet the Lessee may assigne it to whom he will, or if he hath already an estate for another mans life without these words, then it were good for him to assigne his estate to diuers men and their heires during the life of Ce' que vie.

(a) *Vid. le Deane de Worcest. case, lib.6.fo.37. 27.Ass.31.39.E.3.1. 27 H.6.Recognizance Statham.pl.vltimo. 38.H.6.27. Bracton lib.2.fol.9. Britton fol.84.85.*

(b) *27.Ass.p 31. & Pl.com. fol.28.b. in Coltherst case tit.Barre 303.*

(c) *Littleton 167. 11.H.4.42. 17.E.3.48. 39.E.3.25. 7.H.6.46. 8.H.4.15.Dier. 8.Eliz.253.*

(d) *Bract.lib.4.fo.222.231. 232. & vid.fo.136.137. Flet.lib.4.ca.19 25.26.27. 8.E.3.54.55. 21.E.3.41. 48.E.3.31. 7.E.4.28. 21.H.6.46. 10.E.4.3. F.N.B.180.lib.4.86.87. in Luttrels case.*

Vid.Sect.381.

Rosses case lib.5.fo.13.

NOte that (d) to euery tenant for life, the Law as incident to his estate without prouision of the partie giueth him three kinde of estouers, (that is) housbote which is twofold, viz. estouerium edificandi & ardendi. Ploughbote, that is estouerium arandi. And lastly Hayebote, and that is estouerium claudendi and these estouers must bee reasonable estoueria rationabilia. And these the Lessee may take vpon the land demised without any assignement, vnlesse hee bee restrained by speciall couenant for modus et conuentio vincunt legem. Bote in the Saxon tongue and estouers in the French in this case are of all one signification, that is to haue compensation or satisfaction for these purposes. Estouers commeth of the French word estouer. And the same estouers that tenant for life may haue, tenant for yeares shall haue.

You haue perceiued, That our Author deuides Tenant for life into two branches, viz. into Tenant for terme of his owne life, and into Tenant for terme of another mans life: to this may be added a third, viz. into an estate both for terme of his owne life, and for terme of another mans life.

As if a Lease be made to A. to haue to him for terme of his owne life, and the liues of B. and C. for the Lessee in this case hath but one Freehold, which hath this limitation, During his owne life, and during the liues of two others. And herein is a diuersitie to bee obserued betweene seuerall estates in seuerall degrees, and one estate with seuerall limitations. For in the first, an estate for a mans owne life is higher than for another mans life, but in the second it is not. As if A. be tenant for life, the remainder or reuersion to B. for life, A. may surrender to B.

for

TEnant pur terme de vie est, lou home lessa terres ou tenements a vn auter pur terme de vie le lessee, ou pur terme de vie dun auter home, en tiel case le lessee est tenant a terme de vie. Mes per cõmon parlance celuy que tient pur terme de sa vie demesne, est appel tenant pur terme de sa vie, & cestuy que tient pur terme dauter vie, est appel tenant pur term dauter vie.

TEnant for term of life is, where a man letteth Lands or tenements to another for terme of the life of the Lessee, or for terme of the life of another man. In this case the Lessee is tenant for terme of life. But by common speech hee which holdeth for terme of his owne life, is called tenant for terme of his life, and he which holdeth for terme of anothers life, is called tenant for terme of another mans life.

for the eſtate of B. for terme of his owne life is higher than an eſtate for another mans life: And therefore if Tenant for life infeoffe him in the remainder for life, this is a ſurrender, and no forfeiture. And albeit an eſtate for terme of a mans own life be but one freehold, yet may ſeuerall freeholds in certaine caſes be deriued out of the ſame, whereof our bookes are verie plentifull, and wherewith you may diſport your ſelues for a time. As if tenant for life maketh a Leaſe by Deed, or without Deed, to him in the remainder of reuerſion, in taile or in fee, for the term of the life of him in the rem. or reuerſion, and after he in the remainder taketh wife and dieth, his wife ſhall not be endowed, for tenant for life ſhal enioy the land again, for forfeiture it cannot be, for he in the rem' was partie, and ſurrender it cannot bee, for that his whole eſtate was not giuen. 24.E.3.32.& 68.30.aſſ.p.47 19.E.3.Sur.8. 13.R.2.Dow 95.7.H.6.3. per Cur.18.E.3.48.

The heire maketh a leaſe for life, reſeruing a rent, againſt whom the wife recouereth her dower, and dieth, the Leſſee ſhall haue the land againe for his life, and the rent is reuiued. 7.H.5.4.

So it is, if Tenant for life take husband, and by Deed indented they make a Leaſe to him in the reuerſion for the life of the husband, reſeruing a rent, this is neither forfeiture, nor abſolute ſurrender, for the cauſe aforeſaid, and the reſeruation is good. 29.Aſſ.p.64.

B. ſeiſed of lands in fee, taketh to wife I. and infeoffe C. in fee, who take Alice to wife: C. dieth, Alice is endowed; B dieth, I. recouereth dower againſt Alice, and dieth, Alice ſhall enioy the Land againe during her life. 8.E.2.aſſ.393.45.E.3.13.

A. and (a) B. Ioyntenants, A. for life, and B. in fee, ioyne in a leaſe for life, A. hath a reuerſion, and ſhall ioyne in an Action of waſt. (a) 2.H.5.7.13.H.7.15. 18.E.2.Br.835. F.N.B.59.f

Tenant for (b) life, and he in the reuerſion ioyne in a leaſe for life, it is ſaid, that they ſhall ioyne in an Action of waſt, and that the Leſſee for life ſhall recouer the place waſted, and he in reuerſion, damnages. (b) 17.H.8.13.13.H.7.15. 22.H.6.24.17.E.3.9.b.

If a man grant (c) an eſtate to a woman dum ſola fuit, or durante viduitate, or quam diu ſe bene geſſerit, or to a man and a woman during the couerture, or as long as the grantee dwell in ſuch a houſe, or ſo long as he pay x.l. &c. or vntill the grantee bee promoted to a Benefice, or for any like incertaine time, which time, as Bracton ſaith, is tempus indeterminatum: In all theſe caſes, if it be of lands or tenements, the leſſee hath in iudgement of law an eſtate for life determinable, if liuerie be made; and if it be of rents aduowſons, or any other thing that lie in grant, he hath a like eſtate for life by the deliuerie of the Deed, and in count or pleading he ſhall alledge the leaſe, and conclude, that by force thereof hee was ſeiſed generally for terme of his life. (c) 37.H.6.27.26.E.3.69. 14.E.2.Grant 92.3.E.3.15. 14.H.8.13. Bract.li.4.fi207 Fl.l.3.c.12

If a man make a leaſe of a Mannor, that at the time of the leaſe made is worth xx.l. per annum, to another vntil C.l be paid, in this caſe becauſe the annual profits of the manor are incertain, he hath an eſtate for life, if liuery be made determinable vpon the leuying of the C.l. But if a man grant a rent of xx. l. p an vntill C.l. be payd, there he hath an eſtate for fiue yeares, for there it is certaine, and depend vpon no incertaintie. And yet in ſome caſes a man ſhal haue an incertaine intereſt in lands or tenements, and yet neither an eſtate for life, for yeares, or at will. As if a man by his will in writing, deuiſe his lands to his Executors for payment of debts, and vntill his debts be paid; in this caſe the Executors haue but a Chattell, and an incertaine intereſt in the land vntill his debts be paid; for if they ſhould haue it for their liues, then by their death their eſtate ſhould ceaſe, and the debts vnpaid: but being a Chattell, it ſhall goe to the Executors of Executors for the payment of his debts; and ſo note a diuerſitie betweene a deuiſe and a conueyance at the Common Law, in his life time. And tenant by Statute merchant, by Statute ſtaple, and by Elegit, haue incertaine intereſts in lands or tenements, and yet they haue but Chattels, and no freehold, whoſe eſtates are created by diuers Acts of Parliament, whereof more ſhall be ſaid hereafter. And ſo haue Gardeins in Chiualry which hold ouer for ſingle or double value incertaine intereſts, and yet but Chattels. 33 Aſſ.p.2. Li.8.fo.9.Manningtrials. 3.H.7.13.27.H.8.5. 14.H.8.13.21.Aſſ.p.8.

If one grant lands or tenements, reuerſions, remainder, rents, aduowſons, commons, or the like, and expreſſe or limit no eſtate, the leſſee or grantee (due ceremonies requiſite by Law being performed) hath an eſtate for life. The ſame law is of a declaration of a vſe. A man may haue an eſtate for terme of life determinable at will; As if the King doth grant an office to one at will, and grant a rent to him for the exerciſe of his office for terme of his life, this is determinable vpon the determination of the office. V.Sect.381.7.Aſſ.pl.1. 13.El.Dyer 300. 7.E.4.23.

A. tenant in fee ſimple make a leaſe of lands to B. to haue and to hold to B. for terme of life, without mentioning for whoſe life it ſhall be, it ſhall be deemed for terme of the life of the leſſee, for it ſhall be taken moſt ſtrongly againſt the leſſor, and as hath beene ſaid, an eſtate for a mans owne life is higher then for the life of another. But if tenant in taile make ſuch a leaſe without expreſſing for whoſe life, this ſhall be taken but for the life of the leſſor, for two Reaſons. V.Sect.381.

Firſt, when the conſtruction of any act is left to the Law, the Law which abhorreth iniuries and wrong will neuer ſo conſtrue it, as it ſhall worke a wrong: and in this caſe, if by conſtruction it ſhould be for the life of the leſſee, then ſhould the eſtate taile be diſcontinued, and a new reuerſion gained by wrong: but if it be conſtrued for the life of the tenant in taile, then no wrong is wrought. And it is a generall rule, that whenſoeuer the words of a Deed, or of the parties without Deed may haue a double entendement, and the one ſtandeth with law and

4.E.2.Waſt.11. 17.E.3.7.

right, and the other is wrongfull and againſt Law, the intendement that ſtandeth with Law, ſhall be taken.

Secondly, The Law more reſpecteth a leſſer eſtate by right, then a larger eſtate by wrong, as if tenant for life in remainder diſſeiſe tenant for life, now he hath a fee ſimple, but if Tenant for life die, now is his wrongfull eſtate in fee by iudgement in law changed to a rightfull eſtate for life.

19.H.6.7.H.4.32. 6.E.3 17.7.E.3.66. 18.E.3.60. 23.E.3.ca.1.&c. 11.H.4.44. 38.E.3.23.24.

If a man retaine a ſeruant generally without expreſſing any time, the Law ſhall conſtrue it to be for one yeare, for that retainer is according to Law. Vide 23.E.3.cap.1.&c. To ſhut vp this point it hath beene adiudged, that where Tenant in taile made a leaſe to another for terme of life generally, and after releaſed to the leſſee and his heires, albeit betweene the Tenant in taile, and him a fee ſimple paſſed, yet after the death of the leſſee, the entrie of the iſſue in taile was lawfull; which could not be, if it had been a leaſe for the life of the leſſee, for then by the releaſe it had bene a diſcontinuance executed. But let vs now returne to Littleton.

Section 57.

¶ This and the reſt that follow in this chapter concerning the deſcription of Feoffor and feoffee, Donor and Donee, and Leſſor and Leſſee are euident.

¶ *Et eſt aſcauoir que il y ad le Feoffor, & le Feoffee, &c. Vide Sect.* 2. where a light touch is giuen who may purchaſe, now ſomewhat is to be ſaid, who haue abilitie to enfeoffe, &c. and may be a Feoffor, Donor, Leſſor, &c. Whoſoeuer is diſabled by the Common Law to take, is diſabled to infeoffe, &c. But many that haue capacitie to take, haue no abilitie to infeoffe, &c.

Bracton.lib.5.fol.435. Britton.fol.88. Fleta lib.3. cap.3. & lib.6.cap.39.40.

As men attainted of Treaſon, Felonie, or of a Premunire, Aliens borne, the Kings Villaines, Traitors, Felons, &c. he that hath offended againſt the Statutes of Premunire, after the offences committed if Attainders enſue, Ideots, Madmen, a man deafe, dumbe, and blind from his Natiuitie, a Fem, Couert, an Infant, a man by dures: for the feoffements, &c. of theſe may bee auoided. But an Hereticke, though he be conuicted of hereſie, a Leper remoued by the Kings writ from the ſocietie of men, Baſtards, a man Deafe, Dumbe, or blinde, ſo that hee hath vnderſtanding and ſound memorie, albeit he expreſſe his intention by ſignes, Villaine of a common

2.H.5.cap.7. which is repealed Doct. & Stud.lib.2.cap.29.

¶ ET ẽ aſcauoire que il y ad le Feoffor & le Feoffee, Donor & le Donee, l' Leſſor & l' Leſſee. Le feoffor eſt proprẽt lou home enfeoffa vn auter en aſcuns terres ou tenements en fee ſimple, celuy que fiſt le feoffement eſt appel feoffour, & celuy a que le feoffmẽt eſt fait, eſt appel feoffee. Et le donour eſt proprement lou vn home done certaine terres ou tenements a vn auter en le taile, celuy que fiſt le done eſt appel le donor, & celuy a que le done eſt fait, eſt appel le Donee. Et le Leſſor eſt proprement lou vn home leſſa a vn auter certaine terres ou tenements pur terme de vie, ou pur terme des ans, ou a tener a volunt celuy que fiſt le leas eſt appell leſ-

AND it is to be vnderſtood, that there is Feffor and Feffee, Donor and Donee, Leſſor and Leſſee, Feoffor is properly where a man enfeoffes another, in any Lands or Tenements in Fee ſimple, hee which maketh the feoffment is called the Feoffor, and he to whom the feoffment is made, is called the Feoffee. And the Donor is properly where a man giueth certaine lands or tenements to another in taile, he which maketh the gift, is called the Donor, & he to whom the gift is made, is called the Donee. And the Leſſor is properly where a man letteth to another lands or tenements for terme of life or for terme of yeares, or to hold at will: Hee which maketh the Leaſe is called Leſſor,

for

ſoꝛ ꝛ celuy a que le leas eſt fait, eſt appel Leſſee. Et cheſcun que ad eſtate en aſcun terres ou tenements pur terme de ſa vie ou pur terme dauter vie, eſt appell tenant de franktenement, ꝛ nul auter de meindre eſtat poit auer franktenement, mes ceux de greinder eſtate ont franktenement car ceſtuy en fee ſimple ad franktenement, ꝛ celuy en le taile ad franktenement, ꝛc.

and hee to whom the Leaſe is made, is called Leſſee. And euery one which hath an eſtate in any Land or Tenements for terme of his owne or another mans life, is called tenant of freehold, and none other of a Leſſer eſtate can haue a Freehold, but they of a greater Eſtate haue a Freehold; For hee in Fee ſimple hath a Freehold, and Tenant in taile, hath a Freehold, &c.

perſon before entrie, or the like may infeoffe, &c.

(a) All feoffments, gifts, grants, and Leaſes by Biſhops, albeit they bee confirmed by the Deane and Chapter, by any of the Colledges or Halls in either of the Vniuerſities, or elſewhere, Deans and Chapters, Maſter or Gardein of any Hoſpital, parſon, Vicar, or any other hauing Spirituall or Eccleſiaſticall liuing, are alſo to bee auoyded, (b) and all the ſayd bodies politique or corporate, are by the Statutes of the Realme diſabled to make any conueyances to the King, or to any other, as it hath bin adiudged: which ſtatutes haue been made ſince Littleton wrote.

(a) 32. H.8. cap. 28. 1. El. not printed. 13. El. ca. 10. 14. El. ca. 11. 18. El. ca 20. Ia. ca.

(b) Lib. 4. fo. 76. 120. libr. 5. fo. 6. 14. Li. 6. fo. 37. li. 11. fo 67. Magdalen Colledge caſe. Vide Lib. de W. 2. ca. 41.

It is prouided (c) by the Statute of Magna Charta, quod nullus liber homo det de cætero amplius alicui de terra ſua quam vt de reſiduo terræ ſuæ poſſet ſufficienter fieri domino feodi ſeruitium ei debitum quod pertinet ad feodum illud. Vpon which act I haue heard great queſtion (d) made, whether the feoffment made againſt that Statute were voidable or no, and ſome haue ſaid, that the Statute intended not to auoid the feoffment, but implicite to direct the tenure, viz that the tenant ſhould not infeoffe another of parcell to hold of the chiefe Lord (that is of the next Lord) but to hold of himſelfe, and then the Lord may diſtraine in euery part for his whole ſeruice without any preiudice vnto him. But this opinion is againſt (e) the authoritie of our Bookes, and againſt the ſaid Statute of Magna Charta. For firſt it is agreed in 10. H 7. that aſwel before the Statute as after a tenant which held two Acres might haue aliened one of the Acres to hold of him, and notwithſtanding the Lord might haue diſtrained in which of the Acres he would for his whole ſeruices: and reaſon teacheth that before that Statute a tenant could not haue aliened parcell to hold of the chiefe Lord; For the Seigniory of the Lord was intire, for the which the Lord might diſtraine in the whole or in any part, and which the Tenant by his owne Act cannot diuide to the preiudice of the Lord to barre him to diſtraine in any part for his Seruices, as hee ſhould doe, if hee ſhould enfeoffe another of parcell to hold of the chiefe Lord. But the Tenant might haue made a Feoffment of the whole to hold of the chiefe Lord, for there no preiudice inſued to the Lord. Others haue ſaid, and they ſaid truly, that the intention of the Statute was that the Tenant could not alien parcell (which might turne to the preiudice of the Lord) without his aſſent, and this appeareth clearely by the Mirror. And by this Statute the King tooke benefit to haue a fine for his licence, before which Statute no fine for alienation was due to the King. For it is (f) adiudged that for an alienation in time of Henry the ſecond, no fine was due, and it appeareth in our Bookes, that if an alienation had been made before 20. H. 3. no fine was due to the King for alienation: Now it is to be obſerued; that oftentimes for the better vnderſtanding of our Bookes, the aduiſed Reader muſt take light from Hiſtorie and Chronicles eſpecially for diſtinction of times. And therefore Matthew Paris (who in his Chronicle reciteth Magna Charta) teſtifieth that King Henry the third by euill counſell (and eſpecially as the truth was of Hubert de Burgo then chiefe Iuſtice) ſought to auoide the great Charter firſt granted by his Father King Iohn, and afterward granted and confirmed by himſelfe in the ninth of Henry the third, for that as he ſaid King Iohn did grant it by Dures, and that he himſelfe was within age when he granted and confirmed it. But foraſmuch as afterwards the ſaid King Henry the third, in the twentieth yeare of his Raigne, at what time hee was nine and twentie yeare old, did grant and confirme the ſaid great Charter, for that cauſe to put out all ſcruples is the twentieth yeare of Henry the third named, albeit in law the Kings Charter granted in the ninth yeare of Henry the third, was of force and validitie notwithſtanding his nonage, for that, in iudgement of Law the King, as King, cannot be ſaid to be a Minor

(c) Magna Charta cap. 32. Mirror. cap. 5. §. 2. Glanvil. lib. 7. cap. 1. Bract. lib. 1. britton. 88. &c. Fleta lib. 3 cap. 3.

(d) Vide an excellent declaration hereof inter aduiſers coram Rege. Trin. E. 1 fol. 2. in Theſa. Nott. & Derb.

(e) Brack lib. 1. 10. H. 7. fol. 10. b. 33. E. 3. auowry 255. Stanf. prer. fol. 29. 8. E. 4 12.

Mirror. cap. 5. §. 2. Fleta. lib. 3. cap. 3.

(f) 26. Aſſ. p. 37. 20. Aſſ. p. 17. 20. E. 3. auowrie 126. 34. E. 3. cap. 15. Vide Stanf. 29. 30. Matt. Paru. Walſingham 37. 39.

Vide 5. H. 3. Mordanc. 53. Magna Charta there vouched, which was the Charter of King Iohn, for it was cited before. 9. H. 3.

nor, for when the Royall Bodie Politique of the King doth meete with the naturall capacitie in one person, the whole Bodie shall haue the qualitie of the Royall Politique, which is the greater and more worthy, and wherein is no Minoritie. For Omne maius trahit ad se quod est minus. And it is to bee obserued, that no Record can bee found, that either a licence of alienation was sued or pardon for alienation was obtained for an alienation without licence at any time before the twentieth yeare of Henrie the third, and it is holden in the twentieth of Edward the third, that a licence for alienation grew by this Statute.

40. *Ass.pl* 17. *by Skipwith.*

Now in the case of a common person it was the common opinion, that if the tenant had alienedany parcell contrary to the said act, that he himselfe was bound by his owne act, but that his heire might haue anoyded it; and in the Kings Case many held the same opinion. For Britton saith, Ne Countes, ne Barons, ne Chiualer, ne Seriants, que teignont en chiefe de nous: ne purr' my dismember nous fees sanus licence: que nous ne puissent per droit engettre les purchasors, &c. And herewith agreeth Fleta, and our Bookes. But now by the Statute 1.E.3. cap.12. & 34.E.3.cap.15. although the Kings tenant in chiefe, or by grand seriantie doe alien all or any part without licence, yet is there not any forfeiture of the same, but a reasonable fine therefore to be paid. And note, it appeareth by the preamble in 1.E.3. that complaint was made that land holden of the King in Capite, being alienedwithout licence was seised as forfeited. And in the case of a common person, the Statute of 18.E.1. De quia emptores terrarum hath made it cleere, for this hath in effect as to the common persons taken away the said Statute of Magna Charta cap.32. for thereby it is prouided, Quod liceat vnicuique libero homini terras suas seu tenementa sua, seu partem inde ad voluntatem suam vendere, ita quod sceoffatus teneat, &c. de Capitali Domino. And herein are diuers notable points to bee obserued. First, that this word liceat prooueth that the tenant could not, or at least wayes was in danger to alien parcell of his tenancie, &c. vpon the said Act of Magna Charta. Secondly, that vpon the feoffment of the whole, the tenant shall hold of the chiefe Lord. Thirdly, that the tenant might infeoffe one of part to hold pro perticula of the chiefe Lord. But this Act (the King being not named) doth not take away the Kings fine due to him by the Statute of Magna Charta.

*Britton.fol.*28.88.186.187. 245.247. *Prer.Regu cap.*7. *Fleta lib.*6.*cap.*29.*acc.* 20.*E.*3.*Ass.*122.29. *Ass.pl.* 19. 14.*E.*3.*quare imped.*45. 14.*H.*4.2.3. 9.*E.*3.*fol.*26. 1 *E.*3.*cap.*12.34.*E.*3.*ca.*15. *lib.*2.*fol.*81.82. *in Seignior Cromwels case.*

Regist.int les breues de oner and pro rata portione.

¶ *Franktenement.* Here it appeareth that tenant in fee, tenant in taile, and tenant for life are said to haue a franktenement, a freehold, so called because it doth distinguish it from tearmes of yeares, Chattels vpon incertaine interests, lands in Villenage or Customary, or Copphold lands. Liberum autem tenementum dicitur ad differentiam Villenagij, & villanorum qui tenent Villenagium quia non habent actionem nec assisam, &c. item quod sit suum & non alienum, hoc est si teneat nomine alieno vt firmarius & ad terminum vel sicut creditor ad vadium. And note that tenant by statute Merchant, statute staple or elegit are said to hold land Vt liberum tenementum vntill their debt be paid, and yet in troth they (as hath beene said) haue no freehold, but a Chattle, which shall goe to the Executors, and the Executors also if they be ousted shall haue an Assise. But (vt) is similitudinarie, because they shall by the statutes haue an Assise as tenant of the freehold shall haue, and to that respect hath a similitude of a freehold, but Nullum simile est idem.

*Bracton.lib.*4.*fol.*224. *Britton.cap.*32. *&* 47. *Bracton.lib.*4.*fol.*22. *Regist.indic.*68.73.

28.*Ass.p.*7.*H.*2.*cap.*18. *Statut. de mercatoribus anno* 13.*E.*1. 27.*E.*3.*cap.*9. 23.*H.*8.*cap.*6. *F.N.B.*178.*f.*

Chap. 7. *Sect.* 58.

Tenant for tearme of yeares.

¶ *Lou home lessa terres &c. lessa* and Lease is (a) deriued of the Saxon word leapum, or leasum, for that the Lessee commeth in by lawfull meanes (b) and dimittere is in French laysser to depart with or forgoe.

(a) *Mirror. cap.*2.§.17. *Bracton.lib.*2.*cap.*26. *& lib.*4 *fol.*220. *Fleta.lib.*3.*cap.*12. *& lib.* 5.*cap.*34.
(b) *For the word* (dimitto) *see Sect.*531.

¶ Enāt pur tme dans ē lou hōe lessa terres ou tenements a vn auter pur terme de certaine ans solonque le number des ans que est accord perenter le les-

¶ Tenant for tearme of yeares is, where a man letteth Lands or Tenements to another for tearme of certaine yeares after the number of yeares that is accorded between the

for

ſoꝛ ꝛ le leſſee. Et quant le leſſee enter per foꝛce del leas, donque il eſt tenant pur terme des ans. Et ſi le leſſoꝛ en tiel caſe reſerue a luy vn annuall rent ſur tiel leas il poit eſlier a diſtrainer pur le rent en les tenements leſſes, ou il poit auer vn action de debt pur les arrerages enuerz le leſſee. Mes en tiel caſe il couient que le leſſour ſoit ſeiſie de meſmes le tenemẽts al temps del leas, car il eſt bone plee pur le leſſee adire, que le leſſoꝛ nauoit riens en les tenemẽts al tẽps de le leas ſinon que le leas ſoit fait per fait endent, en quel caſe tiel plee donque ne giſt en le bouch le leſſee a pleader.

Leſſor and the Leſſee, and when the Leſſee entreth by force of the Leaſe, then is hee tenant for tearme of yeares, and if the Leſſor in ſuch caſe reſerue to him a yearely Rent vpon ſuch Leaſe, hee may chuſe for to diſtraine for the Rent in the Tenements letten, or elſe he may haue an Action of debt for the Arrerages againſt the Leſſee. But in ſuch caſe it behooueth that the Leſſor be ſeiſed in the ſame Tenements at the time of his leaſe, for it is a good plee for the Leſſee to ſay, that the Leſſor had nothing in the tenements at the time of the leaſe, except the leaſe bee made by deed, indented, in which caſe ſuch plee lieth not for the Leſſee to plead.

liues at their will and pleaſure, which now cannot make them firme in Law. And ſome perſons may now make leaſes for yeares, or for life or liues (obſeruing due incidents) firme and good in law who of themſelues could not ſo doe when Littleton wrote, and this by force of diuers Acts of Parliament (c) as namely 32.H 8. 1.Eliz.13. Eliz.18. Eliz. and 3.Iac.Regis of which ſtatutes one is inabling, and the reſt are diſabling. When Littleton wrote, Biſhoppes with the confirmation of the Deane and Chapter, Maſter & Fellowes of any Colledge, Deanes and Chapters, Maſter or Gardian of any Hoſpitall, and his Brethren, Parſon or Vicar, with the conſent of the Patrone and Ordinary, Archdeacon, Prebend, or any other bodie Politique Spirituall and Eccleſiaſticall (Concurrentibus hijs quæ in iure requiruntur) might haue made Leaſes for liues or yeares without limitation or ſtint. And ſo might they haue made gifts in tailes or ſtates in fee at their will and pleaſure, whereupon not only great decay of Diuine Seruice, but Dilapidations and other inconueniences enſued, and therefore they were diſabled and reſtrained by the ſaid Acts of 1.Eliz. 13. Eliz. and 3.Iac. Regis to make any eſtate or Conueyance to the King at all or to the ſubiect, but there is excepted out of the reſtraint or diſabilitie, leaſes for three liues, or one and twentie yeares; with ſuch reſeruation of Rent, and with ſuch other prouiſions and limitations as hereafter ſhall appeare. Alſo they may make grants of ancient Offices of neceſſitie with ancient fees Concurrentibus hijs quæ in iure requiruntur, for thoſe grants are not within the ſtatute of 32.H.8. but by conſtruction, they are not reſtrained by the ſtatutes of 1.Eliz. or 13.Eliz. becauſe theſe ancient Offices be of neceſſitie, and with the ancient fees, and ſo no diminution of reuenue.

(c) 32.H.8.ca.28. 1.Eliz. not printed but in the iudgement. 13.Eliz.cap.10. 18.Eliz. cap.6. 3.Iac.cap.3.

*Lib.*5.*fol.*14.*caſe de Eccleſiaſticall perſons.* *Lib.*11.*fol.*66 *Magdalen Colledge caſe.* *Leueſque de Sarums caſe lib.* 10.*fol.* 60.61.

There be three kinds of perſons, that at this day may make leaſes for three liues, &c. in ſuch ſort as hereafter is expreſſed which could not ſo doe when Littleton wrote. Viz. Firſt, Any perſon ſeiſed of an eſtate taile in his owne right. Secondly, Any perſon ſeiſed of an eſtate in fee ſimple in the right of his Church. Thirdly, Any husband and wife ſeiſed of any eſtate of inheritance in fee ſimple, or fee taile in the right of his wife, or ioyntly with his wife before the couerture or after, viz. the tenant in taile, by deed to bind his iſſues in taile, but not the reuerſion or remainder, the Biſhop, &c. by deed without the Deane and Chapter to bind his ſucceſſors, the husband and wife by deed to bind the wife and her and their heires, and theſe are made good by the ſtatute of 32.H.8. which inableth them thereunto. But to the making good of ſuch leaſes by the ſaid ſtatute there are nine things neceſſarily to bee obſerued belonging to them all, and ſome other to ſome of them in particular.

First, The leaſe muſt be made by Deed indented, and not by Deed, Poll, or by Paroll.

*Lib.*5.*fol.*6. *Seig Mountioyes caſe.*

Secondly, It muſt be made to begin from the day of the making thereof, or from the making thereof.

Thirdly,

Thirdly, If there be an old leaſe in being, it muſt be ſurrendred or expired, or ended within a yeare of the making of the leaſe, and the ſurrender muſt be abſolute and not conditionall.

*Lib.*5.*fol.*2.*Flamps caſe.*

Fourthly, There muſt not bee a double Leaſe in beeing at one time, as if a Leaſe for yeares bee made according to the ſtatute, hee in the reuerſion cannot expulſe the Leſſee, and make a Leaſe for life or liues according to the ſtatute, nor è conuerſo, for the words of the ſtatute be to make a leaſe for three liues, or one and twentie yeares, ſo as one or the other may be made, and not both.

Fiftly, It muſt not exceed three liues, or one and twentie yeares, from the making of it, but it may be for a leſſer terme or fewer liues.

Sixtly, It muſt bee of Lands, Tenements, or Hereditaments, Manurable or Corporeall, which are neceſſary to be letten, and whereout a rent by law may be reſerued, and not (d) of things that lie in grant, as Aduowſons, Faires, Markets, Franchiſes, and the like whereout a rent cannot be reſerued.

(d) *Lib.*5.*fol.*2. *Iewels caſe.* 17.*E*3.75.9.*Aſſ.*24.14.*E*.3. *Scire facias* 22. 10.*H*.6.2. 3.*H*.6.21.

Seuenthly, It muſt be of Lands or tenements which haue moſt commonly beene letten to farme, or occupied by the Farmers thereof by the ſpace of 20 yeares next before the leaſe made, ſo as if it be letten for 11. yeares at one or ſeuerall times within thoſe 20. yeares it is ſufficient. A grant (e) by copie of Court roll in fee for life or yeares is a ſufficient letting to farme within this ſtatute, for he is but tenant at will according to the cuſtome, & ſo it is of a leaſe at will by the Common Law, but thoſe lettings to farme muſt be made by ſome ſeiſed of an eſtate of Inheritance, & not by a Gardein in Chiualrie, tenant by the curteſie, tenant in dower or the like.

(e) *Lib.*6.*fol.*37. *Deane and Chapter of Worceſters caſe.*

Eightly, That vpon euery ſuch leaſe there be reſerued yearely during the ſame leaſe due and payable to the Leſſors their heires and Succeſſors, &c. ſo much yearely farme or rent, or more, as hath beene moſt accuſtomably yeilded or paid for the lands, &c. within twentie yeares next before ſuch leaſe made. Hereby firſt it appeareth (as hath beene ſaid) that nothing can be demiſed by Authoritie of this act, but that whereout a rent may be lawfully reſerued. Secondly, That where not only a yearely rent was formerly reſerued, but things not annuall, as heriots, or any fine or other profit at or vpon the death of the farmor, yet if the yearely rent be reſerued vpon a leaſe made by force of this ſtatute, it ſufficeth by the expreſſe words of the Act.

*Lib.*5.*fol.*6. *Seignior Mountioyes Caſe.*

Thirdly, If he reſerue more then the accuſtomable rent it is good alſo by the expreſſe letter of the Act; but if twentie Acres of land haue beene accuſtomably letten, and a leaſe is made of thoſe twentie, and of owne Acre which was not accuſtomably letten, reſeruing the accuſtomable yearely Rent, and ſo much more as exceed the value of the other Acre, this leaſe is not warranted by the Act, for that the accuſtomable Rent is not reſerued, ſeeing part was not accuſtomably letten, and the Rent iſſueth out of the whole. Fourthly, If tenant in taile let part of the land accuſtomably letten, and reſerue a Rent pro rata, or more, this is good for that is in ſubſtance the accuſtomable Rent. Fiftly, If two Copercceners be tenant in taile of twentie Acres euery one of equall value, and accuſtomably letten, and they make partition, ſo as each haue ten Acres, they may make leaſes of their ſeuerall parts each of them, reſeruing the halfe of the accuſtomeable rent. Sixtly, If the accuſtomeable Rent had beene payable at foure dayes or Feaſts of the Yeare, yet if it be reſerued yearely payable at one Feaſt, it is ſufficient, for the words of the ſtatute be, reſerued yearely.

*Lib.*5.*fol.*5.*Seignior Mountioyes Caſe, l.*6.*fol.*37.

Lord Mountioyes Caſe vbi ſupra.

Seuenthly, Nor to any leaſe to be made without impeachment of waſte, therefore if a Leaſe be made for life, the remainder for life, &c. this is not warranted by the ſtatute, becauſe it is diſpuniſhable of waſte. But if a leaſe bee made to one during three liues this is good, for the occupant if any happen; ſhall be puniſhed for waſte. The words of the ſtatute be (ſeiſed in the right of his Church) yet a Biſhop that is ſeiſed iure Epiſcopatus, a Deane of his ſole poſſeſſions in iure Decanatus, an Archdeacon in iure Archidiaconatus, a Prebendarie and the like are within the ſtatute, for euery of them generally is ſeiſed in iure Eccleſiæ

Deane and Chapter of Wore. Caſe. Vbi ſupra.

But a Parſon and Vicar are excepted out of the ſtatute of 32.H.8. and therefore if either of them make a leaſe for three liues, &c. of lands accuſtomeably letten, reſeruing the accuſtomed Rent, it muſt be alſo confirmed by the Patrone and Ordinarie, becauſe it is excepted out of 32.H.8 and not reſtrained by the ſtatutes of primo or 13.Eliz. And what hath beene ſaid concerning a leaſe for three liues, doth hold for a leaſe for one and twentie yeares.

Deane and Chapter of Wore. Caſe. Vbi ſupra.

Thus much ſhall ſuffice to haue ſpoken of the inabling ſtatute of 32.H.8. the better to inable the Reader to vnderſtand both this and that which follow. Now to ſpeake ſomewhat of the diſabling Statutes of 1. Eliz. and 13. Eliz. the words of the exception out of the reſtraint and diſabilitie of 1.Eliz are, Other than for the terme of twentie one yeares, or three liues, from ſuch time as any ſuch grant or aſſurance ſhall bee giuen, whereupon the old and accuſtomed yearely rent, or more, ſhall be reſerued: And to that effect is the exception in the Statute of 13.Eliz. Firſt, It is to be vnderſtood, that neither of theſe diſabling Acts, nor any other, doe in any ſort alter or change the inabling Statute of 32.H.8. but leaueth it for a patterne in many things for leaſes to be made by others. Secondly, It is to be knowne, that no Leaſe made according to the exception of 1.Eliz. or 13.Eliz. and not warranted by the Statute of 32.H.8. if it bee made

3.*E*.6.1.*Mar. tit. leaſes Bre.*62.

by

by a Biſhop, or any ſole Corporation, but it muſt be confirmed by the Deanes and Chapters, or others that haue intereſt, as hath beene ſaid in the caſe of the Parſon and Vicar, but examples doe illuſtrate. If a Biſhop make a leaſe for 21. yeares, and all thoſe yeares being ſpent ſauing three or more; yet may the Biſhop make a new leaſe to another for twentie one yeares, to begin from the making, according to the exception of the Statute, but not a Leaſe for life or liues, as hath beene ſaid, and this concurrent Leaſe hath beene reſolued to be good, as well vpon the exception of 1. Eliz. in the caſe of Biſhops, as vpon 13. Eliz. which extend to ſpirituall and eccleſiaſticall Corporations, aggregate of many, as Deanes and Chapters, &c. which 32. H. 8. did not: but in the caſe of the concurrent leaſe, in the caſe of the Biſhop it muſt be confirmed. Alſo the exception of 1. Eliz. and 13. Eliz. doth differ from the ſtatute of 32. H. 8. for the leaſes for yeares to bee made according to the exceptions of the ſtatutes of 1. and 13. Eliz. muſt beginne from the making, and not from the day of the making, but by force of 32. H. 8. from the day of the making. And although the ſtatutes of the firſt or thirteenth of Eliz. doe not appoint the leaſe to be made by writing, yet muſt it therein and in the other eight properties or qualities before mentioned and required by 32. H. 8. follow the paterne thereof (the concurrent leaſe only excepte). Although the exception in 1. and 13. Eliz. concerning the accuſtomed rent is more generall then that of 32. H. 8. and there is not any prouiſion for leaſes made diſpuniſhable of waſte, &c. yet muſt the paterne of 32. H. 8. be followed: for leaſes without impeachment of waſte made by ſuch Spirituall and Eccleſiaſticall perſons are vnreaſonable and cauſes of dilapidations. Thus much haue I thought good to lead the ſtudious Reader by the hand, and to conduct him in the right way. And to put all theſe things together vpon conſideration had of all the ſtatutes, which otherwiſe might haue prima facie ſeemed to him a diffuſe and darke labyrinth. And albeit it be prouided by the ſaid Acts of 1. and 13. Eliz. that all grants, &c. leaſes, &c. made, &c. (other then leaſes for three liues, or one and twentie yeares according to thoſe Acts) ſhould be vtterly void and of none effect, to all intents conſtructions and purpoſes, yet grants, or leaſes, &c. not warranted by thoſe acts are not void, but good againſt the Leſſor, if it be a ſole Corporation, or ſo long as the Deane or other head of the Corporation remaine, if it be a Corporation aggregate of many, for the ſtatute was made in benefit of the ſucceſſor. But let vs now returne to our Author.

*Lib.*3. *fo.* 59. 60. *Lincolne Colledge caſe. P.* 39. *Eliz. Inter Hunt. & Singleton. ibidem.*

¶ *Home leſſa.* Here Littleton putteth this caſe where one letteth, &c. It is therefore neceſſary to be ſeene what the Law is where diuers ioyne in a Leaſe. If the tenant of the Land, and a ſtranger which hath nothing in the Land ioyne in a leaſe for yeares by Deed indented of one and the ſelfe-ſame land, this is the Leaſe of the tenant only, and the confirmation of the ſtranger and yet the Leaſe as to the ſtranger worke by concluſion.

Vide Sect. 346. 11. *H.* 4. 1. 5. *E.* 4. 4. *a.* 27. *H.* 8. 16.

If two ſeuerall tenants of ſeuerall lands, ioyne in a leaſe for yeares by Deede indented, theſe be ſeuerall Leaſes and ſeuerall Confirmations of each of them, from whom no intereſt paſſeth, and worke not by way of concluſion in any ſort; becauſe ſeuerall intereſts paſſe from them. B. tenant for life of C. and he in the remainder or reuerſion in fee, hauing ſeuerall eſtates in the one and the ſame Land ioyne in a leaſe for yeares by Deede indented, this demiſe ſhall worke in this ſort, during the life of C. it is the Leaſe of B. and Confirmation of him in the reuerſion or remainder, and after the deceaſe of C. it is the Leaſe of him in the reuerſion or remainder, and the Confirmation of B. for ſeeing the Leaſors haue ſeuerall eſtates, the Law ſhall conſtrue the Leaſe to moue out of both theſe eſtates reſpectiuely, and euery one to let that which he lawfully may let, and not to be the leaſe only of tenant for life, and the Confirmation of him in the remainder or reuerſion, neither is there any concluſion in this caſe, as ſhall be ſaid hereafter. Tenant for life and he in the remainder in fee, made a leaſe for yeares by Deed indented, the Leſſee was elected, and brought an Electione firme, and declared vpon a demiſe made by tenant for life and him in remainder, and vpon not guilty pleaded this ſpeciall matter was found and that tenant for life was liuing and it was adiudged (a) againſt the pl', for during the life of the tenant (as hath beene ſaid) it is the Leaſe of the tenant for life, and therefore during his life he ought to haue declared of a Leaſe made by him, and after his deceaſe he ought to declare of a Leaſe made by him in remainder. (b) And the Deed indented could be no Eſtoppell in this caſe, becauſe there paſſed an intereſt from them both. And whenſoeuer any intereſt paſſeth from the partie there can be no Eſtoppell againſt him, and (c) ſo it was adiudged. Hereby you ſhall vnderſtand your bookes the better which treate of theſe matters; and accordingly it was adiudged that where tenant in taile and he in the remainder in fee ioyned in a grant of a rent charge by Deed in fee, and after tenant in taile died without iſſue, the grantee diſtreyned and auowed by force of a graunt from him in the remainder and vpon non conceſſit, the Jury found the ſpeciall matter, and it was adiudged for the auowant; for euery one granted according to his eſtate and intereſt.

(a) 27. *H.* 8. *fo.* 13. *a.* 13. *H.* 7. 14. 2. *M.* 5. 7. *Lib.* 1. *fol.* 76. *Bredons Caſe.*

(b) *Mich.* 36. & 37. *Eliz. in the Kings Bench. Vide Mich.* 6. & 7. *Eliz. Dier* 234. 235.

(c) *Hil.* 44. *Eliz. Rot.* 1459. *in Communi Banco inter Clere & Cowne.*

Leaſes for liues or yeares are of three natures, ſome be good in Law; ſome be voydable by

entrie, and some voide without entrie. Of such as be good in Law, some be good at the Common Law as made by tenant in fee whereof Littleton here putteth his case, some by Act of Parliament, as tenant in taile, a Bishop seised in fee in the right of his Church alone without his chapter, A man seised in fee simple or fee taile in the right of his wife together with his wife (as hath beene said) may by deede indented make Leases for 21. yeares or three liues in such manner and forme as hath beene said and by the Statute (d) is limitted; all which were voydable by the Common Law when Littleton wrote, and now are made good by Parliament.

(d) 32.*H.*8.*cap.*28.

An infant seised of Land holden in Socage, may by custome make a lease at his age of 15. yeares, and shall binde him, which Lease was voydable by the Common Law; Voydable, some by the Common Law, after the death of the lessor as of tenant in taile a Bishop, &c. Or after the death of the husband (intended of Leases not warranted by the said statute of 32.H.8.) Some voydable by Act of Parliament, as by a Bishop though it be confirmed by Deane and Chapter, if it be not warranted by the Statute of 32.H.8. and so of a Deane and Chapter after the Death of the Deane; Some voydable at times by the lessor himselfe or his heires, as by an infant and the like. Some voyde in futuro, and some voide in presenti. In futuro as if a tenant in taile make a Lease for yeares and die without issue, it is voide, as to them in reuersion or remainder, though it be made (e) according to the said Statute. If a Prebend, Parson or Vicar make a Lease for yeares, it is voyde by death, if it be not according to the Statutes. Otherwise it is of a Lease for life for that is voydable, & sic de similibus.

(e) 33.*H.*8.*Dier. lib.*3.*fo.*59.60.*in Lincolns Colledge case. Hunts case vouched.*

Some voide in presenti as if one make a Lease for so many yeares as he shall liue, this is voide in presenti for the incertaintie. Et sic in similibus whereof Littleton himselfe will teach you next and immediately and I know you would now gladly heare him.

¶ *Pur terme.* Pro termino, Terminus **in the vnderstanding of the** Law doth not only signifie the limits and limitation of time, but also the estate and interest that passeth for that time. As if a man make a Lease for 21. yeares, and after make a lease to begin A fine & expiratione prædicti termini 21. annorum dimiss. and after the first Lease is surrendred, the second Lease shall begin presently, but if it had beene to begin Post finem & expirationem predict' 21. annorum, in that case although the first tearme had beene surrendred, yet the second lease should not begin, till after the 21. yeares be ended by effluxion of time, and so note the diuersitie betweene the terme for 21. yeares, and 21. yeares; and (f) herewith agreeth the Lord Pagets Case.

*Pl.com.Wiseteſ.*198. 35.*H.*8.*tit.expoſitions des parols* 44. *lib.*1.*fo.*145.*in Dauenports caſe.*

(f) *Lib.*1.*fo.*154.*in the Rector of Chedingtons case.*

(g) *Vid.Sect.*531.
(h) *Regiſter.F.N.B.*270.*e.*

(g) Words to make a lease be, demise, grant, to fearme let, betake, and whatsoeuer word amounteth to a grant may serue to make a lease. In the Kings case (h) this word Committo doth amount sometime to a grant, as when he saith Commisimus W.de B officium seneschalciæ, &c. quamdiu nobis placuerit, and by that word also he may make a lease: and (i) therefore a fortiori a common person by that word may doe the same.

(i) 8.*H.*6.34

¶ *De certaine ans.* **For regularly in euery Lease for yeares the** terme must haue a certaine beginning, and a certaine end, and herewith (k) agreeth Bracton, terminus annorum certus debet esse & determinatus. And Littleton is here to bee vnderstood, first, that the yeares must be certaine when the Lease is to take effect in interest or possession. For before it takes effect in possession or interest, it may depend vpon an incertaintie, viz. vpon a possible contingent before it begin in possession, or interest, or vpon a limitation or condition subsequent. Secondly albeit there appeare no certainty of yeares in the leale, yet if by reference to a certaintie it may be made certaine it sufficeth, Quia id certum est quod certum reddi potest. For example of the first. If A. seised of lands in fee grant to B. that when B. payes to A. xx. shillings, that from thence forth he shall haue and occupie the land for 21. yeares, and after B. payes the xx. shillings, this is a good lease for 21. yeares from thencefoorth. For the second if A. leaseth his land to B. for so many yeares as B hath in the Mannor of Dale, and B. hath then a terme in the mannor of Dale for 10. yeares, this is a good lease by A. to B. of the land of A. for 10. yeares. If the parson of D. make a lease of his gleabe for so many yeares as hee shall bee parson there, this cannot be made certaine by any meanes, for nothing is more vncertaine then the time of death. Terminus vitæ est incertus, & licet nihil certius sit morte, nihil tamen incertius est hora mortis. But if he make a leaſe for three yeares, and so from three yeares to three yeares, so long as he shall be parson, this is a good leaſe for 6. yeares, if he continue parson so long, first for three yeares, and after that for three yeares; and for the residue vncertaine.

(k) 14.*H.*8.14.3.*Mar.leaſes Br.*67. 2.*Mar. ibid.*67. *Say & Fullers caſe, Pl.com.* 273. *& Weldens caſe ibid.* 4.*H.*6.12. 21.*H.*7.38. *Vid.le caſe del eueſque de Bathe.lib.*6.*ſo.*34. 35. *Bract.lib.*2.*ca.*9. *Vid.lib.*1.*ſo.*155.156. *Rector de Chedingtons caſe.*

*Bracton lib.*2.*ca.*9. *Soreſolued Hill:*26. *Eliz.rot.*955.*in com. banco.*

If a man maketh a leaſe to I.S. for so many yeares as I.N. shall name, this at the beginning is incertaine, but when I.N. hath named the yeares, then it is a good leaſe for so many yeares.

A man maketh a leaſe for 21. yeares if I.S. liue so long, this is a good leaſe for yeares, and yet is certaine in incertaintie, for the life of I.S. is incertaine. See many excellent cases concerning this matter put in the said case of the Bishop of Baths and Wells. By the ancient Law of England for many respects a man could not haue made a leaſe aboue 40. yeares at the most, for

*Pl.com.Say & Fullers caſe. Mirror cap.*2.§.17. *& cap.*5.§.1.

then

then was it ſaid that by long leaſes many were preiudiced, and many times men diſherited, but that ancient Law is antiquated.

In the eye of the Law any eſtate for life being as Littleton hath ſaid an eſtate for Freehold, againſt whom a precipe quod reddat doth lye, is an higher and greater eſtate then a leaſe for yeares though it be for a Thouſand or more which neuer are without ſuſpition of fraude, and they were the leſſe valuable, for that at the Common Law they were ſubiect vnto, and vnder the power of the tenant of the Freehold, the learning whereof ſtanderh thus and is worthy to bee knowne. When Littleton wrote if a man had made a leaſe for yeares by writing, and he that had the Freehold had ſuffered himſelfe to be impleaded in a reall action by colluſion to barre the Leſſee of his terme, and made default, &c. The Statute of Glouc' gaue the Leſſee for yeares ſome remedy by way of receipt, and a triall whether the Demandant did moue the plea by good right or colluſion, and if it were found by colluſion then the termor ſhould inioy his tearme, and the execution of the iudgement ſhould ſtay vntill after the tearme ended. But this Statute extended not to 5. Caſes. 1. If the leaſe were without writing for the words of this act are, (ſo that the termor may haue recouery by writ of Couenant.) 2 It extended not but to a recouery by default. 3. The termor could not be relieued by this ſtatute, vnleſſe he knew of the recouery and were receiued, &c. 4. By the better opinion of bookes, it extended not to tenants by Statute merchant, ſtatute ſtaple or elegit. 5. Not to garden. (l) But now the ſtatute of 21 H.8. doth giue remedy in all the ſaid caſes ſauing the caſe of the gardian, and giueth them power to falſifie all manner of recoueries had againſt the tenants of the freehold vpon fained and vntrue titles, &c. Now the (m) ſtatute ſaith that it was a doubt before that ſtatute whether a Termor for yeares might falſifie or no, but yet it ſeemeth by the better opinion of bookes in ſo great varietie, that he hauing but a chattel, was not able by the Common Law to falſifie a couenous recouery of the freehold, becauſe he could not haue the thing that was recoucred. (a) And Thrning and Hankford doe hold that a gardian is not within the ſtatute of Glouc.

*Lib.*11.*fo.*33.

(l) 21.*H.*8.*ca.*15.

(m) *That a termor might falſifie at the Common Law. Vid.*19.*E.*3. *Aſſ.*82. 21.*E.*3.17.*H*7.11.*b.* 1.*H.*7.9.*b. Pl.com.*83. 10.*E.*3.46. 19.*E.*3.*reſcets* 112. *That he could not.* 30.*H.*6. *Fauxet recouery*9. 43.*Aſſ.*41. 26.*H.*8.2. 9.*E.*4.38. *F.N.B.*198.*E.* 14.*H.*8.4. *lib.*9.*fo.*135. *Aſcoughes caſe.*

If two Copercencrs be, and one of them let her part to another for yeares and after vpon a writ of partition brought againſt the Leſſor too little is alotted to the Leſſor, it is holden by ſome that the Leſſee cannot auoide it for that it is made by the oath of men, and iudgement is thereupon giuen that the partition ſhall remaine firme and ſtable. But if there be two Copercencrs of three acres of land euery one of equall value, and the one Copercener letteth her part, and after make partition, and one acre is alotted only to the Leſſor, the Leſſee is not bound hereby, but he may enter and take the profits of another halfe acre, for that of right belong vnto him. Thus much haue I thought good to ſet downe for it ſufficeth not to know what the Law is in theſe caſes, vnleſſe he vnderſtand the reaſon and cauſe thereof.

(a) *Tthrning and Hankford doe hold that a gardian is not within the ſtatute of Glouc.* (a) 7.*H.*4.12. 33.*H.*8. *Dier* 52.

And albeit (as hath beene ſaid) a leaſe for yeares muſt haue a certaine beginning, and a certaine end, yet the continuance thereof may be incertaine, for the ſame may ceaſe and reuiue againe in diuers caſes. As if tenant in taile make a leaſe for yeares reſeruing xx. ſhillings, and after take a wife and die without iſſue, now as to him in the reuerſion the leaſe is meerely voide, but if hee indow the wife of tenant in taile of the land, (as ſhe may be though the eſtate taile be determined) now is the leaſe as to the tenant in dower (who is in of the ſtate of her huſband) (a) reuiued againe as againſt her, for as to her the eſtate taile continueth, for ſhe ſhal be attendant for the third part of the rent ſeruices, and yet they were extinct by act in Law. So it is if tenant in taile make a leaſe for yeares vt ſupra, and dieth without iſſue, his wife enſeint with a ſonne, he in the reuerſion enter, againſt him the leaſe is voide, but after the ſonne be borne the leaſe is good, if it be made according to the (b) ſtatute, and otherwiſe is voydable.

(a) 10.*E.*3.26. 34.*Aſſ.*15. 23.*E.*3. *Dower* 130.

(b) 32.*H.*8.*ca.*28.

The King made a gift in taile of the Mannor of Eaſtfarleigh, in Kent to W. to hold by Knights ſeruice; W. made a leaſe to A. for thirtie ſixe yeares, reſeruing thirteene pound rent; W. dyed, his ſonne and heire of full age, all this was found by office: as to the King this leaſe is not of force, for he ſhall haue his primer ſeiſin as of lands in poſſeſſion, but after liuerie, the leſſee may enter; and if the iſſue in taile accept the rent, the leaſe ſhall bind him, for the Kings primer ſeiſin ſhall not take away the election of the iſſue in taile, for it may be that the rent was better than the land: (c) and ſo it was adiudged in Awſtens caſe, as I had it of the report of Maſter Edmond Plowden, a graue and learned Apprentice of Law.

(c) *Paſch.*2.*&* 3.*ph.& Mar. in an information of Intruſion in the Exchequer againſt Auſten. Vid. Dier Paſch.*2.*&* 3. *Ph.& Mar.*135.

If tenant in fee take wife, and make a leaſe for yeares, and dieth, the wife is endowed, ſhee ſhall auoyd the leaſe, but after her deceaſe the leaſe ſhall bee in force againe. But if the Patron grant the next auoydance, and after Parſon, Patron, and Ordinarie, before the Statute, (d) had made a leaſe of the glebe for yeares, and after the Parſon dieth, and the grantee of the next auoydance had preſented a Clerke to the Church, who is admitted, inſtituted, and inducted, and dieth within the terme, the Patron preſents a new Clerke, and he is admitted, inſtituted, and inducted, albeit he commeth in vnder the Patron that was partie to the leaſe, yet becauſe the laſt incumbent, who had the whole ſtate in him, auoyded the leaſe, it ſhall not reuiue againe, no more than if a feme couert leuie a fine alone, if the huſband enter and auoyd the fine, and die, the whole eſtate is ſo auoyded as it ſhall not bind the wife after his death.

13.*Eliz.*ca.10.

(d) 6.*E.*6 *Dier*72. 17.*E.*3.52. 17.*Aſſ.*p.17. 2.*R*3.20. 9.*H.*6.33.

2.*E.*3.8.*per Scrope.*

If a woman be endowed of an aduowſon which is appropriated, and the preſent, and her incumbent is admitted, inſtituted, and inducted, albeit the incumbent die, yet is the appropriation wholly diſſolued, becauſe the incumbent which came in by preſentation, had the whole ſtate in him, and ſo was it adiudged, as the caſe is to be intended.

*Pl.Com.*437.*a.*

Tenant in tatle make a leaſe for fortie yeares, reſeruing a rent, to commence ten yeares after; tenant in tatle die, the iſſue enter and infeoffe A. ten yeares expire, the leſſee enter, if A. accept the rent, the leaſe is good, for he ſhall haue the ſame election that the iſſue in tatle had, either to make it good, or to auoyd it, ſo as it could not be preciſely affirmed, whither by the entrie of the iſſue this executory leaſe was auoyded, but it dependeth incertainly vpon the will of the feoffee. But now I know you are deſirous to heare Littleton, who is ſpeaking to you.

¶ *Et quant le leſſee enter per force del leaſe, donques il eſt tenant pur terme des ans.* And true it is, that to many purpoſes he is not Tenaunt

*V.Sect.*454.455.

for yeares vntil he enter: as a releaſe made to him is not good to him to increaſe his eſtate, before entrie; but he may releaſe the rent reſerued before entrie, in reſpect of the priuitie. Neither can the Leſſor grant away the reuerſion by the name of the reuerſion, before entrie, vide Sect. 567. But the leſſee before entrie hath an intereſt, intereſſe termini grantable to another, vide Sect. 319. And albeit the leſſor die before the leſſee enters, yet the leſſee may enter into the lands, as our Author himſelfe holdeth in this chapter. And ſo if the leſſee dyeth before he entred, yet his executors or adminiſtrators may enter, becauſe hee preſently by the leaſe hath an intereſt in him: And if it be made to two, and one die before entrie, his intereſt ſhall ſuruiue. Vid Sect.281.

*V.Sect.*665. *more fully of this matter.*

He that hath a leaſe for yeares, hath it either in his owne right, whereof Littleton hath heere ſpoken, or in anothers right, and that in diuers manners, as a man may haue a terme for yeares in the right of his wife, whereof the husband hath power to diſpoſe at any time during his life, and if he ſuruiueth his wife, the law doth giue the leaſe to him. But if he make no diſpoſition thereof, and his wife ſuruiue him, it remaineth with the wife: but of this in another place more fully.

If a man be poſſeſſed of a terme of fortie yeares in the right of his wife, and maketh a Leaſe for twentie yeares, reſeruing a rent, and die, the wife ſhall haue the reſidue of the terme, but the executors of the husband ſhal haue the rent, for it was not incident to the reuerſion, for that the wife was not partie to the leaſe. So note, a diſpoſition of part of the terme is no diſpoſition of the whole. But if the husband grant the whole terme, vpon condition that the grantee ſhall pay a ſumme of money to his executors, &c. the husband die, the condition is broken, the Executors enter, this is a diſpoſition of the terme, and the wife is barred thereof, for the whole intereſt was paſſed away.

*Mich.*17.*El.in the kings Bench.*

If a leaſe be made to a baron and feme for terme of their liues, the remainder to the Executors of the ſuruiuor of them, the husband grant away this terme and dieth, this ſhall not barre the wife, for that the wife had but a poſſibilitie, and no intereſt.

37.*Aſſ.p.*11.*Pl.Com.*418.*b*

If the husband and wife be elected of a terme in the right of his wife, and the husband bring an electione firmæ in his owne name, and haue iudgement to recouer, this is an alteration of the terme, and veſteth it in the husband.

If a leaſe for yeares be made to a Biſhop and his ſucceſſors, yet his executors or adminiſtrators ſhall haue it in auter droit, for regularly no Chattell can goe in ſucceſſion in a caſe of a ſole Corporation no more than if a leaſe be made to a man and his heires, it can goe to his heyres. But let vs returne to Littleton.

*Li.*5.*fo.*1.*Clayton caſe* 12. *Eliz. Dyer* 286.

Touching the time of the beginning of a leaſe for yeares, it is to be obſerued, that if a leaſe be made by Indenture, bearing date 26. Maii, &c to haue and to hold for twentie one yeares, from the date, or from the day of the date, it ſhall begin on the twentie ſeuenth day of May. If

14.*El.Dy.*307.5.*El.Dy.*218

the leaſe beare date the twentie firſt day of May, &c. to haue and to hold from the making hereof, or from henceforth, it ſhall begin on the day in which it is deliuered, for the words of the Indenture are not of any effect till the deliuerie, and thereby from the making, or from henceforth take their firſt effect. But if it be à die confectionis, then it ſhall begin on the next day after the deliuerie. If the habendum be for the terme of twentie one yeares, without mentioning when it ſhall begin, it ſhall begin from the deliuerie, for there the words take effect, as is aforeſaid. If

*Li.*2 *ſe.*5.*Goddards caſe.*

an Indenture of leaſe beare date, which is voyd or impoſſible, as the thirtieth day of Februarie, or the fortieth of March, if in this caſe the terme be limitted to begin from the date, it ſhall begin from the deliuerie, as if there had beene no date at all. (a) And ſo it is, if a man by his Indenture of leaſe, either recite a leaſe which is not, or is voyd, or miſrecite a leaſe in point materiall which is in eſſe, To haue and to hold from the ending of the former leaſe, this leaſe ſhall begin in courſe of time from the deliuerie thereof.

(a) *Pl.Com.*148.3.*E.*6.*tit. Leaſes Br.*62.3.*El.Dy.*195. 1.*Mar.Dyer* 116.

¶ *Et ſi le leſſor en tiel caſe reſerue a luy vn annual rent ſur tiel caſe, il poet eſlier a diſtreyner pur le rent, on il poet auer action de debt pur les arerages.*

¶ *Reſerue*

¶ *Reserue a luy vn annual rent, &c.* **First it appeareth** (b) **here by** Littleton that a rent must be reserued out of Lands or Tenements, whereunto the Lessor may haue resort or recourse to distreine, as Littleton here also saith, and therefore a rent cannot be reserued by a common person out of any incorporeall inheritance, as Aduowsons, Commons, Offices, Corodie, mulcture of a Mill, Tythes, Fairs, Markets, Liberties, Priuiledges, Franchises and the like. (c) But if the lease be made of them by Deede for yeares, it may be good by way of Contract to haue an action of debt, but distreine the Lessor cannot. Neither shall it passe with the graunt of the reuersion for that it is no rent incident to the reuersion. But if any rent be reserued in such case vpon a lease for life, it is vtterly voide, for that in that case no action of debt doe lye. But if a man demiseth the vesture or herbage of his land he may reserue a rent, for that the thing is maynorable, and the Lessor may distreine the chattel vpon the Land: And so a reuersion, or a remainder of lands or tenements may be granted reseruing a rent, for the apparant possibility that it may come in possession, and they are tenements within the words of Littleton.

(a) It appeareth by Littleton that reservando is an apt word of reseruing a rent, and so is reddendo, solvendo, faciendo, inveniendo, dummodo, and the like.

(b) And note a diuersitie betweene an exception (which is euer of part of the thing granted and of a thing in esse) for which exceptis, saluo, præter, and the like be apt words; and a reseruation which is alwayes of a thing not in esse, but newly created or reserued out of the land or tenement demised. (c) Potest enim quis rem dare & partem rei retinere, vel partem de pertinentijs, & illa pars quam retinet semper cum eo est & semper fuit. (d) But out of a generall a part may be excepted, as out of a Mannor; an Acre, Ex verbo generali aliquid excipitur, and not a part of a certaintie, as out of twentie Acres, one.

It is further to bee obserued that the Lessor cannot reserue to any other but to himselfe, for Litt. sayth reserue a luy, reserue to himselfe. (e) If two ioyntenants be, & they make a lease for yeares by paroll, or deed poll reseruing a rent to one of them, this shall enure to them both, but if it bee so reserued by deed indented, it shall enure to him alone by way of conclusion.

(f) Littleton here is putting of a case, and not making a case, for then he would not reserue the rent to him, but to him, and his heires, for otherwise the rent shall determine by his death if he die within the terme. (g) But if he reserue a rent generally without shewing to whom it shall goe, it shall goe to his heires. If he reserue a rent to him and his Assignes, yet the rent shall determine by his death, because the reseruation is good but during his life. So it is if he reserue a rent to him and his Executors it shall end by his death, because the heire hath the reuersion, and the rent was incident to the reuersion. So if a man warrant land to B and his assignes, the assignee must vouche during the life of B. for the Warrantie continues but only during the life of B. for the warrantie is but for life, for want of words of inheritance. But if the warrantie be to B. his heires and assignes, so as he hath an inheritance therein, then his assignee shall vouche after his decease. So if the rent be reserued to the Lessor his heires and assignes, so as it be incident to the inheritance, then shall all the assignees of the reuersion enioy the same.

(b) *Li.*7.*fo.*23. *Butteasse. Li.*10.*fo.*59.60.
(c) 30.*Ass.p.*5.12.*Ass.*20.20.*E.*4.10.1.*H.*4.1,2,3.11.*H.*4.82.19.*E.*2.*Fines* 126.44.*E.*3.45 9.*Ass.*24.16.*ass.*60.14.*E.*3.*Scire fac.*122.3.*E.*3.68.17 *E.*3.75.11.*H.*4.42.3.*H.*6.21.43.15.*H.*6.12.21.*H.*6.11.5.*H.*7.39.21.*H.*7.19.17.*E.*2.*Ex.*112.23.*El. Dyer* 377.

¶ *Annual rent.* **So it is if the rent be reserued euery two or three** or more yeares. Of Rents Littleton doth excellently treate hereafter in his Chapter of rents, and therefore in this place thus much shall suffice.

(a) 40.*E.*3.47.8.*E.*3.67.21.*E.*4.62.3.*H.*6.45.31.*ass p.*30.3.*ass.*9.26 *ass.*66.32.*E.*3.*Br.*291.8.*E.*4.8.10.*El. Dy.*276.*Pl. Com. en Browning & Beesons case fo.*131.132.*&c.*
(b) 30.*E.*3.12.13.*Ass.*9.38.*E.*3.10.21.*E.*3.4.34 *assiss.*11.29 *E.*3.14.3.*H.*6.45.10.*H.*6.8.41.33.*H.*6.1.35.*H.*6.34.17.*ass.*14 *H.*8.1.44.*E.*3.43.*P. Com.*361.
(c) *Brook li.*2.*f.*32.*b.* & *f.*249
(d) 9.*El. Dy.*264.38 *H.*6 38 14.*H.*8.1.22.*E.*3.8.2.*E.*3.56.5.*E.*3 66.34.*Ass.*11.
(e) 5.*E.*4.4.14.*E.*3.*bro.*282 *lib.*8.*fo.*70.71.
(f) *Vid. Sect.*314.215.216.*&c.* 10.*E.*4.18.11.*E.*3.*Ass* 86.27.*H.*8.19.21.*H.*7.25.30.*H.*8.*Dy.*45.
(g) *Mich.*5.*Ia. in repl inter Wootton & Edwin bankle roy. Hil.*33.*El. Rot.*1431. *in bankle roy enter Rickmond & Butcher.*

¶ *A distreiner pur le rent.* **Here it is necessarie to be seene of what** things a distresse may be taken for a rent, and how the distresse ought to be demeaned. (h) First it must be of a thing, whereof a valuable property is in some body, and therfore Dogs, Bucks, Does, Conies and the like that are fere naturæ cannot be distreyned. Secondly, although it be of valuable property as a horse, &c. yet when a man or woman is riding on him, or an axe in a mans hand cutting of wood and the like, they are for that time priuiledged and cannot bee distreyned. (i) 3. Valuable things shall not be distreined for rent for benefit and maintenance of trades, which by consequent are for the Common-wealth, and are there by Authority of Law, as a horse in a Smithes shop shall not be distreyned for the rent issuing out of the shop, nor the horse, &c. in the Hostry; nor the materials in the Weauers shop for making of cloth, nor cloth or garments in a Taylors shop, nor sacks of corne or meale, in a Mill nor in a Market; nor any thing distrayned for damage fesaunt, for it is in custody of Law, and the like.

(k) 4. Nothing shall be distreyned for rent, that cannot be rendered againe in as good plight as it was at the time of the distresse taken, as sheaues or shocks of corne or the like cannot be distreyned for rent, but for damage fesant they may be distreyned. But charrets or carts with corne may be distreyned for rent for they may be safely restored.

(l) 5 Beasts belonging to the plow, aueria carucæ shall not be distreined (which is the ancient Common Law of England for no man shall be distreyned by the vtensills or instruments of his trade or profession, as the axe of the Carpenter, or the bookes of a scholler) while goods

*Vi. for this word Distreine, Sect.*136.
(h) 14.*H.*8.25.2.*E.*2.*tit. Distresse* 6.*R.*2. *Reseous* 11.7.*E.*3. *Auowr.*199.15.*E.*2. *Auowry* 2.
(i) 22.*E.*4.49.*b.*7.*H.*7.1.*b.*22.*E.*4.36.4 *E.*6.*tit. Dist. Br.*74.
(k) 18.*E.*3.4.*a.*11.*H.*7.14.*a.*21.*H.*7.39.*b.*22.*E.*4.50.*b.*2.*H.*4.15.
(l) *Okeham* 38.39. *Bra. li.*4.*f.*217.*F.N.B.*90.*a Reg.*97. *Flet. li.*2.*ca.*41. *Mirr. cap.*2.§.15.16. 4.*E.*3.1.29.§.3.17.

or other beasts which Bracton cals animalia (or catalla) otiosa may be distrained (m). 6. Furnesses, Caudrons or the like fixed to the freehold, or the doores or windowes of a house, or the like cannot be distrained. (n) Lastly, beasts that escape may be distrained for rent, though they haue not beene tenant and couchant. (o) Note that he that distraines any thing that hath life must impound them, in a lawfull pound within three miles in the same Countie, and that is either Ouert or Open, in a Pinfold made for such purposes, or in his owne Close, or in the Close of another by his consent. And it is therefore called Open, because the Owner may giue his Cattle meate and drinke without trespasse to any other, and then the Cattle must be sustained at the perill of the Owner. (p) Or it is a Pound Couert or Close as to impound the Cattle in some part of his house, and then the Cattle are to bee sustained with meate and drinke at the perill of him that distraineth, and he shall not haue any satisfaction therefore. But if the distresse be of Vtensils of houshold or such like dead goods which may take harme by wet or weather, or be stolne away, there he must impound them in a house or other Pownd couert within three miles within the same Countie, for if he impound them in a Pownd ouert hee must answer for them.

(m) 11.H.7.26. 3.E.3.Ass.46.9.
(n) 7.H.7 1.b.10.H.7.21. 11.H.7.4.a. 15.H.7 17. 18.E.2.auowrie 219. 6.E.4. 21.E.4.49.
(o) Marlebr.cap.4. W.1.cap. 16. 2.& 3.Ph.& mar.cap.13. Fleta lib.2.cap.20. 6.H.3 auowrie 242. 30. Ass.38. 1.H.6.9. 22.E.4.11.F.N.B. 89. Doctor & Student. lib.2.cap. 27. 5.H.7. fol.9.
(p) 33.H.8.tit.distres.Br.65

(q) If the distresse be taken of goods without cause the Owner may make Rescous, but if they distrained without cause, and impounded, the Owner cannot breake the Pownd and take them out, because they are then in the custodie of the Law.

(q) 4.E.6.tit.distres.74. F.N.B.100.E.

(r) But if a man distraine Cattle for damage feasant, and put them in the pownd, and the Owner that had common there make fresh suite, and find the doore vnlocked, he may iustifie the taking away of the Cattle in a parco fracto. (s) If the Owner breake the Pownd, and take away his goods, the partie distraining may haue his Action de parco fracto, and hee may also take his goods that were distrained wheresoeuer he find them, and impownd them againe.

(r) 3.E.3.tit.transf.11.

(s) 34.H.6.18.

It is called a Writ de parco fracto of these words in the Writ (t) Parcum illum vi & armis fregit. And the forme thereof appeare in the Register and F.N.B.

(t) Regist.F.N.B.100.101.

But it is to be obserued that for the rent due the last day of the Tearme, the Lessor cannot distraine because the Terme is ended, and therefore some vse to reserue the last halfe yeares rent, at the Feast of the Natiuitie of Saint Iohn Baptist before the end of the Terme, so as if the rent be not then paid, he may distraine betweene that and Michaelmasse following.

¶ *Action de debt. Note* **a diuersitie betweene a rent reserued** vpon a lease for yeares, reseruing a yearely rent; the Lessor may haue seuerall Actions of debt for euery yeares rent. But vpon a bond or contract for payment of seuerall summes, no Action of debt lieth till the last day be past. But otherwise it is of a Recognizance, which see at large and the reason thereof cap. Releases Sect 512.513. (u) Note that the Lord shall not haue an action of Debt for reliefe or forescuage due vnto him, because hee hath other remedie, but his Executors or Administrators shall haue an Action therefore, because it is now become as a flower faine from the stocke, and they haue no other remedie. Neither shall the Lord haue an Action of debt for aide, pur file marier or faire fitz Chiualer for the cause aforesaid.

(u) 7.H 6.13.lib.4.f l.49. Lib.3.fol.16. 34.E.1.tit. auowrie 233. 32.H.8.Br. relefe 11.F.N.B.82.83. Glanvil.lib.9.cap.35. Fleta lib.2.cap.40.& lib.3. cap.14. Bracton.lib.2.fol.36. W.1.cap.35. 25.E.3 cap.11. Britton.fol.57.& 70.

¶ *Mes en tiel case il couient que le lessor soit seisie de mesmes les tenements al temps del lease, car est bone plea pur le lessee a dire que le lessor nauoit riens en les tenements al temps del lease.* **And the reason of this is,** for that in euery contract there must be quid pro quo, for contractus est quasi actus contra actum, and therefore if the Lessor hath nothing in the land, the Lessee hath not quid pro quo nor any thing for which he should pay any rent. And in that case he may also plead, that the Lessor non dimisit, and giue in euidence the other matter.

¶ *Si* (x) *non que le lease soit per fait indent, &c.* **If the lease be made** by deed indented then are both parties concluded; (y) but if it be by deed poll the Lessee is not estopped to say that the lessor had nothing at the time of the Lease made. A. lessee for the life of B. makes a lease for yeares by deed indented, and after purchase the reuersion in fee. B dieth, A. shall auoid his owne Lease, for he may confesse & auoid the lease which took effect in point of interest, and determined by the death of B. But if A. had nothing in the land, and made a Lease for yeares by deed indented, and after purchase the land, the Lessor is as well concluded, as the Lessee to say that the Lessor had nothing in the land, and here it worketh only vpon the conclusion, and the Lessor cannot confesse and auoid as hee might in the other case. (z) If a man take a Lease of his owne Land by deed indented reseruing a Rent the Lessee is concluded. (a) But if a man take a Lease of the herbage of his owne Land by Deed indented, this is no conclusion, to say that the Lessor had nothing in the Land, because it was not made of the land it selfe: (b) but if a man take a Lease for yeares of his owne Land by deed indented, the estopell doth not continue after the terme ended. For by the making of the lease the estoppell doth growe and consequently by the end of the lease, the estopell determines (c) and that part

(x) 45.E.3.9.20.E.4.10. 34.H 6.48. 35.H.6.34. 9.H.6.35.11.H.4.22.
(y) 2.E.2.Estop.253. 39.E.3.13. Pl.Com.434. 18.E.3.16. 15.E.3.Estop.236. 14.H.4.32.
(z) 14.H.6.23. 8.H.4.7.

(a) Ks.blue.Tasch. 2.Eliz. in Communi Banco.
(b) Mich.31.& 32.Eliz. in Communi Banco a iudge in London case.
(c) 38.H.6.24. 30.E.3.21.

part of the indenture which belonged to the lessee, doth after the terme ended, belong to the lessor: which should not be if the estoppell continued.

Section 59.

CEt est asauoire, Que en lease pur terme de ans per fait ou sans fait, il ne besoigne ascun liuerie de Seisin deste fait al Lessee, mes il poet enter quant il voet p force de mesme de Lease. Mes des Feoffmts faits en pais, ou dones en l'Taile, ou lease pur term de vie, en tiels cases ou Franktenement passera, si ceo soit per fait ou sauns fait, il couiēt auer vn liuery de seisin.

AND it is to be vnderstood, That in a lease for yeares by deed or without deed, there needs no Liuery of seisin to be made to the Lessee, but he may enter when he will by force of the same lease. But of Feoffements made in the Countrie, or gifts in Taile, or Lease for terme of life, in such cases where a Freehold shall passe, if it be by Deed, or without Deed, it behooueth to haue Liuerie of Seisin.

¶ L*iuerie de seisin.* Traditio, or deliberatio seisinæ is a solemnitie that the Law requireth, for the passing of a Freeholde of Lands or Tenements by deliuerie of Seisin thereof. (b) Interuenire debet solennitas in mutatione liberi tenementi ne contingat donationem deficere pro defectu probationis.

18.*E*.3.*fo*.16.41.*E*.3.17. 40.*Ass*.10.2.*Ass*.1.2 *E*.3.4 43.*E*.3.*Feoff*.51 *Pl.Com*. 25.*a*.& 303.*b*.*V*.*Sect*.66.

(b) *Bract*.*li*.2.*ca*.15.

And there be two kinds of liuerie of seisin, viz. a liuerie in (c) Deed, and a liuerie in Law. A liuerie in Deed, is when the Feoffor taketh the ring of the doore, or turfe or twigge of the land, and deliuereth the same vpon the land to the Feoffee in name of seisin of the land, &c. per hostium & per haspam & anulum vel per fustem vel baculum, &c.

(c) *Bract*.*li*.2.*ca*.15.& 18. *Brit*.*ca*.33.*in fine fo*.87. *Flet*.*li*.3.*ca*.15.

A seised of an house in fee, and being in the house, (d) saith to B. I deuise to you this house for terme of my life; this is a good beginning to limit the state, but here wanteth liuerie. A liuerie in Deed may be done two manner of wayes by a solemne act and words, as by deliuerie of the ring or haspe of the doore, or by a branch or twig of a tree, or by a turfe of the land, and with (e) these or the like words, the feoffor and feoffee both holding the Deede of feoffement, and the ring of the doore, haspe, branch, twigge, or turfe: and the feoffor saying, Here I deliuer you seisin and possession of this house, in the name of all the Lands and Tenements contained in this Deed, according to the forme and effect of this Deed. Or by words without any Ceremonie or Act, as the feoffor being at the house doore, or within the house, Here I deliuer you seisin and possession of this house, in the name of seisin and possession of all the lands and tenements contained in this Deed, Et sic de similibus, or enter you into this house or land, and haue and enioy it according to the Deed; or, Enter into the house or land, and God giue you ioy, or I am content you shall enioy this land according to the Deed, or the like. For if words may amount to a liuerie within the view, much more it shall vpon the land. But if a man deliuer the Deed of feoffement vpon the land, this amounts to no liuerie of the land, for it hath another operation to take effect as a Deed: but if he deliuer the Deed vpon the land in name of seisin of all the lands contained in the Deed, this is a good liuerie: and so are other books entended that treat hereof, that the Deed was deliuered in name of seisin of that land. Hereby it appeareth, That the deliuerie of any thing vpon the land in name of seisin of that land, though it be nothing concerning the land, as a ring of gold, is good, and so hath it beene resolued by all the Iudges, and so of the like.

(d) *Li*.6.*fo*.26.*Sharps case*.
Quære demise.

(e) *See of this more, Sect*.60.

41.*E*.3.17.*b*.41.*Ass*.*p* 10. 38.*Ass*.*p*.2.38.*E*.3.11. 39.*Ass*.*p*.12.26.*Ass*.39. 27 *Ass*.*p*.61.18.*E*.3.16. *Li*.6 *fo*.26. *Sharps case*.

43.*E*.3.*tit*.*Feoffm*.51. 35.*H*.8.*Feoffm*.*Br*.

50.*E*.3.*Rot*.*Parl*.*nu*.30.

If diuers parcells of land be conteyned in a Deed, and the Feoffor deliuers seisin of one parcell according to the Deed, all the parcels doe passe albeit he saith not (in name of all, &c.) because the Deed conteyneth all. And so if there be diuers Feoffees, and hee make liuery to one according to the Deed, the land passeth to all the Feoffees, and yet the playner way is to say (in the name of the whole, or of all the Feoffees.)

13.*E*.3.*Estop*.177.

If a man make a Charter in fee, and deliuer seisin for life secundum formam cartæ, the whole fee simple shall passe, for it shall be taken most strongly against the Feoffor. Note that these words (Secundum formam cartæ) are vnderstood according to the quantitie and qualitie of the effectuall estate conteyned in the Deed. If a man make a lease for yeares by Deed, and deliuer

Ibidem.

7.*E*.4.25.29.*Ass*.40. 10.*Ass*.19.43.*Ass*.20.

liuer ſeiſin according to the forme and effect of the Deede, yet he hath but an eſtate for yeares, and the liuery is voide as Littleton ſaith. So if A. by Deed giue land to B. to haue and to hold after the death of A. to B. and his heires, this is a voide Deed, becauſe he cannot reſerue to himſelfe a particular eſtate, and conſtruction muſt be made vpon the whole Deed, and if liuery be made according to the forme and effect of the Deed, the liuery alſo is voide becauſe the liuery referreth to a Deed that hath no effect in Law, and therefore it cannot ſtande ſecundum formam & effectum cartæ. And ſo it was adiudged, & ſic de ſimilibus. * And it is to be obſerued that neither the Feoffor being abſent, can make liuery, nor the Feoffee being abſent can take liuery; but by warrant of Attorney, by Deed and not by parol, becauſe it concerneth matter of freehold.

Mich.33.& 34.El.C. in the Kings bench Inter Hegge & Croſſe for lands in London. Vid. Pl.com.395.

* *See more of this Sect.66. 11.H.4.71. 19.Aſſ.9. 19.H.8.9.b.*

Bridgewaters Caſe.

Vide Sect.1. in Bridgewaters Caſe, where a man hath a moueable eſtate of inheritance, for example there put, in 13. acres: the queſtion is where liuery ſhall be made. Firſt, if they be parcell of a Mannor, they may paſſe by the name of the Mannor, but if they be in groſſe then the Charter of Feoffment muſt be of 13. acres, lying and being in the meadow of 80. acres, generally without bounding or deſcribing of the ſame in certaintie, and liuery of the ſeiſin of any 13. acres allotted to the feoffee for a yeare ſecundum formam cartæ is a good liuery to paſſe the content of 13. acres whereſoeuer the ſame lie in that meadow. In the ſecond caſe where one entire Mannor is ſeperate and deuided, as is aforeſaid, there is no queſtion but the liuery muſt be made of that Mannor, but in the other caſe where two Mannors are ſeparate, and deuided alternis vicibus, there the Charter of feoffment muſt be made of both, and liuery in that Mannor which he is ſeiſed of in any one yeare ſecundum formam cartæ, and the next yeare in the other ſecundum formam cartæ: for there are two diſtinct Mannors, and ſeuerall eſtates in them.

Vid. Sect.1.

38.E.3.11.38.Aſſ.p.2. 43.Aſſ.p.20.Temps H.8. Tit.Feoffments Br.70. 18.E.3.16.b. 28.H.8.F.18. 9.E.4.39. per Moyle. Bract.lib 2.cap.18.& lib.4.fo.225.a.

A liuery in Law is when the Feoffor ſaith to the Feoffee being in the view of the houſe or land, (I giue you yonder land to you and your heires and goe enter into the ſame, and take poſſeſſion thereof accordingly,) and the Feoffee doth accordingly in the life of the Feoffor enter this is a good feoffment for ſignatio pro traditione habetur. And herewith agreeth Bracton, Item dici poterit, & aſſignari quando res vendita vel donata ſit in conſpectu quam venditor & donator dicit ſe tradere: And in another place he ſaith, in ſeiſina per affectum & per aſpectum. But if either Feoffor or the Feoffee die before entry the liuery is voyde. And liuery within the view is good where there is no Deed of feoffment. (a) And ſuch a liuery is good albeit the land lie in another country. (b) A man may haue an inheritance in an vpper chamber, though the lower buildings and ſoyle be in another, and ſeeing it is an inheritance corporeall it ſhall paſſe by liuery. (c) A man maketh a Charter of feoffment and deliuers ſeiſin within the view, the Feoffee dares not enter for feare of death, but claimes the ſame, this ſhall veſt the freehold and inheritance in him, albeit by the liuery no eſtate paſſed to him, neither in Deed, nor in Law, ſo as ſuch a claime ſhall ſerue, aſwell to veſt a new eſtate and right in the Feoffee, as in the cõmon caſe to reueſt an ancient eſtate and right in the diſſeiſee, &c. as ſhalbe ſaid hereafter more at large in the chapter of continuall claime. And ſo note a liuery in Law ſhalbe perfected and executed by an entry in Law. (d) If a man be diſſeiſed, and make a Deed of feoffment, and a letter of Attorney to enter and take poſſeſſion, and after to make liuery ſecundum formam cartæ, this is a good feoffment albeit he was out of poſſeſſion at the time of the Charter made for the Authority giuen by the letter of Attorney is executorie, and nothing paſſed by the deliuery of the Deed till liuery of ſeiſin was made. And in ancient letters of Attorney power is giuen to others to take poſſeſſion for the Feoffor. But if a man be diſſeiſed, and make writting of Leaſe for yeares and deliuer the Deed, and after deliuer it vpon the ground, the ſecond deliuery is voide, for the firſt deliuery made it a Deed, and for that the leaſe for yeares muſt take effect by the deliuery of the Deed, therefore the Deed deliuered when he was out of poſſeſſion was voide. But ſo it is not of a Charter of feoffment, for that takes effect by the liuery and ſeiſin. But if the Leſſor had deliuered it as an eſcrowe, to be deliuered as his Deed vpon the ground, this had beene good.

(a) *9.E.4.39. 38.E.3.11.*
(b) *9.E.4.28.40.5.H.7.9. 3.H.6.tit.Pleint.1. 11.H.4.32. 11.E.3.Aſſ.86.*
(c) *38.Aſſ.p.23.*

(d) *Hill:37.Eliz.rot.620. in com.banco, inter Browne & Tirrey adiudged. Dier 16.Eliz.334. 3.Eliz.Dier 131.*

Lib.3.fol.35.inter Iennings & Bragge.

A man makes a leaſe for yeares and after makes a Deed of feoffment and deliuers ſeiſin, the Leſſee being in poſſeſſion and not aſſenting to the feoffment, this liuery is voyde, for albeit the Feoffor hath the freehold and inheritance in him, yet that is not ſufficient, for a liuery muſt bee giuen of the poſſeſſion alſo: but if the leſſee be abſent, and hath neither wife nor ſeruants (though he hath cattell) vpon the ground the liuery of ſeiſin ſhall be good.

Lib.2.fo.31.32. Bertſworths caſe.

If a man be ſeiſed of an houſe, & of diuers ſeuerall cloſes in one Countie in fee, and makes a leaſe thereof for yeares, and afterward maketh a feoffement in fee of the ſame, and makes liuerie of ſeiſin in the Cloſes, (the Leſſee or his wife or ſeruants then being in the houſe) the liuery is voyd for the whole: for the leſſee cannot be vpon euery parcell of the land to him demiſed, for the preſeruation and continuance of his poſſeſſion therein. And therefore his being in the houſe, or vpon any part of the land to him demiſed, is ſufficient to preſerue and continue his poſſeſſion in the whole, from being oulted or diſpoſſeſſed.

Nor

Note a great diuerſitie, when a man hath two wayes to paſſe lands, and both of the wayes be by the Common Law, and he entendeth to paſſe them by one of the wayes, yet vt res magis valeat it ſhall paſſe by the other. But where a man may paſſe Lands either by the Common Law, or by raiſing of an vſe, and ſetling it by the ſtatute, there in many caſes it is otherwiſe. For example, If a man be ſeiſed of two acres in fee, and letteth one of them for yeares, and intending to paſſe them both by feoffement, maketh a Charter of feoffement, and maketh liuerie in the acre in poſſeſſion, in name of both, onely the acre in poſſeſſion paſſeth by the liuerie. Yet if the leſſee attorne, the reuerſion of that acre ſhall paſſe by the deed and attornement, for he is in by the Common Law, and in the per in both, and ſo in the like. But otherwiſe it is, if the father make a Charter of feoffement to his ſonne, and a letter of Attorney to make liuerie, and no liuerie is made, yet no vſe ſhall riſe to the ſon, becauſe he ſhould be in by the ſtatute in another degree, viz in the poſt, and the intention of the parties worke much both in the raiſing and direction of vſes. So if Ceſty que vſe and his feoffees had ioyned in a feoffement after the ſtatute of 1.R.3.fc. it had beene the feoffement of the feoffees, and the confirmation of Ceſty que vſe, for the ſtate at the Common Law ſhall be preferred. So to conclude in this point, Of Freehold and Inheritances, ſome be corporeall, as houſes, &c. lands, &c. theſe are to paſſe by liuerie of ſeiſin, by Deed or without Deed; ſome be incorporeall, as Aduowſons, Rents, Commons, Eſtouers, &c. theſe cannot paſſe without Deed, but without any liuerie. And the law hath prouided the Deed in place or ſtead of a liuerie. And ſo it is if a man make a leaſe, and by Deed grant the reuerſion in fee, here the freehold with attornement of the leſſee by the Deede doth paſſe, which is in lieu of the liuerie. See Bract. lib. 2. cap. 18. Et eſt traditio de re corporali de perſona in perſonam de manu, &c. gratuita tranſlatio, & nihil aliud eſt traditio in vno ſenſu, niſi in poſſeſſionem inductio, de re corporali; & ideo dicitur, Quod res incorporales non patiuntur traditionem ſicut ipſum ius quod rei ſiue corpori inhærer, & quia non poſſunt, res incorporales poſſideri ſed quaſi, ideo traditionem non patiuntur, &c.

7.E.4.20.a. per tonts les Iuſt. 11.H.4.71. Pl.Com.152. 10.E.4.3.

Li.2. fo.35.36. Sir R. Heywardes caſe.

1.R.3.ca.1. 21.H.7.

This antient manner of conueyance by feoffement and liuery of ſeiſin, doth for many reſpects exceed all other conueyances. For (as hath beene ſaid) if the feoffor be out of poſſeſſion, neither fine, recouerie, Indenture of bargaine and ſale inrolled, nor other conueyance, doth auoyd an eſtate by wrong, and reduce clearely the eſtate of the feoffee, and make a perfect Tenant of the Freehold, but onely liuerie of ſeiſin vpon the land: the other conueyances being made off from the ground, doe ſometimes more hurt than good, when the feoffor is out of poſſeſſion. And yet in ſome caſes a freehold ſhall paſſe by the Common Law without liuerie of ſeiſin: As if a houſe or land belong to an office, by the grant of the office by Deed, the houſe or land paſſeth as belonging thereunto. So if a houſe or chamber belong to a Corodie, by the grant of a Corodie, the houſe or chamber paſſeth. A Freehold may by cuſtome be ſurrendred without liuerie, as hereafter ſhall be ſaid: and ſo of aſſignement of Dower ad oſtium Eccleſiæ, or otherwiſe, and by exchange a Freehold may paſſe without liuerie, as hereafter ſhall be ſaid in this Chapter.

Lib.2.fo.55. Buck'ers caſe.

1.H.7.28. 8.H.7.4.

31.H.6.16. 8.H.7.4. M.31.E.1. coram Rege. Rana ph Hunting ſels caſe. 3.E.3. Coron. 310. 11.H.4.83 V. Sect.74.

Section 60.

¶ Mes ſi home leſſa terres ou Tenements per fait, ou ſans fait, a terme des ans, le remainder ouſter a vn auter pur terme de vie, ou en taile, ou en fee donque en tiel caſe il couient que le leſſor fait vn liuerie de ſeiſin a le leſſee per terme de ans, ou autrement riens paſſa a eux en le remaind̄ coīt q̄ le leſſee ent̄ en

BVt if a man letteth lands or tenements by Deed or without Deed for terme of yeares, the remainder ouer to another for life, or in taile, or in fee; in this caſe it behooueth, that the leſſor maketh liuery of ſeiſin to the leſſee for yeres, otherwiſe nothing paſſeth to them in the remainder, although that the leſſee enter into the

¶ *Per fait, ou ſauns fait.* For ſeeing that the remainders take effect by liuerie, there needs no deed.

22.H.6.1.10.E.4.1. 18.E.4.13.

¶ *Le remainder* is a reſidue of an eſtate in land depending vpon a particular eſtate, and created together with the ſame, and in Law-Latin it is called Remanere.

¶ *Fait vn liuery de ſeiſin al Leſſee.* This Liuery is not neceſſarie in this caſe for the leſſee himſelfe, becauſe he hath but a Terme for yeares, but it is for the benefit of them in the rem', ſo as the liuery the leſſee ſhal enure for the benefit of them in the rem': for the liuerie of the poſſeſſion could not be made to the next in remainder, becauſe the

the poſſeſſion belonged to the leſſee for yeares, and for that the particular terme, and all the remainder make in Law but one eſtate, and take effect at one time therefore the liuerie is to bee made to the leſſee. But if a leaſe for yeares without deed bee made to A. and B. the remainder to C. in fee, and liuerie is made to A. in the abſence of B. in the name of both; it ſeemeth this liuerie is good to veſt the remainder; and there is a diuerſitie, betweene two ioynt Attornies to receiue liuerie for another, and liuery and ſeiſin is made to one of them, in the name of both, this is clearely void because they had but a mere and bare authoritie, and they both doe, in Law make but one Attorney, vnleſſe the warrant bee ioyntly and ſeuerally, but the leſſee for yeares hath an intereſt in the land. Againe, if A. is to make a feoffment to B. and C. and their heires without deed, and A. makes liuerie to B. in the abſence of C. in the name of both, and to their heires; this liuerie is void to C. becauſe a man being abſent cannot take a freehold by a liuery, but by his Attorney being lawfully authoriſed to receiue liuerie by deed, vnleſſe the feoffment be made by deed, and then the liuerie to one in the name of both is good.

leſs tenements. Et ſi le termor en tiel cas entra deuant aſcun liuerie de ſeiſin fait a luy, donque eſt le franktenement & auxy le reuerſion en le leſſor: Mes ſi il fait liuerie de ſeiſin a le leſſee, donque eſt le franktenement oue le fee a eux en le remainder, ſolonque le forme del grant & le volunt del leſſor.

tenements. And if the Termour in this caſe entreth before any liuery of ſeiſin made to him, then is the Freehold and alſo the reuerſion in the Leſſor. But if he maketh liuerie of ſeiſin to the Leſſee, then is the Freehold together with the fee to them in the remainder acording to the forme of the grant, & the wil of the leſſor.

10.*L.*4.1.12.*E.*4.16. 15.*E.*4.18.22.*E.*4.35. 40.*E.*3.10.41. *Temps H.*8. *Feffments* 72. 6.*H.*4.2.*b. Litt.*153. 3.*H.*7.13.

Note there is a diuerſitie betweene liuerie of ſeiſin of land, and the deliuerie of a Deed; for if a man deliuer a Deed without ſaying of any thing, it is a good deliuerie; but to a liuery of ſeiſin of land, words are neceſſarie; as taking in his hand the Deed, and the Ring of the doore (if it be of an houſe) or a turffe or twigge (if it be of land) and the feoffee laying his hand on it, the feoffor ſay to the feoffee, Here I deliuer to you ſeiſin of this houſe, or of this land, in the name of all the land, contained in this Deed, according to the forme and effect of the Deed, (as hath beene ſaid) and if it be without Deed, then the words may be, Here I deliuer you ſeiſin of this houſe or land, &c. to haue and to hold to you for life, or to you and the heires of your bodie, or to you and your heires for euer as the caſe ſhall require.

*Ruth. cap.*4. *verſe* 7.8. *Deut.* 25.9.10.

When the Kinſman of Elimelech gaue vnto Boas the parcell of land that was Elimelechs, he tooke off his ſhoe, and gaue it vnto Boas in the name of ſeiſin of the land (after the manner in Iſrael) in the preſence, and with the teſtimonie of many witneſſes. And when Ephron infeoffed Abraham of the field of Machepela, hee ſaid to him, Agrum trado tibi, &c. I deliuer this field to thee.

Geneſis 23. *verſe* 11.

A man makes a leaſe for yeares to A. the remainder to B. in fee, and makes liuery to A. within the view; this liuerie is void, for no man can take by force of a liuerie within the view, but he that taketh the freehold himſelfe.

¶ *Et ſi le termor en tiel caſe enter deuant aſcun liuery fait, &c.* By the entrie of the leſſee he is in actuall poſſeſſion, and then the liuery cannot be made to him that is in poſſeſſion, for Quod ſemel meum eſt, amplius n eum eſſe non poteſt. But if the leſſor and leſſee come vpon the ground, of purpoſe for the leſſor to make, and for the leſſee to take liuery, there his entrie veſt no actuall poſſeſſion in him vntill liuerie be made; for as (a) Affectio tua nomen imponit operi tuo, And therefore if it be agreed betweene the diſſeiſor and diſſeiſee, that the diſſeiſee ſhall releaſe all his right to the diſſeiſor vpon the land, and accordingly the diſſeiſee entreth into the land, and deliuereth the releaſe to the diſſeiſor vpon the land, this is a good releaſe, and the entrie of the diſſeiſee, being for this purpoſe did not auoid the diſſeiſin, for his intent in this caſe did guide his entrie to a ſpeciall purpoſe. And ſo was it reſolued (b) by Sir Iames Dier, and the whole Court of Common Pleas, Paſch. 18. Eliz. vpon euidence which I my ſelfe heard and obſerued. But if the diſſeiſor infeoffe the diſſeiſee and others, there albeit the diſſeiſee came to take liuerie, yet when liuerie is made, the diſſeiſee is remitted, to the whole in iudgement of law, as ſhall be ſaid more at large in the Chapter of Remitter in his proper place.

(a) *Bracton. lib.*1.

(b) *T.*19.*Eliz. in Communi Banco. Pl. Com. in Aſſ. de freſh-force.* 91. 29.*Aſſ.*26. 43.*Aſſ. p.*3. 3.*H.*6.19. *in formdon.*

Sect.

Section 61.

CEt ſi home voile faire feoff, per fait ou ſans fait, de tres ou tenements que il ad en pluſors Villes en vn Countie, le liuerie de ſeiſin fait en vn parcel de les tenements en vn ville en le noſme de touts ſuffiſt pur touts les autres terres & tenements comprehendes deins ñ l'feoffement, en toutz les autres villes deins ñ le countie. Mes ſi home fait vn fait de feoffement des terres ou tenements en diuers Counties, la il couient en cheſcun Countie auer vn liuerie de ſeiſin.

AND if a man wil make a feoffement by deed or without deed, of lands or Tenements, which hee hath in diuers Townes in one Countie, the liuerie of ſeiſin made in one parcell of the Tenements in one Towne in the name of all the reſt is ſufficient for all other the Lands and Tenements cõprehended within the ſame feoffment in all other the Townes in the ſame Countie, but if a man maketh a Deed of Feoffement of Lands or Tenements in diuers Counties, there it behoueth in euery Countie to haue a liuerie of ſeiſin.

CEN. *vn Countie.*

A Countie is fetched frõ the French, and Shire from the Saxon. For Styran in the Saxon tongue ſignifieth parturi, becauſe euerie Countie or Shire is deuided and parted by certaine meres and bounds from another, and in Latine is called Gomitatus à comitando, for accompanying together. And for as much as the men of one Countie doe not accompanie together with men of another Countie at Countie Courts, Turnes, Leets and other Courts, therefore in iudgement of Law they ſhall take no notice of a liuerie in another Countie to paſſe any lands in their owne Countie. But of this more ſhall be ſaid hereafter. 45.*E.*3.21.

Section 62.

CEt en aſcun cas home auera per le grant dun auter fee ſimple, fee taile, ou frankten. ſans liuerie de ſeiſin. Sicome deux homes ſont, & cheſcun deux eſt ſeiſie dun quantitie de terre deins vn countie, & lun granta ſa terre a lauter en eſchange pur la terre que lauter ad, & en Meſme le Manner lauter granta ſa ter-

AND in ſome caſe a man ſhall haue by the grant of another a fee ſimple, fee taile, or freehold without liuery of ſeiſin. As if there bee two men and each of them is ſeiſed of one quantitie of Land in one Countie, and the one granteth his Land to the other in exchange for the Land which the other hath, and in like maner the other gran-

CHere Littleton putteth a caſe where Freehold, &c. ſhall paſſe without liuerie of ſeiſin, and thereupon putteth the caſe of an exchange of lands in one Countie that is good by deed or without deed, without any liuerie, but if it bee in ſeuerall Counties there muſt bee a deed. Alſo of things that lie in grant as Aduowſons, Rents, Commons, &c. an exchange of them albeit they bee in one Countie, is not good; vnleſſe it be by deed, and therefore Littleton putteth his caſe warily of land. And in caſe of a fine, which is a feoffment of Record, of a deuiſe by a laſt will, of a ſurrender, of a releaſe or confirmation to a leſſee for yeares, or at will, In all 45.*E.*3.21. 3.*E.*4.10. 9.*E.*4.21 7 *H.*4 1, 8.*H.*7.4. 28.*H.*6.2.

*Vide Sect.*1.

all theſe and ſome other caſes a freehold, &c. (as hath beene ſaid) may paſſe without liuerie. But this word (eſchange) which our Authour here vſeth, is ſo appropriated by Law, to this caſe as it cannot bee expreſſed by any Periphraſis or circumlocution.

¶ *En ceo caſe chefcun poet enter, &c.* For by the exchange the parties, albeit the lands bee all in one Countie, haue no freehold in Deed or Law in them before they execute the ſame by entrie; and therefore if one of them dieth, before the exchange be executed by entrie, the exchange is void; for the heire cannot enter and take it as a Purchaſor, becauſe he was named only to take by way of limitation of eſtate in courſe of diſcent.

re a le primer grantor en eſchange pur la terre que le primer grantor ad, en ceo caſ chefcun poit enter en lauter terre iſſint miſe en eſchange ſans aſcun liuerie de ſeiſin, & tiel eſchange fait per parolx de tenemts deins meſme le Countie ſans eſcript, eſt Aſſets bone.

teth his Land to the firſt Grantor in exchange for the Land which the firſt Grantor hath. In this Caſe each may enter into the others land, ſo put in exchange without any liuerie of ſeiſin. And ſuch exchange made by paroll of tenements within the ſame Countie without writing, is good enough.

9.E.4.38.39.45.F.3.20.21. 45.E.3, *exchange* 10.

Section 63.

¶ THis is euident enough. But of what things an exchange may be made (which was a conueiance frequent in former times) is to be ſeene, and herein many things are to bee obſerued.

First, That the things exchanged (a) need not to be in eſſe at the time of the exchange made. (As if I grant a rent newly created out of my lands in exchange, for the mannor of dale, this is a good exchange.

(a) 30.E.1.*Eſch.*15. 3.E.4.10. 9.E. 4.21. 14.H.8.20.

(b) Secondly, There needeth no tranſmutation of poſſeſſion, and therefore a releaſe of a Rent, or Eſtouers, or right to land in eſchange for land is good.

(b) 6.E.56. 30.E.1.*Eſch.*16 16.E.3.*Eſch.*2. 7.H.4.34. 3.E.4.11.

¶ Et les terres ou tenements, ſoient en diuers cõſities, ceſtaſcauoire ceo que lun ad eſt vn Countie & ceo que lauter ad eſt en auter Countie la il couient de auer vnfait indent deſtre fait enter eux de tiel eſchange.

AND if the lands or tenements bee in diuers counties, *viz.* that which the one hath in one countie, and that which the other hath in another countie, there it behoueth to haue a deed indented, made betweene them of this exchange.

(c) 9.E.4.21. 9.E.3.56. 21.E.3.6.

The things (c) exchanged need not be of one nature, ſo they concerne lands or Tenements whereof Littleton here ſpeaketh. As land for rent or common, or any other inheritance which concerne lands or tenements, or ſpirituall things, as Tythes, &c. for temporall, and tenure by a diuine Seruice for a temporall Seigniorie, &c. But Annuities or ſuch like which charge the perſon only, and doe not concerne lands or tenements, cannot be exchanged for lands or tenements.

Section 64. 65.

Eſtates. Vide Sect. 650.

¶ EN *eſchange, il couient que les eſtates ſoient egales, &c.* Equalitie in lands is threefold, viz. Firſt equalitie in value;

¶ Et nota que en exchange il couient q̃ les eſtates ſoient egales, que

AND note that in exchanges it behooueth that the eſtates which both par-

am-

ambideux tielx parties aueront en les fres iſſint eſchanges, car ſi lun voit a grant que lauter aueroit la terre en fee taile, pur le terre que il aueroit del grant de le auter en fee ſimple, coment que lauꝰ ſoit agree a cel, ceſt eſchange eſt voide, pur ceo q̃ les eſtates ne ſont ny egales.

CEſ m̃ le manner eſt, lou il eſt grant a agree enter eux que lun auera en lun terre fee taile, a lauter en lauter terre forſqꝫ a terme de vie, ou ſi lun auera en lun terre fee taile generall a lauꝰ en lauꝰ terre fee taile eſpecial, &c. Iſſint touts foits il couient que en eſchange les eſtates dambideux parties ſoiẽt egales ceſtaſcauoire, ſi lun ad fee ſimple en lun terre, que lauter auera tiel eſtate en lauter terre, a ſi lun ad fee taile en lun terre il couient que lauter aũa ſemblable eſtate en lauter terre, &c. & ſic de alijs ſtatibus, mes neſt ny riens a charger del egal value des terres, car ties haue in the lands ſo exchanged, be equall, for if the one willeth and grant that the other ſhall haue his land in fee taile for the land which he hath of the grant of the other in fee ſimple, although that the other agree this, yet this exchange is voide, becauſe the eſtates be not equall.

IN the ſame manner it is, where it is granted and agreed betweene them, that the one ſhall haue in the one land fee taile, and the other in the other land but for terme of life, or if the one ſhall haue in the one land fee taile generall, and the other in the other land fee taile eſpeciall, &c. So alwayes it behoueth that in exchãge the eſtates of both parties bee equall, *viz.* if the one hath a fee ſimple in the one land that the other ſhall haue like eſtate in the other land, and if the one hath Fee taile in the one land the other ought to haue the like eſtate in the other land .&c. and ſo of other eſtates, but it is nothing to charge of the equal

Secondly, equalitie in quantitie of eſtate giuen and taken. Thirdly, equality in qualitie or manner of the eſtate giuen and taken. But as Littleton after ſaith, Equalitie in value of lands in an exchange is not requiſite; Neither equalitie in the qualitie or manner of the eſtate. And therefore if two ioyntenants giue lands ioyntly to two men, and their heires, and the other in exchange of other lands to them and their heires in common, this is a good exchange, and yet the manner of their eſtates is not equall, for the eſtate of one partie is ioynt, and the other in common. And ſo it is if two men giue lands in exchange to A. and his heires for lands from A. to them two and their heires, though the one partie haue a ioynt eſtate, and the other a ſole eſtate, yet the exchange is good. The like is if the one land be of a defeaſible title, and the other of an vndefeaſible title, yet the exchange is good till it be auoyded.

(a) In exchange with the King is good and yet the King is ſeiſed in his politique capacitie, and the ſubiect in his naturall capacitie But equalitie of the quantitie of the eſtate is requiſite, as it appeareth clearely in the caſes put by Littleton. (b) But therein it is to be obſerued that it is not neceſſarie that the parties to the exchange be ſeiſed of an equall eſtate at the time of the exchange made: for if Tenant in taile, or a husband, ſeiſed in the right of his wife, exchange lands, and both by the exchange, giue a fee ſimple, this is good vntill it be auoyded by the iſſue in taile, or by the wife after the death of the husband, (d) ſo as Littleton ſaith that in exchanges it behoueth that the eſtates which both parties haue in the land ſo exchanged be equall is as much to ſay as that the ſtate reciprocally giuen in exchange ought to bee equall. (e) But in a partition the eſtates allotted to either partie need not to bee equall

(a) *Bracton lib.*5 *fo.*389. 17.*E.*3.12.*b.* 4.*H.*4.2.

(b) 14.*H.*6. 6.*E.*2.*Exch.*12. 8.*E.*2. (*ni in vic.*128. 10.*E.*2.*Exch.*13. 16.*E.*3.*Exch.*2. 3 *E.*3.19.12.*H.*4.12. 21.*H.*6.25. 13.*E.*4.3.

(d) 44.*E.*3.20.38.*E.*3.15. 39.*E.*3.1. 9.*E.*4 21. 7.*H.*4.17. 30.*E.*1.*tit. bre.*884. 30.*E.*1. *tit. exchange*,15.

(e) *F.N.B.*162.*m.*

quall, as ſhall be obſerued in his proper place.

To ſhut vp this point, There be fiue things neceſſary to the perfection of an exchange. 1. That the eſtates giuen be equall. 2. That this word (excambium exchange) be vſed (f) which is ſo individually requiſite, as it cannot be ſupplied by any other word or deſcribed by any circumlocution; and herewith agreeth Littleton afterwards in this chapter Sect. In the booke of Domeſday I finde hanc terram cambiauit Hugo Briccuino quod modo tenet comes Meriton, & ipſum ſcambium valet duplum.
Hugo de Belcamp pro eſcambio de warres.

coment que la terre lun vault mult pluis que la terre de lauter ceo nest riens a purpose: issint que les estates per leschange fait, soient egales. Et issint ē leschange sont deux grants car chescun partie grant son tre a lauter en eschange, &c. & en chescun de lour grants mention serra fait de leschange.

value of the lands, for albeit that the land of the one be of a farre greater value than the land of the other, this is nothing to the purpoſe, ſo as the eſtates made by the eſchange be equall. And ſo in an eſchange there be two grants, for each partie granteth his land to the other in eſchange, &c. and in each of their grants mention ſhalbe made of the eſchange.

(f) 9.E.4.21. 25.H.6.56. 19.H.6.27. 44.E.3.24. 50.Aſſ. Dorſet. Wales. Bedf. Sandis. (b) 9.E.4.39. 15.E.4.3. 45.E.3.30.

3. That there be an execution by entrie or claime in the life of the parties, as hath bin ſaid. (g) 4. That if it be of things that lye in grant, it muſt be by Deede. (h) 5. If the lands be in ſeuerall Counties there ought to be a Deede indented, or if the thing lye in grant albeit they be in one Countie.

(i) If an infant exchange lands and after his full age occupie the lands taken in exchange, the exchange is become perfect, for the exchange at the firſt was not voyde (becauſe it amounted to a liuery, and alſo in reſpect of the recompence) but voidable.

45.E.3. eſchange 1. (g) 28.H.6.2. (h) 45 E.3.20. 7.H.4.11. (i) 4.E.2.tit.exch.10. 12.H.4.12.

¶ *Coment que lauter agree a cel ceſt eſchange eſt voide.* The agreement of the parties cannot make that good which the Law maketh voide.

Section 66.

¶ *Si home leſſa terre a vn auter pur terme dans, Coment que le leſſor moruſt deuant, &c.* The reaſon is becauſe the intereſt of the tearme (as hath beene ſaid) doth paſſe and reſt in the Leſſee before entrie, and therefore the death of the Leſſor cannot deueſt that which was veſted before

¶ *Attorney.* Is an ancient Engliſh word and ſignifieth one that is ſet in the turne, ſtead or place of another, and of theſe ſome be priuate (whereof our Author here ſpeaketh) & ſome be publike, as Attorneys at Law; whoſe warrant from his maſter is ponit loco ſuo talem Attornatum ſuum which ſetteth in his turne or place ſuch a man to be his Attorney.

¶ Item ſi home leſſa terre a vn auter pur term dans, coment que le leſſor moruſt deuant que le leſſee enter en les tenements, vncore il poit enter en meſmes les tenements apres le mort le leſſour, pur ceo que le leſſee per force de le leaſe ad droit maintenāt dauer les tenements solonq; le forme de le leaſe. Mes ſi home fait vn fait de feoffement a vn auter, & vn letter dattorney a vn

ALſo if a man letteth land to another for terme of yeares, albeit the leſſor dieth before the leſſee entreth into the tenements, yet he may enter into the ſame tenements after the death of the leſſor, becauſe the leſſee by force of the leaſe, hath right preſently to haue the tenements according to the forme of the leaſe, but if a man maketh a deed of Feoffment to another, & a letter of Attorney to

¶ Et

home a deliuerer a luy ſeiſin per force de meſme le fait, uncore ſi liuerie de ſeiſin ne ſoit fait en la vie celuy que feſoit le fait, ceo ne vault riens, pur ceo que lauter nad pas aſcun droit dauer les tents ſolongz le purport de le dit fait, deuant le liuerie de ſeiſin. Et ſi nul liuerie de ſeiſin ſoit fait, donqz apres le mort celuy que fiſt le fait, le droit de tiels tenements eſt maintenant en ſon heire, ou en aſcun auter.

one to deliuer to him ſeiſin by force of the ſame deed, yet if liuery of ſeiſin be not executed in the life of him which made the deed, this auaileth nothing, for that the other had nought to haue the tenements according to the purport of the ſaid Deede before liuery of ſeiſin made, & if there be no liuery of ſeiſin, then after the deceaſe of of him who made the Deed, the right of theſe tenemẽts is forthwith in his heire, or in ſome other.

Vid. Sect. 196.

¶ *Et vn letter dattorney a vn home a deliuer a luy ſeiſin per force de meſme le fait.* Here firſt it appeareth that the Authority to deliuer ſeiſin (as hath beene ſaid) muſt be by Deede; For Letter dattorney is as much as a warrant of Attorney by Deede for Littere doe ſignifie ſometime a Deed as litteræ acquietanciæ doe ſignifie a Deede of Acquittance, and herewith (a) agreeth Britton.

(a) 24.*E.*3.27.11.*H.*7.13. *Britt.*101.*b.*

2. Littleton here ſpeakes generally a vn home, and few perſons are (b) diſabled to be priuate Attorneys to deliuer ſeiſin; for Mounks, infants, feme couerts, perſons attainted, outlawed, excommunicated, villeins, aliens, &c. may bee Attorneys. A feme may be an Attorney to deliuer ſeiſin to her huſband, and the huſband to the wife, and he in the remainder to the leſſee for life.

(b) 21.*E.*4.18. *Br. feoffments.*50 21.*H.*6.30. 13.*E.*3. *Attorney* 73.

3. It appeareth here that the Attorney muſt (c) purſue his warrant, otherwiſe he doth not deliuer ſeiſin by force of the Deed, as Littleton ſpeaketh. Now his Authoritie is twofold, expreſſed in his warrant, and implied in Law, both which he muſt purſue and firſt of his expreſſe authority. A man ſeiſed of blacke acre and white acre makes a Deede of feoffment of both, and a letter of Attorney to enter into both acres, and to deliuer ſeiſin of both of them according to the forme and effect of the Deede, and he entreth into blacke acre and deliuers ſeiſin ſecundum formam cartæ, this liuery and ſeiſin is good, albeit he did not enter into both, nor into one in the name of both; for when he deliuereth ſeiſin of one ſecundum formam cartæ, this is tantamount and implieth a liuery of both. So when the feoffment is made to two or more, and the Attorney is to make liuery of ſeiſin to both, and the Attorney make liuery of ſeiſin to one of the Feoffees ſecundum formam & effectum cartæ, this is good to both, and yet in that caſe he that is abſent may waiue the liuery. If Leſſee for life make a Deede of Feoffment and a letter of Attorney to the Leſſor to make liuery and the Leſſor maketh liuery accordingly, notwithſtanding he ſhall enter for the forfeiture, but if Leſſee for yeares make a feoffment in fee and a letter of Attorney to the Leſſor to make liuery and he make liuery accordingly, this liuery ſhall binde the Leſſor, and ſhall not be auoided by him; for the Leſſor cannot make liuery as Attorney to the Leſſee, becauſe he had no freehold, whereof to make liuery; but the freehold was in the Leſſor. If the Leſſor make a deed of Feoffment, and a letter of Attorney to the Leſſee for yeares to make liuery, and he doth it accordingly, this ſhall not drowne or extinguiſh his tearme, becauſe he did it as a miniſter to another and in another right, and is accounted in iudgement of Law the act of the other and the Feoffee claimeth nothing by him.

(c) 12. *Aſſ. pl.*24 26. *Aſſ.*39. 11.*H.*4.3.10.*H.*7. 11.*H.*7.13. 40. *Aſſ.*38.

27. *Aſſ.*61. 41. *Aſſ.*10. 41.*E.*3.17.

*Tr.*7.*Eliz. in com. banco.*

If one as Procurator or Attorney to another preſent to his owne benefice, he putteth himſelfe out of poſſeſſion, becauſe he commeth in by the induction and inſtitution of the Ordinary. If the tenant deuiſe that the Lord ſhall ſell the land, and dieth, and the Lord ſelleth it, the Seignory remaine. But if the Lord or a grantee of a Rent charge had beene alſo Ce' que vſe of the land and after the ſtatute of R.3. and before the ſtatute of 27.H.8. Ce' que vſe had made a feoffment in fee of the land, albeit the land paſſeth from the Feoffees, and his feoffment is warranted by the power giuen to him by the ſtatute, yet the Seignory or rent charge is extinct by his feoffment, for that he hath not a bare Authority as the Attorney hath.

17.*E.*3.61.

If a man be diſſeiſed of blacke acre and white acre, and a warrant of Attorney is made to enter into both and to make liuery, there if the Attorney enter into blacke acre only and makes liuery ſecundum formam cartæ there the liuery of ſeiſin is voide; becauſe he doth leſſe then his warrant for the eſtate of the diſſeiſor in white acre cannot bee deueſted without an entry.

But

But there is a diuerſitie betweene an authoritie coupled with an intereſt, and a bare authoritie. For example, A cuſtome within a mannor time out of mind of man vſed, was to grant certain lands parcell of the ſaid mannor in fee ſimple, and neuer any grant was made to any, and the heires of his bodie, for life or for yeares; and the Lord of the ſaid mannor did grant to one by Copie for life, the remainder ouer to another, and the heires of his bodie: And it was (k) adiudged, that the grant and remainder ouer was good; for the Lord hauing authoritie by cuſtome, and an intereſt withall, might grant any leſſer eſtate: for in this caſe, the cuſtome that enableth him to the greater, enableth him to the leſſer, Omne maius in ſe, continet minus. But hee that hath but a bare authoritie, as he that hath a Warrant of Atturney, muſt purſue his authority, (as hath been ſaid) and if he doe leſſe, it is voyd.

(k) *Hil.*36.*El.Rot.*492. *Inter Stanton & Barnes, in Ejectione firmæ, in the Kings bench*

2.& 3.*Ph.& M. Dyer* 131. 17.*El.Dyer* 340.

A man make a leaſe for life, and after make a Charter of feoffement, with a Letter of Attorney to deliuer ſeiſin, the Atturney enters vpon the Leſſee, this is ſufficient to conuey away the reuerſion; for (that it may be ſaid once for all) liuerie of ſeiſins being to perfect the common aſſurance of lands, is alwayes expounded fauourably, vt res magis valeat quam pereat. And all this was adiudged and (l) reſolued by the Court of Common Pleas, and after affirmed by all the Iudges of the Kings Bench, in a Writ of Error.

(l) *Paſc.* 31.*El.Rot.* 514. *in Com.Banc.inter Carter pl. & Claypole & al.def. In Ejectione firmæ, & in Briefe de Error. Mil* 32.*El.Rot.*791.

And it is to be knowne, that a deed of feoffement beginning Omnibus Chriſti fidelibus, &c. or Sciant præſentes & futuri, &c. or the like, a Letter of Atturney may bee contained in ſuch a Deed; for one continent may containe diuers Deeds to ſeuerall perſons, but if it be by Indenture betweene the Feoffor on the one part, and the Feoffee on the other part, there a Letter of Atturney in ſuch a Deed is not good, vnleſſe the Atturney bee made a partie in the Deed indented.

Now the authoritie of an Atturney implyed in the Law, is, though the Warrant bee generall, to deliuer ſeiſin: yet the Atturney cannot deliuer ſeiſin within the view, for his Warrant is intendable in Law of an actuall and expreſſe liuerie, and not of a liuerie in law, and ſo hath it beene reſolued. See more hereof here next following.

*Paſ.*3.*El.in Com. Banc. in Tatham's caſe.*

¶ *Vncore ſi liuerie & ſeiſin ne ſoit fait en la vie celuy que feſoit le fait.* Here albeit the Warrant of Atturnie be indefinite, without limitation of any time, yet the Law preſcribeth a time, as Littleton here ſaith, in the life of him that made the Deed: but the death not onely of the Feoffor, of whom Littleton ſpeaketh, but of the feoffee alſo, is a countermand in Law, of the Letter of Atturney, and the Deed it ſelfe is become of none effect, becauſe in this caſe nothing doth paſſe before Liuerie of Seiſin. For if the Feoffor dieth, the Land deſcends to his heire, and if the Feoffee dyeth, liuerie cannot be made to his heire, becauſe then hee ſhould take by purchaſe, where heires were named by way of limitation. And herewith agreeth Bracton, Item oportet, quod donationem ſequatur rei traditio, etiam in vita donatoris & donatorij. Therefore a Letter of Attorney to deliuer Liuerie of Seiſin after the deceaſe of the Feoffor, is voyd.

22.*H.*6.6.

*Bract.li.*2.*fo.*16.40.*aſſ.pl.*38 29.*H.*6 7.*a.*14.*E.*4.2. 18.*E.*3.16.*b.*

Fourthly, In all caſes the Atturney muſt purſue the Warrant in ſubſtance and effect, that he hath to deliuer Seiſin.

11.*H.*7.13.*&c.*

Fiftly, All this is to be vnderſtood of ſole perſons, or of a Corporation or bodie conſiſting of one ſole perſon, or a Biſhop perſon, &c. But it holdeth not in a Corporation aggregate of manie perſons capable. And therefore if a Maior and Commonaltie make a Charter of feoffement, and a Letter of Attorney to deliuer Seiſin, the Liuerie of Seiſin is good after the deceaſe of the Maior, becauſe the Corporation neuer dieth. The like of a Deane and Chapter, Et ſic de ſimilibus.

18.*H.*8.3.11.*H.*7.19.

Laſtly, If the Leſſor by his Deed licence the Leſſee for life or yeares, (which is reſtrained by condition not to alien without Licence) to alien, and the Leſſor dieth before the Leſſee doth alien, yet is his death no countermand of the licence, but that he may alien, for the licence exempteth the Leſſee out of the penaltie of the Condition; and it was executed on the part of the Leſſor as much as might be. And ſo was it reſolued, Michael 3. Iacob. in Communi Banco. As if the King doth Licence to alien in Mortmaine, and dieth, the Licence may bee executed after.

*Mich.*3.*Ia.in Com. Banco. F.N.B.*223.2.*E.*3.*Offic.de Coron.*29.*Stamf.Prer.*30.

Sect. 67.

¶ *Si le Leſſee fait waſt. Waſt*, Vaſtum dicitur à vaſtādo, of waſting and depopulating: and for that Waſt is often alled-

¶ Item ſi Tenements ſoiēt leſſes a vn home p̄ terme de demy an, ou pur le

ALſo if tenements be let to a man for terme of halfe a yeare, or for a quarter of a

quarter de vn an, &c. En tiel caſe, ſi l'leſſee fait waſt, l'leſſor auera enuers luy briefe de Waſt, & le Briefe dirra, Quod tenet ad terminum annorum: Mes il auera vn ſpeciall Declaration ſur le veritie de ſon matter, & le Count nabatera le Briefe, pur ceo que il puit auer nul auter briefe ſur le matter.

yeare, &c. In this caſe if the Leſſee commit waſt, the Leſſor ſhall haue a Writ of Waſte againſt him; and the Writ ſhall ſay, *Quod tenet ad terminum annorum*: but he ſhall haue an eſpeciall declaration vpon the truth of his matter, and the Count ſhall not abate the Writ, becauſe he cannot haue any other writ vpon the matter.

ged to be in timber, which we call in Latin Maremium, or mareſnium, or mareſnium, it is good to fetch both of them from the originall. Firſt, Timber is a Saxon word. Secondly, Maremium is deriued of the French word Marrein, or Marein, which properly ſignifieth timber.

An Action of waſt doth lie againſt tenant by the Curteſie, tenant in Dower, tenant for life, for yeares, or halfe a yeare, or gardein in Chiualry, by him that hath the immediate eſtate of inheritance, for waſt or deſtruction in houſes, gardens, woods, trees, or in lands, meadowes, &c. or in exile of men to the diſherſon of him in the reuerſion or remainder. *Vide Marlb. ca 23. 2. part of the Inſt. c.*

There be two kinds of waſts, viz. Voluntarie or actuall, and permiſſiue. (a) Waſt may be done in houſes, by pulling or proſtrating them downe, or by ſuffering the ſame to be vncouered, whereby the ſparres or rafters, plaunchers, or other timber of the houſe are rotten. (b) But if the houſe be vncouered when the Tenant commeth in, it is no waſt in the Tenant, to ſuffer the ſame to fall downe. But though the houſe be ruinous at the tenants comming in, yet if hee pull it downe, it is waſt vnleſſe he re edifie it againe. (c) Alſo if glaſſe windowes (though glaſed by the tenant himſelfe) be broken downe, or carried away, it is waſt, for the glaſſe is part of his houſe. And ſo it is of wainſcote, benches, doores, windowes, furnaces, and the like, annexed or fixed to the houſe, either by him in the reuerſion, or the tenant.

(a) 34.E.3.Waſt.145.

(b) 40.aſſ.p 22.2.Mar. Dyer 117.23.H.6.24 10.H.7 2 44.E.4.29.E.3.33.li.4. fo.63 Herlakendens caſe.

(c) 22.H.6.8.12 H.8.1. 13.H.7.21. 21.E.4.18. 21.E.4.39.10.H.7.2.Reg. Indic.96.

(d) Though there bee no timber growing vpon the ground, yet the Tenant at his perill muſt keepe the houſes from waſting. If the Tenant doe or ſuffer waſt to be done in houſes, yet if he repaire them before any Action brought, there lieth no action of waſt againſt him, but he cannot plead, Quod non fecit vaſtum, but the ſpeciall matter.

(d) 44.E.3.24.38.aſſ.1. 4.E.3.Waſt.22.10 El Dyer 276.li.5.fo.119.m Wheldales caſe. 19.E.3.Waſt.30. 44.E.3.44

A Wall vncouered when the tenant commeth in, is no waſt if it be ſuffred to decay. (e) If the tenant cut downe or deſtroy any fruit trees growing in the garden or orchard, it is waſt, but if ſuch trees grow vpon any of the ground which the Tenant holdeth out of the garden or Orchard, it is no waſt.

(e) 7.H.6.38.44.E.3.44.

(f) If the Tenant build a new houſe, it is waſt, and if he ſuffer it to be waſted, it is a new waſt. (g) If the houſe fall downe by tempeſt, or be burnt by lightning, or proſtrated by enemies, or the like, without a default of the Tenant, or was ruinous at his comming in, and fall downe, the Tenant may build the ſame againe with ſuch materialls as remaines, and with other timber which he may take growing on the ground for his habitation, but hee muſt not make the houſe larger than it was. If the houſe be diſcouered by tempeſt, the tenant muſt in conuenient time repaire it.

(f) 42.E.3.21.49.E.3.3. 9.H.6.52.17.E 2.Waſt 118.

(g) Li 4.fo.63. Herlakendens caſe. 43.E.3.6. 26 E.3.76. 11.H.4.32.12.H 4.5. 22.H.6.18.19.E.3.waſt.30.

(h) If the Tenant of a Doue houſe, Warren, Parke, Viuarie, Eſtangues, or the like, doe take ſo many, as ſuch ſufficient ſtore be not left as he found when he came in, this is waſt, and to ſuffer the pale to decay, whereby the Dere are diſperſed, is waſt.

(h) Temps E.1.Waſt.128. Brit. fo.34 3.R.2.Waſt.97. 12.H.8.1.Pl.Com.322. 7.H.3.Waſt.141.

And it is to be obſerued, That there is waſt, deſtruction, and exile. Waſt properly is in houſes, gardens, (as is aforeſaid) in timber trees, (viz. Oke, Aſhe, and Elme, and thoſe be Timber trees in all places) either by cutting of them downe, or topping of them, or doing any Act whereby the timber may decay. Alſo in Countries where timber is ſcant, and Beeches or the like are conuerted to building for the habitation of man, or the like, they are alſo accounted timber. (i) If the Tenant cut downe timber trees, or ſuch as are accounted timber, as is aforeſaid, this is waſt, and if he ſuffer the young germyns to be deſtroyed, this is deſtruction. (k) So it is, if the Tenant cut downe vnderwood, (as he may by law) yet if he ſuffer the young germins to be deſtroyed, or if he ſtubbe vp the ſame, this is deſtruction.

(i) 22.H.6.12.4.9.H.6.1 66 11.H.6.1.F.N.B.59.m.

(k) 20.E.3.Waſt.32. 10.H.7 2. 42.E.3.6.b.5.E.4.100. 41.E.3.Waſt.82. 20.Edw.3. Waſt.32.12.E.4.1.

(l) Cutting downe of willoughes, beech, birch, aſpe, maple, or the like, ſtanding in the defence and ſafeguard of the houſe, is deſtruction. (m) If there be a quickeſet Fence of white thorne, if the tenant ſtubbe it vp, or ſuffer it to be deſtroyed, this is deſtruction, and for all theſe and the like deſtructions, an action of waſt lieth. (n) The cutting of dead wood, that is, vbi arbores ſunt aridæ, mortuæ, cauæ, non exiſtent macremium, nec portantes fructus, nec folia in æſtate, is

(l) 40.E.3.15.b.& 35. 12.E.4.1.12.H.8.1.b. 10.H.7.2.8.E.2.Waſt.111. 4.E.6.Waſt.Br.136.

(m) 46.E.3.17.9.H.6.10. 12.H.8.1.

(n) 16.El.Dy.332.20.E.3. Waſt.32.F.N.B.59.m.

no Waſt; but turning of trees to coles for fewel, when there is ſufficient dead wood, is waſt.

(o) If the Tenant ſuffer the houſes to be waſted, and then fell downe timber to repaire the ſame, this is a double waſt. (p) Digging for graueli, lime, clay, bricke, earth, ſtone, or the like, or for mines of mettall, cole, or the like, hidden in the earth, and were not open when the tenant came in, is waſt; but the Tenant may dig for gravell or clay for the reparation of the houſe, aſwell as he may take conuenient timber trees.

(q) It is waſt to ſuffer a wall of the ſea to be in decay, ſo as by the flowing & refloweing of the ſea, the meadow or marſh is ſurrounded, whereby the ſame becomes vnprofitable: but if it bee ſurrounded ſuddenly by the rage and violence of the ſea, occaſioned by wind, tempeſt, or the like, without any default in the tenant, (r) this is no waſt puniſhable. So it is, if the Tenant repaire not the bankes or walls againſt riuers, or other waters whereby the meadowes or marſhes be ſurrounded, and become ruſhie and vnprofitable.

(s) If the Tenant conuert erable land into wood, or è conuerſo, or meadow into erable, it is waſte, for it changeth not only the courſe of his husbandry but the proofe of his euidence.

(t) The tenant may take ſufficient wood to repaire the walls, pales, fences, hedges and ditches, as he found them, but he can make no newe: and he may take alſo ſufficient plowbote, firebote, and other housbote.

The tenant cutteth downe trees for reparations and ſelleth them, and after buyeth them againe, and imploy them about neceſſary reparations, yet it is waſte by the condition: hee cannot ſell trees and with the money couer the houſe; burning of the houſe by negligence or miſchance is waſte

(u) If a man make a Leaſe for life and by Deed grant that if any waſte or deſtruction bee done, that it ſhall be redreſſed by neighbours, and not by ſute or plea, notwithſtanding an action of waſte ſhall lye, for the place waſted cannot be recouered without a plea.

(w) Bracton, Fleta and Britton, doe vſe the ſame diuiſion as is afore ſaid, viz. Vaſtum, deſtructio, & ex lium, in their proper ſignification.

Now ſomewhat is to be ſpoken of Exile or deſtruction of men; Exile or deſtruction of Villeines, or Tenants at will, or making them poore where they were rich when the Tenant came in, wherby they depart from their tenures, is waſte. (a) And yet the ſtatute of Glouc' ſpeaketh not of exile, but it is comprehended vnder the generall word of waſte. The ſtatute of W.1. hath deſtructionem, the ſtatute of Magna Carta hath Vaſtum & deſtructionem, the ſtatute of Merlebridge hath vaſtum, venditionem & exilium in domibus, boſcis, vel hominibus, &c.

But waſte and deſtruction in their larger ſence are words conuertible. (b) Item de hoc quod dicit vaſtum & exilium, ſciendum eſt quod non ſunt referenda ad eundem intellectum, ſed vaſtum & deſtructio fere idem ſunt, vaſtum idem eſt quod deſtructio, & è conuerſo, & ſe habent ad omnem deſtructionem generaliter.

(c) Vaſtum autem & deſtructio fere equipollent & conuertibiliter ſe habent in domibus, boſcis, & gardinis, ſed exilium dici poterit, cum ſerui manumittantur & à tenementis ſuis iniuriosè eijciantur, fortuna autem & ignis vel huiuſmodi euentus inopinati omnes tenentes excuſant.

(d) No perſon ſhall haue an action of waſte, vnleſſe he hath the immediate eſtate of inheritance, but ſometime another ſhall ioyne with him for conformity. As if a reuerſion be granted to two and to the heires of one; they two ſhall ioyne in an action of waſte: and in like ſort the ſurviuing Copercener, and the tenant by the Curteſie ſhall ioyne in an action of waſte: and if two ioyntenants be, and to the heires of one of them, and they make a Leaſe for life, they ſhall ioyne in an action of waſte. (e) If the eſtate taile determine, hanging the action of waſte, and the plt. become tenant in taile after poſſibilitie, the action of waſte is gone. (f) If the Tenant doth waſte, and he in the reuerſion dieth, the heire ſhall not haue an action of waſte for the waſte done in the life of the Anceſtor; nor a Biſhop, maſter of an Hoſpitall, Parſon, or the like in the time of the Predeceſſor. (g) And ſo if Leſſee for yeares doth waſte, and dieth; an action of waſte lyeth not againſt the Executor or Adminiſtrator, for waſte done before their time. But if two Copercenors be of a reuerſion, and waſte is committed, and the one of them die, the Aunt and the Neece ſhall ioyne in an action of waſte.

(h) If lands be giuen to two and the heires of one of them, he that hath the fee ſhall not haue an action of waſte vpon the ſtatute of Glouc: for that they are ioyntenants, but his heire ſhall haue an action of waſte againſt tenant for life.

Note after waſte done there is a ſpeciall regard to be had to the continuance of the reuerſion in the ſame ſtate that it was at the time of the waſte done, for if after the waſte he granteth it ouer, though he taketh backe the whole eſtate againe, yet is the waſte diſpuniſhable. So if he grante the reuerſion to the vſe of himſelfe and his wife, and of his heires, yet the waſte is diſpuniſhable, and ſo of the like, becauſe the eſtate of the reuerſion continueth not, but is altered, and conſequently the action of waſte for waſte done before (which conſiſt in priuity) is gone.

(i) A Prohibition of waſte did lye againſt Tenant by the curteſie, Tenant in dower, and a gardian in Chiualry by the Common Law, but not againſt tenant for life, or yeares, becauſe they

(o) 44.E.3.44.20.E.3. *Waſt.*32.F.N.B.59.b. 19.E.3.*Waſt.*30.
(p) 22.H.6.18.b.9.E.4.35. 41 E.3.*Waſt.*82.17.E.3.7. 9.H 6 66. 2.H.7.24. F N. B.59.2 & 149.c.20.Ed.3. *Waſt.*32.
(q) *Anno* 6. El. *Of the Reports of Iuſtice Dalſon in Griffins caſe.*17.E.3.65.*Brit. fo.*168.b.
(r) 20.H.6.1.F.N.B.59.n. 6.El.*vbi ſupra.*
(s) 28.H.8.*Dyer* 37. 22.H.6.24.10.H 7.5.a. 44.E.3.44.
(t) 16.El. *Dy.*332. 21.H.6. 47. L.5.E.4.100.12.E.3. *Waſt.*38.48.E. 3.25.*Tenures* E.1.123.20 E.3 *Waſt.*32. 19.E.3.*Waſt.*30.
(u) 3.E.3.*Waſt.*5. *Bracton lib.* 4 *fo.*315.
(w) *Bracton fo.*168. *Fleta.lib.*1.*cap.*11. 16.H.3.*waſt.*135. 3.E.2. *tit. Waſt.*2. 17.E.2.*Waſt.*118.10.H.7. 2.H.6.11. 9 H.6.52. 11.E.2.*Waſt.*113. F.N.B. 56.H.& 55.e. *Regiſt.iudic.*25.
(a) *Glouc.cap.*5. *W.*1.*ca.*21. *Magna Carta.cap.*4. *Merleb.ca.*23.
(b) *Bract.lib.*4.*fo.*316. & 317.
(c) *Fleta lib.*1.*ca.*11.
(d) 7.E.3.54.b.2.H.5.7. 22.H.6.24. 13.H.7. 27.H.8.13.F.N.b.59.f. 8.R.2.*Waſt.*147.
(e) 2.H.4.22.
(f) 2.H.4.2.
(g) 10.E.4.1. 49.E.3 25. 2 5.H.8.*tit.Waſt.Br.* 38.E.3.17. 44.E.3.8. 45.E.3.3. 46.E.3.31. 11.E.2.*Waſt.* 115. 2.*Mar.waſt.*117. 8.E.2.*waſt.*110.
(h) 24.E.3.27. 50.E.3.3. 8.H.6.13.
(i) *Bract.lib.*4 *f.*315.316.317 *Fleta lib.*1.*ca.*11.*Brit. fo.*168. *Doct.& Stud.lib.*2.*cap.*1. 12.H.4.3. 10.H.3. *Waſt.*142 20 H.6.1. 4 H.3.*Waſt.*140. 9.H.3. *ibid.*136.

they came in by their owne act, and he might haue prouided that no waſte ſhould be done. (i) A tenant by the curteſie or in dower can hold of none but of the heire, and his heires by diſcent, and therefore if they grant ouer their whole eſtate, and the grantee doth waſte, yet the heire ſhall haue an Action of waſte againſt them, and recouer the land againſt the aſſignee: but if the heire either before the aſſignement had granted, or after the aſſignement doth grant the reuerſion ouer, the ſtranger ſhall haue an Action of waſte againſt the aſſignee, becauſe in both Caſes the priuitie is deſtroyed: in all other Caſes the Action of waſt ſhall be brought againſt him that did the waſte (for it is in nature of a treſpaſſe) vnleſſe it be in the caſe of a Ward (k) for there if the Gardian doth waſt and aſſigne ouer, the action lieth againſt the aſſignee (l). A Gardian ſhall not be puniſhed for waſte done by a ſtranger, it is ſo penall vnto him, for he ſhall loſe the Wardſhip both of the bodie and of the land, though the waſte be but to the value of twentie ſhillings, and if that ſufficeth not to ſatisfie for the waſt, then he ſhall recouer damages of the waſte, ouer and aboue the loſſe of the Ward. But tenant by the curteſie, tenant in dower, tenant for life, yeares, &c. ſhall anſwere for the waſte done by a ſtranger, and ſhall take their remedie ouer. (m) But if there be two ioyntenants of a Ward, and one of them doe waſte both ſhall anſwer for it.

(n) If the Gardian doth waſte and the heire within age bring an action of waſte, the Gardian ſhall loſe the wardſhip as is aforeſaid, but if the heire bring an action of waſte at his full age, then he ſhall recouer treble damages, for then he cannot loſe the wardſhip.

(o) An infant and Baron and Feme ſhall be puniſhed for waſte done by a ſtranger, and ſo ſhall the wife that hath the ſtate by ſuruiuour, for waſt done by the huſband in his life time, if ſhe agree to the Eſtate, though there hath beene variette of opinions in our Bookes.

(p) But if Feme tenant for life take huſband, and the huſband doth waſte, and the wife dieth, no Action of waſte lieth againſt the huſband in the tenuit, for he was ſeiſed but in iure vxoris and his wife was tenant of the freehold, but if a Feme bee poſſeſſed of a terme for yeares, and take huſband, and the huſband doth waſte, and the wife dieth, the huſband ſhall be charged in an Action of waſte, for the Law giueth the terme to him.

(q) If tenant for life grant ouer his Eſtate vpon condition, and the grantee doth waſte, and the Grantor re-entreth for the condition broken, the Action of waſte ſhall bee brought againſt the grantee, and the place waſted recouered.

(r) If a leaſe for life be made to a Villaine, and waſte is done, the Lord entreth, he ſhall not be puniſhed for the waſte done before, but for waſte done after he ſhall.

(ſ) An occupant ſhall be puniſhed for waſte, and ſo if an Eſtate bee made to A. and his heires during the life of B. A. dieth, the heire of A. ſhall be puniſhed in an Action of waſte.

(t) If a leaſe be made to A. for life, the remainder to B. for life, the remainder to C. in fee in this caſe where it is ſaid in the Regiſter, and in F.N.B. that an Action of waſte doth lie, it is to be vnderſtood after the death or ſurrender of B. in the meane remainder for during his life, no Action of waſte doth lie.

But if a leaſe for life be made, the remainder for yeares, the remainder in fee, an Action doth lie preſently during the terme in remainder for the meane terme for yeares is no impediment.

But if a man make a leaſe for life or yeares, and after granteth the reuerſion for yeares, the Leſſor ſhall haue no Action of waſte during the yeares, for he himſelfe hath granted away the reuerſion, in reſpect whereof he is to maintaine his Action. (*) Otherwiſe it is, if hee had made a leaſe in reuerſion which had beene but a future intereſt, for there an action of waſte lieth during the termie, and ſo is the Bookes to be vnderſtood, and terme ſhall be ſaued in that caſe.

(u) No action of waſte lieth againſt a garden in ſocage, but an account or treſpaſſe, nor againſt tenant by ſtatute, ſtaple, &c. or elegit.

(w) If tenant for life or yeares or their aſſigne make a grant ouer, and notwithſtanding take the profits, an action of waſte lieth againſt him, by him in the reuerſion or remainder by the ſtatute, Nota.

(x) If waſte be done ſparſim here and there in woods, the whole woods ſhall be recouered, or ſo much wherein the waſte ſparſim is done. And ſo in houſes ſo many roometh ſhall be recouered wherein there is waſte done, but if waſt be done ſparſim throughout, all ſhall bee recouered. It hath bin ſaid that if the hall be waſted, the whole houſe ſhall be recouered, becauſe the whole houſe is denominated of the hall: but later Authoritie is to the contrarie.

(y) There is waſte of a ſmall value, as Bracton ſaith, Niſi vaſtum ita modicum ſit propter quod non ſit inquiſitio facienda. Yet trees to the value of three ſhillings and foure pence, hath bin adiudged waſte, and many things together may make waſte to a value. But let vs now returne to our Authour.

(i) *F.N.B.56.e.et f. Temps E.1.waſt.122 18.E 3. 3.30.E.3.16.38.E.3.23.11. H.4.18.4.E.3.25.Regiſt.72. lib.3.fol.23.Walwens caſe. lib. 9.fol.142.Beaumonts caſe.*

(k) *27.E.3.81.26 E 3. Waſte.10.*

(l) *12.H.4.3.Bract.lib.4. 316.317.Fleta.lib.1.cap 11. Brut.168.34.E.3.Waſt 146. 44.E.3.27. F.N.B.59.a.& 60.g.& I.*

(m) *33.E.3.Waſt.6.*

(n) *44.E.3.27.48.E.3.10. F.N.B.60.I.12.H.4.3. 19.E.2.Waſt.117.41.E.3. Waſt.81.3.E.2.Waſt.3. 7.E.3.12.*

(o) *15.H.3.Waſt.16. Temps E.1.Waſt.128.2.H.4.3 a. 3.E.3.13.76. 11. Aſſ.11. 21.H.6.24.b.33.H.6.31.a. 42 E.3.22.19.E.3.breue 246 46.E.3.25.7H.6.2.b.3.E.3. 46.10.E.3.17.18.9.E.3. 42.9.E.3.breue 246.17.E.4. 7.9.H.6.51.F.N.B.36.b. Doct.& Stud.lib.2.cap.1. 23.H.8.Waſt.138.lib.8.fol. 44.Willingbams caſe.*

(p) *Lib.5.fol.75.(I ſtens caſe 46.E.3.25.46.E.3.Waſt. Statham.10 H.6.11.12.*

(q) *30.E.3.16.*

(r) *48.E 3.19.*

(ſ) *Lib.6.fol.37.le Deane and Chapter of Worceſt.caſe. lib. 10.fol.9.b.*

(t) *4.E.3.18.Cotes caſe.3.E. 3.18 F.N.B.58.c.& 59 h. 50.E.3.3.33.E.3.Waſt.144 11.E.3.ref cit.118.10.E.4.9 Regiſt.74.lib.2.fol.92. inter Paget & Carie in Bingbams caſe.lib.5 fol.76.Pagets caſe. lib.10.fol.44. Tenn gs caſe. F.N.B.59.h.4.E.3.18.*

(*) *4.E.3.18.F.tit. Waſt.18.*

(u) *Mellbridge cap.17.21.E. 3.30.16.E.3.tit.waſt.100. 14.E.3.waſt.107.2.E.2. Waſt.1.28.H.6.waſt.9.32. H.6.7. F.N.B.59.E.*

(w) *11.H.6.cap.5. Lib.5.fol.77.Bootbes caſe.*

(x) *8.E.2.waſt.112.4.E.6. waſt.136.4.E.3.32.15.H.7. 11.15.E.3.Waſt.134.Temps E.1.waſt.134.18.H 8 1.*

(y) *Bract.lib.4.fol.316. 38.E.3.7 b.34.E.3.waſt.146 14.H.4.11.b. F.N.B.60 c. Temps E.1.waſt.124. 19,H.6.8.*

¶ *Brief de waſte.* **See in the Regiſter fiue ſeuerall Writs of** waſte; Two At the Common Law for waſte done by Tenant in Dower, or the Garden, and Three by ſpeciall or ſtatute law, for waſte done by tenant for life, for yeares and tenant by the curteſie.

(z) *Vi. Bract. lib. 5. fo. 413. b. Fleta lib. 2 cap. 12 See the ſecond part of the Inſtitutes. W. 2. cap. 24.*

¶ *Brief dirra.* **The Writs originall of the Regiſter** (z) (as Bracton ſaith) formed, and of courſe had their firſt authoritie by Act of Parliament, and therefore without an Act of Parliament they cannot be altered, or changed, which is proued by the ſtatute of W 2 cap. 24. whereby remedie is prouided in many caſes. But heare what Bracton ſaith. Sunt quædam breuia formata in ſuis caſibus, & quædam de curſu, quæ concilio totius regni ſunt approbata, quæ quidem mutari non poſſunt, abſque eorundem contraria voluntate. Magiſtralia autem ſæpe variantur ſecundum varietatem caſuum, &c. And this is the reaſon that in this caſe of halfe a yeare the words of the Writ ſhall be without change, Quod tenet ad terminum annorum, and the pl' muſt make a ſpeciall declaration according to his caſe, for otherwiſe hee ſhould bee without remedie. In this particular caſe the ſtatute of Glouc. cap. 5. which giueth the Action of waſte againſt the Leſſee for life or yeares (which lay not againſt them at the Common Law) ſpeaketh of one that holdeth for tearme of yeares in the plurall number, and yet here it appeareth by the authoritie of Littleton. That although it be a penall Law, whereby treble damages and the place waſted ſhall be recouered, yet a tenant for halfe a yeare being within the ſame miſchiefe, ſhall be within the ſame remedie, though it bee out of the letter of the Law, for Qui hæret in littera, hæret in cortice, which is an excellent example, whereupon in many like caſes a man may ſettle a certaine iudgement. You may obſerue in the ſaid ancient Authors, what remedie was giuen for waſte at the Common Law, and againſt whom, and what was adiudged waſte, deſtruction, and exile.

De waſte. Bract. lib. 4. fol. 315. 316. 317 Fleta. lib. 1. cap. 11. & lib. 5. cap. 33. Brute. fol 162. & 168 46. E. 3. 31. F. N. B. 60. e. 4. E. 4. 13. 27. H. 6. 16. b. 7. H 7. 2. 14. H. 8. 12. 18. E. 3. 27.

Vide Marlebridge cap. 23. 2. part of the inſtitutes.

In many caſes a tenant for life or yeares may fell downe timber to make reparations, albeit hee be not compellable thereunto, and ſhall not bee puniſhed for the ſame in any action of waſte. As (a) if a houſe be ruinous at the time of the leaſe made, if the leſſee ſuffer the houſe to fall downe he is not puniſhable, for he is not bound by law to repaire the houſe in that caſe. And yet if he cut downe timber vpon the ground ſo letten, and repaire it, he may well iuſtifie it, and the reaſon is, for that the law doth fauour the ſupportation and maintenance of houſes of habitation for mankind. And therefore if two or more ioyntenants or tenants in common be of a houſe of habitation, and the one will not repaire the houſe, the other ſhall haue by the law a Writ De reparatione facienda, and the Writ ſaith, Ad ſuſtentationem eiuſdem domus tenentur. So it is if the Leſſor by his Couenant vndertaketh to repaire the houſes, yet the leſſee (if the Leſſor doth it not) may with the timber growing vpon the ground repaire it though hee be not compellable thereunto. In the ſame manner, if a man make a leaſe of a houſe and land without impeachment of waſte for the houſe, yet may the leſſee with the timber vpon the ground repaire the houſe, though he may vtterly waſte it if he will, and ſo in many other caſes. A man hath land in which there is a Mine of Coales, or of the like, and maketh (b) a leaſe of the land (without mentioning any Mines) for life or for yeares, the leſſee for ſuch Mines as were open at the time of the leaſe made, may digge and take the profit thereof. (c) But he cannot digge for any new Mine, that was not open at the time of the leaſe made, for that ſhould be adiudged waſte. And if there be open Mines, and the Owner make a leaſe of the land, with the Mines therein this ſhall extend to the open Mines only, and not to any hidden Mine, but if there be no open Mine, and the leaſe is made of the land together with all Mines therein, there the leſſee may digge for Mines, and enioy the benefit thereof, otherwiſe thoſe words ſhould be void. I haue beene the more ſpacious, concerning this learning of waſte, for that it is moſt neceſſarie to be knowne of all men.

(a) *12. H. 8. 1.*

F. N. B. fol. 127.

(b) *17. E. 3. 7. 9. H. 6. 56. 22. H. 6. 18. 9. E. 4. 35. 12. E. 4. 8. F. N. B. 149. e. & 59. n.*

(c) *Lib. 5. fol. 12. Sanders caſe.*

Now hath Littleton ſpoken of an eſtate for life, and an eſtate for yeares in ſeuerall perſons. Now let vs ſee how they ſtand ſimul and ſemel in one perſon.

If a man letteth lands to another for life, the remainder to him for 21. yeares, hee hath both eſtates in him ſo diſtinctly, as he may grant away either of them; for a greater eſtate may vphold a leſſer, but not è conuerſo, and therefore if a man make a leaſe to one for 21. yeares, the remainder to him for terme of his life, the leaſe for yeares is drowned.

(d) *19. E. 2. couenant. 25. 19. E. 3. couenant. 24. 32. E 3. Quid iuris cl. 5. 17. E. 3. 29. 46. E. 3. 31. 40. E. 3. 5. 11. H. 4. 34. 14. Eliz. Dier. 309. M. 40. & 41 Eliz. in Communi Banco. Rot. 2115. in reſp. inter Sparke & Sparke.. Hill. 42. Eliz. Sir Iohn Sauages caſe in Curia Wardorum.*

(d) If a man make a leaſe for life to one, the remainder to his Executors for 21. yeares, the terme for yeares ſhall veſt in him, for euen as Anceſtor and Heire are corelatiua, as to Inheritance (as if an eſtate for life bee made to A. the remainder to B. in taile, the remainder to the right heires of A, the fee veſteth in A, as it had beene limitted to him and his heires) euen ſo are the Teſtators and the Executors corelatiua as to any Chattell. And therefore if a leaſe for life be made to the teſtator, the remainder to his Executors for yeares, the Chattls ſhall veſt in the leſſee himſelfe, as well as if it had beene limited to him and his Executors.

CHAP.

Chap. 8. *Sect.* 68.

Of Tenant at will.

Tenant a volũt eſt, ou terres ou tenements ſont leſſes per vn home a vn auter, a auer ⁊ tener a luy a la volunt le leſſor, p force de quel leaſe le leſſee eſt en poſſeſſion, en tiel cas le leſſee eſt appel tenant a volunt, pur ceo que il nad aſcun certaine ne ſure eſtate, car le leſſor luy poit ouſter a quel temps que il luy plerroit: vncore ſi l'leſſee emblea l'terre ⁊ le leſſor apres lembleer, ⁊ deuant q̃ les blees ſont matures luy ouſta, vncore le l'ſſee auera, l's blees, ⁊ aũra, fraĩk entr̃, egres ⁊ regres a ſcier ⁊ de carier les blees, pur c̃ q̃ il ne ſcauoit a quel tempz le leſſor voloit ẽtre ſur luy. Autermt eſt ſi tenãt pur terme dans q̃ conuſt le fine de ſon terme emblea ſa terre, ⁊ le terme eſt finy deuant que les blees ſont matures en ceo cas le leſſor, ou celuy en la reuerſion

A Tenant at will is, where lands or tements are let by one man to another, to haue and to hold to him at the wil of the leſſor, by force of which leaſe, the leſſee is in poſſeſſion, In this caſe the leſſee is called tenant at will, becauſe hee hath no certain nor ſure eſtate, for the leſſor may put him out at what time it pleaſeth him. Yet if the leſſee ſoweth the land, and the leſſor after it is ſowne, and before the corne is ripe put him out, yet the leſſee ſhall haue the corne, and ſhall haue free entrie, egreſſe and regreſſe to cut and carrie away the Corne, becauſe hee knew not at what time the leſſor would enter vpon him. Otherwiſe it is if Tenant for yeares, which knoweth the end of his terme, doth ſow the land, and his terme endeth before the corn is ripe; In this caſe the leſſor, or he in

Flet. lib. 3. cap. 15.

A Tenant a volunt eſt, ou terres ou tenements, ſont leſſes per vn home a vn auter, a auer & tener a luy a la volunt le leſſor, &c. It is regularly true that euery leaſe at will muſt in law bee at the will of both parties, and therefore when the leaſe is made, To haue and to hold at the will of the Leſſor, the law implyeth it to be at the will of the leſſee alſo; for it cannot bee only at the will of the Leſſor, but it muſt be at the will of the leſſee alſo. And ſo it is when the leaſe is made To haue and to hold at the will of the Leſſee, this muſt be alſo at the will of the Leſſor; and ſo are all the Bookes, that ſeeme prima facie to differ, cleerely reconciled.

18. H. 6. 1. 38. H. 6. 21. 9. E. 4. 1. b. 10. E. 4. 18. b. 21. H. 7. 38. 13. H. 8. 16. 14. H. 8. 11. 14.

A Pur ceo que il nad aſcun certaine ou ſure eſtate, &c. Alia poſſeſſio eſt præcaria & alia pro prece conceſſa vt ſi quis ſine ſcripto conceſſerit alicui habitationem vel vſumfructum in re ſua tenenda ad voluntatem ſuam hæc quidem poſſeſſio præcaria eſt & nuda eo quod tempeſtiue & intempeſtiue pro voluntate Domini poterit reuocari.

Flet. lib. 3. cap. 15.

A Vncore ſi le leſſee emblea la terre, & le leſſor apres le embleer, &c. The reaſon of this is, for that the Eſtate of the Leſſee is vncertaine, and therefore leaſt the ground ſhould be vnmanured, which ſhould bee hurtfull to the Common-wealth, hee ſhall

shall reape the Crop which hee sowed in peace, albeit the Lessor doth determine his will before it be ripe. And so it is if he set roots, or sow Hempe or Flax, or any other annuall profit if after the same bee planted, the Lessor oust the Lessee, or if the Lessee dieth yet he or his Executors shall haue that yeares crop. But if he plant young fruit trees, or young Okes, Ashes, Elmes, &c. or sowe the ground with Acornes, &c. there the Lessor may put him out notwithstanding, because they will yeald no present annuall profit. And this is not only proper to a Lessee at will, that when the Lessor determine his will that the Lessee shall haue the Corne sowne, &c. but to euery particular Tenant that hath an estate incertaine, for that is the reason which Littleton expresseth in these words (Pur ceo que il nad ascun certeine ou sure estate.) And therefore if Tenant for life soweth the ground, and dieth his Executors shall haue the Corne, for that his estate was vncertaine, and determined by the act of God. And the same law is of the Lessee for yeares of Tenant for life. So if a man be seised of land in the right of his wife, and soweth the ground, and he dieth, his Executors shall haue the corne, and if his wife die before him he shall haue the Corne. But if husband and wife be ioyntenants of the land, and the husband soweth the ground and the land surviueth to the wife, it is said (a) that she shall haue the Corne. If Tenant pur terme dauter vie soweth the ground, and Cesty que vie dieth, the Lessee shall haue the Corne. If a man seised of lands in fee and hath issue a daughter and dieth his wife being enseint with a sonne, the daughter soweth the ground the sonne is borne, yet the daughter shall (b) haue the Corne because her estate was lawfull, and defeated by the act of God, and it is good for the Common wealth that the ground be sowen. (c) But if the Lessee at will sowe the ground with Corne, &c. and after he himselfe determine his will and refuseth to occupie the ground, in that case the Lessor shall haue the Corne because he loseth his Rent. And if a woman that holdeth land Durante viduitate sua soweth the ground and taketh husband, (d) the Lessor shall haue the emblements because that the determination of her owne estate grew by her owne act. But where the estate of the Lessee being incertaine is defeasible by a right paramount, or if the Lease determine by the act of the Lessee as by forfeiture, condition, &c. (e) There he that hath the right paramount, or that entreth for any forfeiture, &c. shall haue the Corne.

If a Disseisor sowe the ground and seuer the corne, and the Disseisee re-enter (f) hee shall haue the corne because he entreth by a former title, and seuerance or removing of the corne altereth not the case, for the regres is a recontinuation of the freehold in him in iudgement of Law from the beginning.

(g) If tenant by statute Merchant soweth the ground, and then a sodaine and casuall profit faileth by which he is satisfied, he shall haue the emblements.

¶ *Le lessor luy puit ouster.* **There is an expresse** ouster, **and implied** ouster, an expresse, as when the Lessor commeth vpon the land, and expressly forewarneth the Lessee to occupie the ground no longer; an implied, as if the Lessor without the consent of the Lessee enter into the land and cut downe a tree, this is a determination of the will, for that it should otherwise be a wrong in him, vnlesse the trees were excepted, and then it is no determination of the will, for then the act is lawfull albeit the will doth continue. If a man leaseth a Mannor at will whereunto a Common is appendant, if the Lessor put in his beasts to vse the Common this is a determination of the will. The Lessor may by actuall entrie into the ground determine his will in the absence of the Lessee, but by words spoken from the ground the will is not determined vntill the Lessee hath notice. So more then the discharge of a Factor, Attorney, or such like in their absence is sufficient in Law vntill they haue notice thereof.

(a) If a woman make a Lease at will reseruing a Rent and she taketh husband, this is no countermand of the Lease at will, but the husband and wife shall haue an action of debt for the Rent, and so it is if a Lease be made to a woman at will reseruing a Rent and the Lessee taketh husband this is no countermand of the Lease but the Lessor may haue an action of debt or distreine them for the Rent: so if the husband and wife make a Lease at will of the wifes land reseruing a Rent and the husband die, yet the Lease continueth. In like manner if a Lease be made by two to two others at will and the one of the Lessors or of the Lessees die the Lease at will is not determined in neither of those cases; which are necessarie points to be knowne.

¶ *Apres lembleer, & deuant que les blees sont matures.* **Then put the** case that the corne is ripe and ready cut downe, and the Lessor before the Lessee reapeth it, enter, and put out the Lessee, whither shall the Lessee haue the corne? and it is without all question that the Lessee shall haue it, for by the same reason that he shall haue it when he is put out before it

auera les blees, pur ceo que le termor conust le certaintie de son terme quant son time serroit finy. the reuersion shal haue the corne becausse the Lessee knew the certaintie of his tearme, & when it should end.

18.E.4.18.

Tempr E.1.br.25.
19.Ass pl.6.
20.E.3.29.
46.E.3.1.
7. H.4.17.
7. Ass.19.
Lib.5.136. Olands case.

(a) *8.Ass.21.*
8.E.3.54.
Dier 316.

(b) *18.H.6.6.*
(c) *Lib.5 fo.106. Olands case.*
(d) *Olands cas. vbi supra.*

(e) *33.E.3.tresp.F.254.*
42.E.3.25.
Olands case.
Vbi supra.
(f) *27.H.6.1. 37.H.6.6.*
12.E.4.45. 14.E.4.6.
15.E.4.31. 2.H.7.1.
5.H.7.17. 12.H.7.25.
10.H.4.1. 28.H.8.32.
Dier.
(g) *44.E.3.15.*
Fleta lib.3. cap.15.
(h) *35.H.6.24. 21.H.6.9.*
1.E.4.3. 21.E.4.5.
Pl.com. persons case.
Henxlands case.

14.E 4.6.
8.E 4.11. &c.

(a) *Lib.5.fol.10.*
Henstead's case.
10.Eliz. Dier.269.b.

it be ripe, he ſhall haue it when he is put out when it is ripe, Et vbi eadem eſt ratio, ibi idem jus.

¶ *Et auxi franke entrie, egres & regres.* (b) For when the Law doth giue any thing to one, it giueth impliedly whatſoeuer is neceſſary, for the taking and enioying of the ſame Quando lex aliquid alicui concedit, concedere videtur, & id ſine quo res ipſa eſſe non poteſt, and the Law in this caſe driueth him not to an action for the corne, but giueth him a ſpeedy remedy to enter into the land, and to take and carry it away, and compelleth not him to take it at one time, or to carry it before it be ready to be carried; and therefore the law giueth all that which is conuenient, viz. free entrie egreſſe and regreſſe as much as is neceſſary.

(b) *Temps E.1 tit grant 4.* *Holt 524.* *9.E.4.35. 5.E.3.treſp.13.* *1 Salk.19.20* *21 H.7.14 b 8.H.6.18.b.* *2.R.2 barre.237.* *14.H.8.2. 27.H.8.12.b*

If the Leſſee be diſturbed of this way which the law doth giue vnto him, he ſhall haue his action vpon his caſe, and recouer his damages, and this action the law doth giue vnto him; for whenſoeuer the law giueth any thing, it giueth alſo a remedy for the ſame. But here is to be obſerued a diuerſity, betweene a Priuate way, whereof Littleton here ſpeaketh, and a common way. For if the way be a common way, if any man be diſturbed to goe that way, or if a ditch be made ouerthwart the way ſo as he cannot goe, yet ſhall he not haue an action vpon his caſe, and this the law prouided for auoyding of multiplicity of ſuites, for if any one man might haue an action, all men might haue the like. But the law for this common nuſance hath prouided an apt remedy, and that is by preſentment in the Leete or in the Corne, vnleſſe any man hath a particular damage as if he and his horſe fall into the ditch whereby he receiued hurt and loſſe, there for this ſpeciall damage which is not common to others, he ſhall haue an action vpon his caſe, and all this (c) was reſolued by the Court in the Kings bench: And in that caſe it was ſaid that it had beene adiudged in that Court betweene Weſtbury and Powell that where the Inhabitants of Southwarke had by cuſtome a watering place for their cattell which was ſtopped vp by Powell that in that caſe any Inhabitant of Southwarke might haue an action, for otherwiſe they ſhould be without remedy becauſe ſuch a nuſance is not preſentable in the Leete or Corne: Note the diuerſitie.

(c) 27.H.8.27. 2.E.4.9. 5.E.4.2. Tr. 41.Eliz. betweene Finucx and Hoxenden. Vid.lib.5.fo.72. Williams caſe.

There be three kinde of wayes, whereof you ſhall (d) reade in our ancient bookes. First a foote way, which is called Iter, quod eſt jus eundi vel ambulandi hominis, and this was the firſt way.

(d) *Fleta lib.4.ca.27.* *Bracton.lib.4.fo.232.*

The ſecond is a foote way and horſe way, which is called actus ab agendo; and this vulgarly is called packe and prime way, becauſe it is both a foot way, which was the firſt or prime way, and a packe or drift way alſo.

The third is via or aditus which conteyne the other two, and alſo a cart way, &c, for this is jus eundi, vehendi, & vehiculum & iumentum ducendi; and this is twofold, viz. Regia via the Kings high way for all men, & comunis ſtrata belonging to a Citie or Towne, or betweene neighbours and neighbours. This is called in our bookes chimin being a French word for a way, whereof commeth chiminage chiminagium, or chimmagium, which ſignifieth a Toll due by cuſtome, for hauing a way through a Forreſt; and in ancient Records it is ſometime alſo called Pedagium.

32.E.3.barre 261. 27.E.3.78. 6.E.3.23. *Carta de foreſta cap.14.*

If the Leſſee at will by good husbandrie and induſtry, either by ouerflowing or trenching, or compaſſing of the meadowes, or digging vp of buſhes or ſuch like make the graſſe to growe in more abundance, yet if the Leſſor put him out, the Leſſee ſhall not haue the graſſe, becauſe that the graſſe is the naturall profit of the earth. And the ſame law is if he doth ſowe hay ſeed, and thereby encreaſeth the graſſe.

¶ *Autrement eſt de tener a terme dans que conuſt le fine de ſon terme, &c.* Well ſaid Littleton (which knoweth the end of his terme) that is, where the end of the terme is certaine, but where the Leaſe for yeares depends vpon an incertainty, as vpon the death of tenant for life being made by him, or of a husband ſeiſed in the right of his wife or the like, there it is otherwiſe.

Section 69.

¶ Item ſi vn meſe ſoit leſſee a vn home a tener a volunt, p force de quel le leſſee enter en le meſe, deins quel meſe

ALſo if a houſe bee letten to one to hold at will, by force whereof the leſſee entreth into the houſe, & brings his houſhold-

¶ *Si vn meſe ſoit leſſe a vn home a tener a volunt, &c.* The reaſon of this is euident vpon that which hath beene ſaid before.

¶ *Meſe*, or maiſon,

ſon, called in legall Latine Meſſuagium, containeth (as hath beene ſaid) the Buildings, Curtelage, Orchard, and Garden.

Cottage, Cotagium is a little houſe without land to it. (a) See 31.Eliz. cap.1. and Cottagers in Domeſday booke are called Cotterelli: And in antient Records haga ſignifieth a houſe. If a man hath a houſe neere to my houſe, and he ſuffereth his houſe to be ſo ruinous, as it is like to fall vpon my houſe, (b) I may haue a Writ de domo reparando, and compell him to repaire his houſe. But a Præcipe lieth not de domo, but de meſſuagio.

(a) 31.El.ca.1. in Domeſday.

(b) Reg.153.F.N.B.127. 4.E.2.Vouch. 244. Six acres of land may be parcel of a houſe.

¶ *Per reaſonable temps.* (c) This reaſonable time ſhall be adiudged by the diſcretion of the Iuſtices, before whome the cauſe dependeth; and ſo it is of reaſonable fines, cuſtomes, and ſeruices, vpon the true ſtate of the caſe depending before them: for reaſonableneſſe in theſe caſes belongeth to the knowledge of the Law, and therefore to be decided by the Iuſtices. (d) Quam longum eſſe debet non definitur in iure, ſed pendet ex diſcretione Iuſticiariorum: And this being ſaid of time, the like may be ſaid of things incertaine, which ought to be reaſonable; for nothing that is contrarie to reaſon, is conſonant to Law.

(c) 22.E.4.27.34.H.6.40.

(d) Bract.li.2.ca.52.b.

il porta ſes vtenſils de meaſon, & puis le Leſſor luy ouſta, vncore il auera franke entre egreſſe & regreſſe en meſme le meſe per reaſonable temps, de carrier ſes biens & vtenſils. Sicome home ſeiſie dun meſe en fee ſimple, fee taile, ou pur terme de vie, le quel ad certaine biens deins ñ le meſe, & fait ſes executors, & dëy, quecunque apres ſa mort ad l' meſe, vncor les executors añont franke entry egreſſe & regres ô carier hors de meſme le meſe les bñs lour teſtator per reaſonable temps.

ſtuffe into the ſame, and after the Leſſour puts him out, yet he ſhall haue free entrie, egreſſe and regreſſe into the ſaid houſe, by reaſonable time to take away his goods and vtinſels. As if a man ſeiſed of a meſe in fee ſimple, fee taile, or for life, hath certaine goods within the ſayd houſe, and makes his Executors, and dieth, whoſoeuer after his deceaſe hath the houſe, his Executours ſhall haue free entrie egreſſe and regreſſe to carrie out of the ſame houſe the goods of their teſtatour by reaſonable time.

¶ (e) *Sicome home ſeiſi dun meſe en fee ſimple, ou fee taile, &c.* This is ſo euident, as it needeth no explanation.

(e) 2.H.6.15. 21.H.6.30.

Section 70.

¶ HEre it appeareth, That if the Feoffee doth enter, he is tenant at will, becauſe hee entreth by the conſent of the Feoffor.

¶ *Et deliuer a luy le fait.* Albeit the deed be deliuered vppon the Ground, yet doth it not amount to a liuerie of ſeiſin of the Land; for it hath his naturall effect to make it a Deed. (f) Donationum alia perfecta, alia incepta & non perfecta: Vt

(f) Flet.li.3 ca.3. & ca.15. 43.E.3.Tit Feoff. & faits 51. 35.H.8.Feoff.Br.27.Aſſ.61. 38.Aſſ 2.39.Aſſ.12. 41.E.3.17.li.6.fo.26. Sharpleſſe.

¶ Item ſi vn hõe fait vn fait de Feoffement a vn auter de certaine terre, & deliuer a luy le fait, mes nemy liuerie de Seiſin, en ceo caſe, celuy a que le fait eſt fait, poit enter en le Terre, & tener & occupier a la volunt celuy que fiſt

ALſo if a man make a Deed of Feoffement to another, of certaine lands, and deliuereth to him the Deed, but not liuerie of ſeiſin; in this caſe he to whom the Deed is made, may enter into the Land, and hold and occupie it at the will of him which

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le fait, pur ceo que il eſt proue per les parols del fait, que il eſt la volunt que le auter auera la terre, mes celuy que fiſt le fayt luy poet ouſte quaunt luy pleiſt.

made the Deed, becauſe it is prooued by the words of the Deed, that it is his will that the other ſhould haue the land; but hee which made the Deed may put him out when it pleaſeth him.

ſi donatio lecta fuerit & conceſſa ac traditio nondum fuerit ſubſecuta. But if the Deede be deliuered in name of ſeiſin of the Land, or if the Feoffor ſaith to the Feoffee, Take and enioy this Land according to the Deed, or enter into this Land, and God giue you ioy, theſe words doe amount to a liuery of ſeiſin.

Section 71.

¶ Item ſi vn meſe ſoit leſſe a tener a volunt, le leſſee neſt pas tenus a ſuſteiner ou repairer le Meaſon, ſicome Tenant a terme dans eſt tenus. Mes ſi le Leſſee a volunt fait voluntarie waſt, ſicome en abatement des meaſons, ou en couper des arbres, il eſt dit que le Leſſor auera de ceo enũs luy action de Treſpaſſe. Sicome ieo bayle a vn hõe mes barbits a cõpeſter ſ̃ tr̃, ou mes boefes a aret̃ la terr̃, & il occiſt mes auers, ieo puiſſoy bñ añ vn acc̃ ó trñs enũs luy nient obſtant l'bailement.

ALſo if a houſe be leaſed to hold at will, the Leſſee is not bound to ſuſtain or repaire the houſe, as Tenant for terme of yeres is tied. But if Tenant at will commit voluntarie waſt, as in pulling downe of houſes, or in felling of trees, it is ſaid that the Leſſor ſhall haue an action of Treſpaſſe for this, againſt the Leſſee. As if I lend to one my Sheepe, to tathe his land, or my Oxen to plow the land, and he killeth my Cattle, I may well haue an action of Treſpas againſt him, notwithſtanding the lending.

¶ *Si vn meſe ſoit leſſe a tener a volunt le leſſee neſt paſſe tenus, &c.* For the ſtatute of Glouceſter aboue mentioned extends not to a Tenant at will, and therefore for permiſſiue waſt, the leſſor hath no remedie at all.

¶ *Mes ſi Leſſee a volunt fait voluntary waſt, &c.* (g) And true it is, That if Tenant at will cutteth downe timber Trees, or voluntarily pul downe and proſtrate houſes, the Leſſour ſhall haue an action of Treſpaſſe againſt him, quare vi & armis, for the taking vpon him power to cut timber, or proſtrate houſes, concerneth ſo much the freehold and inheritance as it doth amount in Law to a determination of his will, (h) and ſo hath it beene adiudged.

(g) 21.H.6.38. 28.E.3.25. 12.H.4.3.22.E.4.50.

(h) *Mich.*18.& 19.*Eliz.* *Rot.*318.*in Cem. Banc. enter Walgrane & Somerſet. V. le Comte de Shrewsburies caſe, li.*5.*fo.*13.

(i) If Tenant at will granteth ouer his eſtate to another, and the Grantee entreth, he is a Diſſeiſor, and the leſſor may haue an Action of Treſpaſſe againſt the grantee, for albeit the grant was void, yet it amounteth to a determination of his will.

(i) 27.H.6.3.22.E.4.5.

¶ *Sicome ieo baile a vn home mes barbits a compeſter ſon terre, &c.* And the reaſon is, (k) that when the Bailife hauing but a bare vſe of them, taketh vpon him as an owner, to kill them, he loſeth the benefit of the vſe of them. Or in theſe caſes hee may haue an action of Treſpaſſe ſur le caſe, for this conuerſion, at his election.

(k) V.11.H.4.24.1.E.4.9.b 12.E.4.8. 21.E.4.19.& 76. 22.E.4.5. 3.H.7.4. 21.H.7. 14. Flo. li. 2.ca. 1.

¶ *Treſpaſſe.* Tranſgreſſio deriuatur a tranſgrediendo, because it paſſeth that which is right: Tranſgreſſio autem eſt cum modus non ſeruatur, nec menſura: debet enim quilibet in ſuo facto modum habere, & menſuram: Nota, In the loweſt and the higheſt offences there are no acceſſaries, but all are principals, as in ryots, routs, forcible entries, and

other tranſgreſſions vi & armis, which are the loweſt offences, and ſo in the higheſt offence which is crimen leſæ majeſtatis, there be no acceſſaries: but in felonies there be acceſſaries both before and after.

Sect. 72.

21.H.7.39.b. 2.E.4.6.b. 7.E.4.27.a. 6.R.2.Auowrie 86.

CIL *poet diſtreyner pur le rent arere ou auer de ceo vn action de debt, &c.* **But if he** impound the diſtreſſe vpon the ground letten at will, the will is determined. Note he may diſtreine for the Rent, and yet it is no Rent ſeruice, for no fealty belongeth thereunto, but a Rent diſtreinable of common right.

CNOta ſi le leſſor ſur tiel leaſe a volunt reſerue a luy vn annual rent, il poit diſtrainer pur le rent arere, ou auer de ceo vn action de debt a ſon election.

NOte if the leſſor vpon a leaſe at will, reſerue to him a yearely rent, he may diſtreine for the rent behinde, or haue for this an action of debt at his owne election.

(l) *Bracton lib.4.fol.318. 4.E.3.39.7.E.3.13. 24.E.3.24. 38.E.3.28. 7.R.2.ſauour deff.30. 8.E.4.25.4 H.6.30. 22 E.4.38. 18.E.4.25. F.N.B.201.D.203. 8.E.2.entre 87. Temps H.8.b.15. tit.tenant a volunt. Pl.com.138. 4.H.7.3.*

(m) *13.H.7.10 a. 21.H.6.54. 5.E.4.3. 22.R.2.tit. Diſcent. 48.E.3.23.pl.com.435. 19.E.3.bre. 468. 25.E.4. Diſcent.30. 6.E.3.56.57. 21.E.4.5. 21.H.7.38. 10.E.4.18. Ter Choke. & Litt.*

(n) *Statute de Merlbridge cap.26. Abb.Aſſ.120.b. F.N.B.196. 11.E.4.10. & 11. Brack.lib.4 fo.252.253.*

There is a great diuerſity betweene a tenant at will, and a Tenant at ſufferance; for Tenant at will is alwayes by right, and Tenant at ſufferance entreth by a lawfull Leaſe, and holdeth ouer by wrong. A Tenant at ſufferance is he that at the firſt came in by lawfull demiſe, and after his eſtate ended continueth the poſſeſſion and wrongfully holdeth ouer. (l) As Tenant pur terme dautre vie, continueth in poſſeſſion after the deceaſe of Ce' que vie, or tenant for yeares holdeth ouer his tearme; the Leſſor cannot haue an action of treſpaſſe before entrie. Now that a Writ of entrie ad terminum qui preterijt lyeth againſt ſuch a Tenant as holdeth ouer, is rather by admiſſion of the demandant, then for any eſtate of Freehold that is in him, for in iudgement of Law he hath but a bare poſſeſſion, but againſt the King there is no tenant at ſufferance, but he that holdeth ouer in the caſes aboue ſaid is an intruder vpon the King, becauſe there is no laches imputed to the King for not entring (m) If Tenant in taile of a Rent grant the ſame in fee and dieth, yet the iſſue in taile may bring a Formedon and admit himſelfe out of poſſeſſion. The like Law is it if a man maketh a Leaſe at will and dieth, now is the will determined, and if the Leſſee continueth in poſſeſſion he is Tenant at ſufferance, and yet the heire by admiſſion may haue an aſſize of Mordanc' againſt him. (n) But there is a diuerſity betweene particular eſtates made by the tertenaunt, as aboue is ſaid, and particular eſtates created by act in Law: as if a gardian after the full age of the heire, continueth in poſſeſſion, he is no Tenant at ſufferance, but an Abator, againſt whom an Aſſize of Mordanceſter doth lye, Et ſic de ſimilibus.

CHAP. 9. *Section* 73.

Tenant by Coppie.

CT*Enant per copie, &c.* Tenens per copiam rot. Cur'. Copie we call in Latyn copiam, though copia in his proper ſignification ſignifieth plenty, but we haue made a Latyn word of the French word copie and this is ancient for in the Regiſter fo.51. there is a Writ de copia libelli deliberanda, which is grounded vpon the ſtatute of 2.H.4.ca. There is no tenant in the Law, that holdeth

CTEnant p copie de court roleſt, deins quel manor il y ad vn cuſtome que ad eſte vſe de temps dont memorie ne court, que certaine tenants deins meſm le manor, ont vſe dauer terres & tenements, a tener a

TEnant by copy of Court Roll is, as if a man be ſeiſed of a mannor, within which manor there is a cuſtome, which hane beene vſed time out of minde of man, that certaine tenants within the ſame manor haue vſed to haue lands and te-

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eux & la lour heires en fee ſimple, ou en fee taile, ou a terme de vie, &c. a volunt le Seignior ſolonque le cuſtome de meſme le manor.

nements to hold to them and their heires in fee ſimple, ou fee taile or for terme of life, &c. at the will of the Lord according to the cuſtome of the ſame manor.

by copie but only this kinde of cuſtomary tenant, for no man holdeth by copie of a Charter, or by copie of a fine, or ſuch like, but this tenant holdeth by copie of Court roll.

(a) Bracton calleth Copiholders Villanos Sockmānos, not becauſe they were bond, but becauſe they held by baſe tenure by doing of Villein ſeruices.

(a) *Bracton lib.*2. *ca.*8. *fo.*26. *& lib.*4. *fo.*209. *Britton.*165. *Fleta lib.*1. *cap.*8. *& lib.*2. *cap.*6. *Item de conſuetudinibus. Oc'ard Cap. quid mandrum. F.N.B. fo.*12. *c.*

And Britton ſaith that ſome that be free of blood doe hold land in Villenage, and Littleton himſelfe in the next chapter calleth them tenants by baſe tenure: and in F.N.B. fo.12.C. Et ceſt terme que eſt ore a ceſt jour appel copitenaunts ou copiholders, ou tenaunts per copie, eſt forſque vn novel noſme trove, car dancient temps ils fuer' appelles tenants in Villenage, ou de baſe tenure, &c. (b) And yet in 1.H.5.11. they be called Coppiholders in 14.H.4.34. tenant per le verge in 42.E 3 25. Tenant per Roll ſolonque le volunt le ſeignior; and in the ſtatute of 4.E.1. called extenta manerij they are called Cuſtumarij tenentes, and ſo doth Fleta call them; And before him Ockam (who wrote in the raigne of H.2.) ſpeake of them and how and vpon what occaſion they had their beginning.

(b) *1.H.5.11.14.H.4.34. 42.E.3.25. Vid. lib.4 fo.2. Brownes caſe.*

(c) Terra ex ſcripto Saxonice Bockland, fundū veteres aut ex ſcripto qui Bockland. i. booklād, aut ſine ſcripto qui Folkland dicebatur, poſſidebant, que fuit ex ſcripto poſſeſſio commodiore erat poſſeſſione libera, atque immunis, fundus ſine ſcripto cenſum penſitabant annuū, atque officiorum ſeruitute quadam eſt obligatus, priorem viri plerunque nobiles, atque ingenui, poſteriorem ruſtici fere & pagani poſſidebant.

(c) *Lamb. verb. terra ex ſcripto.*

¶ *Court.* Curia, **Court is a place where Juſtice is iudicially miniſtred** and is deriued a cura quia in curijs publicis curas gerebant. (d) The Court baron muſt be holden on ſome part of that which is within the Mannor, for if it be holden out of the Mannor it is voide, vnleſſe a Lord being ſeiſed of two or three Mannors hath vſually time out of minde kept at one of his Mannors Courts for all the ſaid Mannors, then by cuſtome ſuch Courts are ſufficient in Law, albeit they be not holden within the ſeuerall Mannors. And it is to be vnderſtood that this Court is of two natures, the firſt is by the Common Law, and is called a Court baron, as ſome haue ſaid for that it is the freholders or freemans Court, (for barons in one ſence ſignifie freemen) and of that Court the freholders being ſuitors be iudges, and this may be kept from three weekes to three weekes; The ſecond is a cuſtomary Court, and that doth concerne Coppiholders, and therein the Lord or his Steward is the iudge. Now as there can be no Court baron without freholders, ſo there cannot be this kinde of cuſtomary Court without Coppiholders or Cuſtomary holders. And as there may be a Court baron of Freholders only without Coppiholders, and then is the ſteward the Regiſter, ſo there may be a cuſtomary Court of Coppiholders only without Freholders, and then is the Lord or his ſteward the iudge. And when the Court baron is of this double nature, the Court Roll conteineth aſwell matters appertaining to the cuſtomary Court as to the Court baron.

(d) *Vid. 4 fo.24. iuras Murrell & Southeodens lib.fo.27. inter Cliſton & Molineux.*

Lib.4.fo.26. Malwitches caſe. Britton fol 274.

And forasmuch as the title, or eſtate of the Copiholder is entred into the Roll whereof the ſteward deliuereth him a copie, thereof he is called Copiholder. (e) It is called a Court baron becauſe amongſt the lawes of King Edw: the Confeſſor it is ſaid: Barones vero qui ſuam habent curiam de ſuis hominibus, &c. taking his name of the Baron who was Lord of the Mannor, or for that properly in the eye of Law it hath relation to the Freholders, (f) who are Iudges of the Court. And in Ancient Charters and Records the Barons of London, and Barons of the Cinque ports doe ſignifie the free men of London and of the Cinque ports.

(e) *Lamb fo.*128 *&* 136. *Cambden Brit. fo.*121. *b. Britton fo* 274.

(f) *Mirror cap.*1. §.3.

¶ *Seiſie dun mannor.* Manerium dicitur a manendo ſecundum excellentiam ſedes magna fixa & ſtabilis. Lageman .i. habens ſocam & ſacam ſuper homines ſuos, &c. (g) Et ſciendum eſt quod manerium poterit eſſe per ſe ex pluribus edificijs coadiuuatum ſiue villis & hamletis adjacentibus. Poterit etiam eſſe manerium & per ſe & cum pluribus villis & cum pluribus, Hamletis adjacentibus, quorum nullum dici poterit manerium per ſe ſed villæ ſuæ hamlettæ, poterit etiam eſſe per ſe manerium capitale, & plura continere ſub ſe maneria non capitalia, & plures villas & plures Hamlettas quaſi ſub vno capite aut dominio vno. And afterwards, Manerium autem fieri poterit ex pluribus villis vel vna, plures enim villæ poterunt eſſe in corpore manerij ſicut & vna. And in theſe (h) ancient Authors you ſhall ſee the difference, inter manſionem, villam, & manerium. Concerning the inſtitution of this Court by the Lawes and Ordinances of ancient Kings and eſpecially of King Alfred, it appeareth

Domeſday.

(g) *Bracton lib.4.fol.*212. *Fleta lib.4.cap.*15. *& lib.*6. *cap.*49. *Britton fol.*124.

(h) *Bract. lib.*5 *fo.*434. *Fleta ubi ſupra. Mirror. cap.*1. §.3.

that the first Kings of this Realme had all the Lands of England in Demeane, and les grand Manors & Royalties they reserued to themselues, and of the remnant they, for the defence of the Realme, enfeoffed the Barons of the Realme with such iurisdiction as the Court Baron now hath, and instituted the Freeholders to be Iudges of the Court Baron. And herewith agreed the aforesaid Law of Saint Edward. And it is to be obserued, that in those ancient Lawes vnder the name of Barons were comprised all the Nobilitie.

There may be a customarie Manor granted by Copie of Court Roll, so although the word be (seisie) which properly betokeneth a Freehold, yet Tenant for yeares, Tenant by Statute, Merchant, Staple, Elegit, and Tenant at will, Garden in Chiualrie, &c. who are not properly seised but possessed are Domini pro tempore, not only to make admittance, but to grant voluntarie Copies of ancient Copihold lands which come into their hands. And therefore there is a diuersitie betweene Disseisors, Abators, Intruders, and others that haue defeasible Titles, for their voluntary grants of ancient Copihold lands, shall not binde the Disseisors or others that right haue. And voluntarie grants by Copie, made by such particular Tenants as is aforesaid, shall bind him that hath the Freehold and Inheritance, because all these be lawfull Lords for the time being, but so is not a Tenant at sufferance, because he is in by wrong as hath beene said, and so (i) was it adiudged P. 29. Eliz. inter Rowle & Arteis lib 4. fol. 24. But admittances made by Disseisors, Abators, Intruders, Tenant at sufferance or others that haue defeasible Titles, stand good against them that right haue because it was a lawfull act, and they were compellable to doe them.

(i) *Lib.4.fol.24.p.29. Eliz. inter Rous & Arteis.*

(k) And yet in some speciall case an Estate may be granted by Copie, by one that is not Dominus pro tempore, nor that hath any thing in the manor. As if the Lord of a manor by his will in writing, deuiseth that his Executor shall grant the customary Tenements of the Manor according to the custome of the Manor for the payment of his debts, and dieth, the Executor hauing nothing in the Manor may make grants according to the custome of the Manor.

(k) *Dier. Mich. 7. & 8. Eliz. Manuscript.*

¶ *Deins quel mannor il y ad vn Custome que ad este vse de temps dont memory ne court, &c.* **Of this custome here spoken of there bee** three supporters. The first is time, and that must be out of memory of man, which is included within this word (custome) so as Copihold cannot begin at this day. (l) The second supporter is that the Tenements be parcell of the Manor or within the Manor, which appeare by these words of Littleton, que certeine tenants deins mesme le mannor, &c. The third supporter is that it hath beene demised and demisible by copie of Court Roll, for it neede not to be demised time out of mind by copie of Court; but if it be demisible it is sufficient. For example: If a Copihold tenement escheat to the Lord, and the Lord keepeth it in his hands by many yeares, during this time it is not demised but demisible, for the Lord hath power to demise it againe.

(l) *Vide lib.4. fol.24. inter Murrel & Smith.*

¶ *A volunt le seignior solonque le custome.* **So as he is not a bare** tenant at will, but a tenant at will according to the custome of the mannor, as shalbe spoken more hereafter in this chapter.

¶ *Certaine tenements.* **What things may be granted by copie, is** necessarie to be knowne: First, a Manor may be granted by copie. Secondly, vnderwoods without the solle may be granted by copie to one and to his heires, and so may the herbage or vesture of land. Thirdly, generally all lands and tenements within the Manor and whatsoeuer concerneth lands or tenements may be granted by copie: as a faire appendant to a Manner may be granted by copy, &c.

Lib.11.17.Sir H. Neuils case.

Lib.4.fol.30.31. inter Hee & Tayler.

¶ *Consuetudines.* **This word** Consuetudo **being deriued** a Consueto, properly signifieth a Custome, as here Littleton taketh it: But in legall vnderstanding it signifieth also Tolles, Murage, Pontage, Pauiage, and such like newly granted by the King; and therefore when the King grantes such things, the words be Concessimus &c. in auxillium villæ prædict' pauiand' &c. consuetudines subscriptas, viz. de quolibet sunnagio, &c.

Regist. F.N.B.270.d. Vet.mag.Cartain oap Itin. fol.151.Bract.lib.3.117. Fleta.lib.1.cap.20.

And it was an Article of the Iustices in Eire to inquire, De nouis consuetudinibus leuatis in regno siue in terra, siue in aqua, & quis eas leuauit & vbi. where consuetudo is taken for Tolles, and such like Taxes or Charges vpon the subiect.

Section 74.

¶ *Et tiel tenant ne puit aliener sa terre, &c.* **And this is**

¶ **Et tiel tenant ne puit alien sa terre per fait, car**

And such a tenant may not alien his land by deed, for then

don-

Donques le Seignior poit entre come en chose forfeit a luy, mes sil voit alien sa terre a vn auter, il couient solonque ascun custome de surrender les tenemẽts en ascun Court &c. en le maine le Seignior, al vse celuy que auera le state, en tiel forin̄, ou a tiel effect.

Ad hanc Curiam venit *A.* de *B.* & sursum reddidit in eadem Curia, vnum mesuagium, &c. in manus Domini, ad vsum *C.* de *D.* & hæredum suorum, vel hæredum de corpore suo exeuntiũ, vel pro termino vitæ suæ, &c. Et super hoc venit prædictus *C.* de *D.* & cœpit de Domino in eadem Curia, mesuagium prædictũ, &c. Habendum & tenendum sibi & hæredibus suis, vel sibi & hæredibus de corpore suo exeuntibus, vel sibi ad terminum vitæ, &c. ad voluntatem domini, secundum consuetudinem manerij, faciendo & reddendo inde redditus, seruitia, & consuetudines inde, prius debita & consueta, &c. Et dat Domino pro fine, &c. Et fecit Domino fidelitatem, &c.

the Lord may enter as into a thing forfeited vnto him. But if hee will alien his land to another, it behoueth him after the custome to surrender the tenements in Court, &c. into the hands of the Lord to the vse of him that shall haue the Estate in this forme or to this effect.

A. of *B.* commeth vnto this Court, and surrẽdreth in the same Court a Mease, &c. into the hands of the Lord, to the vse of *C.* of *D.* and his heires, or the heires issuing of his bodie, or for terme of life, &c. And vpon that, commeth the aforesaid *C.* of *D.* and taketh of the Lord in the same Court, the foresaid Mease &c. To haue and to hold to him and to his heires, or to him and to his heires issuing of his bodie, or to him for terme of life, at the Lords will, after the custome of the Manor to do and yeeld therefore the Rents, Seruices, and Customes thereof before due & accustomed, &c. and giueth the Lord for a fine, &c. and maketh vnto the Lord his fealtie, &c.

trne in Case of alienation, but when a man hath but a right to a Copihold, he may release it by deed or by Copie, to one that is admitted Tenant de facto. *Lib. intrat. 131. Lib. 4. fol. 25. b. inter Kite & Quinton.*

¶ *Alien per fait.* Here it appeareth by Littleton that there must be an alienation: for the making of the Deed alone, vnlesse somewhat passe thereby is no forfeiture: as if he make a Charter of feoffement, or a Deed of demise for life, and make no liuery, this is no forfeiture, because nothing passeth, and therefore no alienation, but otherwise it is of a lease for yeares.

¶ *Forfeit a luy.* This Adiectiue in Latine is forisfactus, the Verbe is forisfacere, and the Noune forisfactura, they are all deriued of foris, (that is) extra and facere, quasi diceret extra legem seu consuetudinem facere to do a thing against or without Law or Custome, and that legally is called a forfeiture. Littleton vseth this word but once in all his booke. What shall be said (k) forfeitures of Copiholds you may read at large in my Reports. (k) *Lib. 4. inter les Copihold cases 21. 23. 25. 27. 28. Lib. 8. 92. 99. 100. Lib. 9. 75. 107. Lib. 10. 131.*

¶ *En ascun Court.* (l) This is the generall custome of the Realme that euerie Copiholder may surrender in Court and need not to alleadge any custome therefore. So if out of Court hee surrender to the Lord himselfe, he need not alleadge in pleading any custome, but if he surrender out of Court into the hands of the Lord by the hands of two or three, &c. Copiholders, or by the hands of the bayliffe or Reeue, &c. or out of Court by the hand of any other, these customes are particular, and therefore he must plead them. (l) *Bract. lib. 2. cap. 8. & lib. 4 49. 15. H. 4. 34. 1. H. 5. 11.*

(m) Bracton lib. 4. fol. 209. speaking of these kind of customary Tenants, saith, Dare autem non possunt tenemẽta sua, nec ex causa donationis ad alios transferre non magis quam villani puri, & vnde si transferre debeant restituunt (m) *Bract. lib. 4. fol. 209. & lib. 2. cap. 8 &c. 14. H. 4. 34.*

ea Domino vel Baliuo & ipſi ea tradant alijs in villenagium tenenda, but although it be incident to the eſtate of a Copihold, to paſſe as our Author ſaith by ſurrenders, (b) Yet ſo forcible is cuſtome that by it a Freehold and Inheritance, may alſo paſſe by ſurrender (without the leaue of the Lord) in his Court and deliuered ouer by the Baily to the feffee according to the forme of the Deed, to be inrolled in the Court or the like.

(b) *Coram rege Mich.* 31. *E.*3 *Randolph Huntingfields caſe.* 3.*E.*3.*Corona* 310. 11.*H.*4.83. *per Thirning.*

¶ *Ad hanc Curiam venit* A. *de* B. *& ſurſum reddidit, &c.* Here Littleton putteth an example of a ſurrender in Court, and in this example three (c) things are to be obſerued.

(c) *Vide lib.*4. *inter les caſes de Copiholds.*

Firſt, That the ſurrender to the Lord be generall without expreſſing of any Eſtate, for that he is but an inſtrument to admit Ceſty a que vſe, for no more paſſeth to the Lord, but to ſerue the limitation of the vſe, and Ce' que vſe, when hee is admitted, ſhall bee in by him that made the ſurrender, and not by the Lord.

Secondly, if the limitation of the vſe be generall, then Ce' que vſe taketh but an eſtate for life, And therefore here Littleton expreſſeth vpon the declaration of the vſe the limitation of the Eſtate, viz. in fee ſimple, fee taile, &c.

(d) *Mich.*2.*&* 3.*Tb.& M. in Com. Banco,* by the whole Court in *Conſtables caſe of Pickenham in Norfolk.*

Thirdly, The Lord cannot grant a larger Eſtate then is expreſſed in the limitation of the vſe. Littleton here putteth his caſe of one. If two ioyntenants be of Copihold lands in fee, and the one out of Court according to the cuſtome ſurrender his part to the Lords hands, to the vſe of his laſt Will, and by his Will deuiſeth his part to a ſtranger in fee, and dieth, and at the next Court the ſurrender is preſented; by the ſurrender and preſentment the ioynture was ſeuered, and the deuiſee ought to be admitted to the moitie of the lands, for now by relation, the ſtate of the land was bound by the ſurrender.

¶ *In manus Domini. Dominus manerij:* The Lord of a Manor is deſcribed (e) by Fleta as he ought to be in theſe words. In omnibus autē & ſupra omnia deſet quēlibet Dominū verbis eſſe veracem, & in operibus fidelem, Deū & Iuſtitiam amantem, fraudem & peccatum odientem, voluntarioſque, malcuolos, & iniurioſos contemnentem, & apud proximos pietatem vultumque motibilem & plenum, ipſius enim intereſt potius conſilio quam viribus vti, proprioue arbitrio: non cuiuſlibet voluntarij iuuenis meneſtralli, vel adulatoris ſed iuriſperitorum virorum fidelium & honeſtorum, & in pluribus experiorum conſilio debet fauere. Qui bene ſibi vult diſponere & familiæ ſuæ, ſcire veram executionem terrarum ſuarum neceſſarium erit, vt perinde ſciat quantitatem ſuarum facultatum & finem annuarum expenſarum. And the reſidue is fit for euery Lord of a Manor to know and follow which were too long here to be recited, only his concluſion hauing ſpoken of the Lords reuenue and expenſes I will adde, Quæ omnia diſtincte ſcribantur in membranis, vt perinde ſagacius vitam ſuam diſponat & facilius conuincat mendacia compoſtariorum.

(e) *Fleta. lib.*2.*ca.*65.*&* 71.

(f) If the Lord of the Manor for the time being be Leſſee for life or for yeares, garden, or any that hath any particular intereſt, or tenant at will of a Manor (all which are accounted in law Domini pro tempore) doe take a ſurrender into his hands, and before admittance the Leſſee for life dieth, or the yeares intereſt or cuſtodie doe end or determine, or the will is determined, though the Lord commeth in aboue the Leaſe for life or for yeares, the cuſtodie or other particular intereſt or tenancie at will; yet ſhall he be compelled to make admittance according to the ſurrender, and ſo was it holden in 17. Eliz. in the Earle of Arundels Caſe, which I my ſelfe heard.

(f) *See more of this lib.*4. *the caſes of Copiholds. Trin.*1.*Ia.Rot.*854. *inter Sbapland & Ridler in repl. in Com. Bance, the caſe of the Garden in Soeage adiudged.*

¶ *Et dat Domino de fine.* For the ſignification of this word (finis) vide Sect. 174. 183. 194. 441.

Of fines due to the Lord by the Copiholder, ſome be by the change or alteration of the Lord, and ſome by the change or alteration of the tenant, the change of the Lord ought to be by Act of God, otherwiſe no fine can be due, but by the change of the tenant either by the Act of God, or by the act of the partie a fine may be due: for if the Lord doe alledge a cuſtome within his Manor to haue a fine of euery of his Copiholders of the ſaid Manor at the alteration or change of the Lord of the Manor, be it by alienation, demiſe, death, or otherwiſe; This is a cuſtome againſt the Law, as to the alteration or change of the Lord by the act of the partie, for by that meanes the Copiholders may be oppreſſed by multitude of fines, by the act of the Lord. But when the change groweth by the act of God, there the cuſtome is good as by the death of the Lord. And this, vpon a Caſe in the Chancerie (g) referred to Sir Iohn Popham Chiefe Iuſtice, and vpon conference with Anderſon, Periam, Walmeſley, and all the Iudges of Sergeants Inne in Fleeſtreet, was reſolued, and ſo certified into the Chancerie. But vpon the change or alteration of the Tenant, a fine is due vnto the Lord.

(g) T. 39. *Eliz. betweene the Copiholders of the Manor of Guiltrins, in the Countie of Northumberland and Armeſtrong, Lord of the Manor in Chancerie.*

Of fines taken of Copiholders ſome be certaine by cuſtome, and ſome bee incertaine but that fine though it be incertus, yet muſt it bee rationabilis. And that reaſonablenеſſe ſhall bee diſcuſſed by the Iuſtices vpon the true circumſtances of the Caſe appearing vnto them, and if the Court where the cauſe dependeth, adiudgeth the fine exacted vnreaſonable, then is not the Copi-

Copyholder compellable to pay it. And so was it adiudged (h) for all excessiuenesse is abhorred in Law. See more concerning fines of Copyholders in my Reports (i) which are so plainly there set downe, as they need not be rehersed here.

(h) *Pasch.*1.*Iac.in com. banco rot.*1845.*inter Stal'es & Brady.*

(i) *Lib.*4.*the cases of Copyholds.*

*Sect.*75.

CEt tiels tenants sont appelles Tenants per copie de court Rolle, pur ceo que ils nont auter euidence concernãt lour tenemẽts, forsque les Copies des Rolles d Court.

And these tenants are called tenants by copie of court Rolle, becausse they haue no other euidence concerning their tenements but only the Copies of Court Rolles.

¶ *Ils nont auter euidence.* **This is to** be vnderstood of euidences of alienation, for a release of a right by Deed a Copyholder (that commeth in by way of admittance) may haue, and that is sufficient to extinguish the right of the Copyhold which he that maketh the release had.

Section 76.

CEt tiels tenãts ne empledерõt, ne serront empledes de lour tenements p briefe le Roy. Mes ils voilent empleder auters pur lour tenements, ils aueront vn plaint fait en le Court le Seignior en tiel forme, ou a tiel effect: A.de B. queritur versus C. de D. de placito terræ, videlicet, de vno mesuagio, quadraginta acris terr',quatuor acris prati,&c. cum pertin. & facit protestationem sequi querelam istam in natura breuis domini Regis assisæ mortis anteceſſoris ad communẽ legẽ, vel breuis domini regis assisæ Nouæ disseisinæ ad cõmunem legem, aut in natura breuis de formedon in the discender at the

And such tenants shall neither impleade nor be impleaded for their tenements by the Kings writ, but if they will implead others for their tenements, they shall haue a plaint entred in the Lords Court in this forme, or to this effect. A.of B. complaines against C.of D. of a plea of land,viz.of one mesuage, forty acres of land, foure acres of meadow,&c.with the appurtenances, and makes protestation to follow this complaint in the nature of the Kings writ of assise of Mordancester at the Common Law, or of an assise of nouel disseisin, or formedon in the discender at the

¶ *Iels tenants ne emplederont, ne serront empledes, &c.* This is euident and needes no explanation.

4.*H.*4. 34.*adiudge in Parliament.*

¶ *Mes ils violent empleder auters, ils aueront,&c.* **Put the case** that the Demandant in a plaint in nature of a reall action recouereth the land erroniously, what remedy for the partie grieued? For he cannot haue the Kings writ of false iudgement in respect of the baseneſſe of the estate and tenure, being in the eye of the law but a Tenant at will and the freehold being in another, he shall haue a petition to the Lord in the nature of a writ of false iudgement, and therein assigne erross and haue remedie according to Law.

14.*H.*4.34. 1.*H.*5.11. *Vee.N*ō.18. 13.*R.*2.*tit. Faux iudgement.* 7.*E.*4.19 21.*E.*4.80.

¶ *De forma donationis in discender ad communem legem.* **By the** opinion of Littleton as there may be an estate taile by custome with the co-operation of the Statute of W.2.cap.1. so may he haue a Formedon in discender, but as the Statute without a custome extendeth not to Copyholds, so a custome

*Lib.*3*fo.*8.9.*in Eydons case. Lib.*4*fo.*22.23. 15.*H.*8.*Br. Iur.taile.*

ſtome without the ſtatute cannot create an Eſtate taile. Now it is not a ſufficient proofe that lands haue beene granted in taile, for albeit lands haue anciently and vſually beene granted by Copie to many men and to the heires of their bodies, that

ma donationis in diſcendere ad communem legem, **ou en nature dascun auter brieue, &c.** Plegij de proſequendo, F.G.&c

Common Lawe, or in the nature of any other Writte, &c. Pledges to proſecute F.G.&c.

(y) *T.29.Eliz. inter Hill & Ypcheic. Cuſtome deins le manor de Ouerball in Eſſex. 21.Eliz. Dier 356. 23 Eliz. Dier 373.* (z) *10.E.2.formden.55. 21.E.3.47.Tl.Com.240. 4.E.2.formden 50.*

may be a Fee ſimple conditionall as it was at the Common Law. But if a remainder haue beene limited ouer ſuch Eſtates and enioyed, or if the iſſues in taile haue auoyded the alienation of the anceſtor, or if they haue recouered the ſame in Writs of Formedon in the diſcender, theſe and ſuch like be proofes of an Eſtate taile. (y) But if by cuſtome, Copihold may bee intailed, the ſame by like cuſtome, by ſurrender may be cut off, and ſo hath it beene adiudged, (z) ſome haue holden that there was a Formedon, in the diſcender at the Common Law.

Sect. 77.

¶ *Ar(il eſt dit) que ſi le Seignior, &c.* **And here** Littleton ſaith truly that it is ſaid ſo, for ſo it is ſaid in 13.E.3.13.R.2. 32. H.6.& 7.E.4.19.

13.E.3.tit.preſcript.20. 13.R.2.ſeiux iudgement 7. 32.H.6.tit.Subpena 2. 7.E.4.19.

But hee ſetteth not downe his owne opinion, but rather to the contrarie, as hereafter in this chapter appeareth. But now magiſtra rerum Experientia, hath made this cleere and without queſtion, that the Lord cannot at his pleaſure put out the lawfull Copiholder without ſome cauſe of forfeiture, and if he do the Copiholder, may haue an action of treſpaſſe againſt him, for albeit hee is tenens ad voluntatem Domini, yet it is ſecundum conſuetudinem Manerij.

Vide Sect.81.82.84.132.

(b) And Britton ſpeaking of theſe kinde of Tenants ſaith thus, & ceux ſont priuiledges en tiel maner que nul de les doit ouſter de

(b) *Vid.42.E.3.25. Britt.fol.165.*

¶ **Et coment que aſcun tiels tenants ont inheritãce ſolonque le cuſtome del Manor, vnc ils nont eſtate forſque a volunt le Seignior ſolonque le courſe del common ley. Car il eſt dit, ſi l' Seignior eux ouſta, ſils nont auter remedy forſque de ſuer a lour Seigniors per petition, car ſils aueront auter remedie, ils ne ſerront dits tenants a volunt le ſeignior ſolonq; le cuſtome del Manor, mes le Seignior ne voile enfreinder le cuſtom q̃ eſt reaſonable ẽ tiels caſes.**

And although that ſome ſuch Tenants haue an Inheritance according to the cuſtome of the Manor, yet they haue but an Eſtate but at the will of the Lord according to the courſe of the cõmon law. For it is ſaid, that if the Lord doe ouſt them, they haue no other remedy, but to ſue to their lords by petitiõ, for if they ſhold haue any other remedy, they ſhould not be ſaid to be tenãts at wil of the lord according to the cuſtome of the Manor. But the Lord cãnot breake the cuſtome which is reaſonable in theſe caſes.

¶ **Mes Brian Chiefe Juſtice dit, que ſon opinion ad touts foits eſte, & vnquez ſerr̃, ſi tiel teñt per le cuſtome payant ſes ſeruices ſoit eiect per le Seignior, que il auera action de trñs vers luy,** H.21.Ed.4. **Et iſſint fuit lopinion de** Danby **chiefe Juſtice,** M.7.Ed.4.

¶ But *Brian* Chiefe Iuſtice ſaid, that his opinion hath alwayes been and euer ſhall be, that if ſuch tenant by cuſtome paying his ſeruices be eiected by the Lord, hee ſhall haue an Action of treſpaſſe againſt him. *H.21.Ed.4.* And ſo was the opinion of *Danby*, Chiefe Iuſtice in 7.*Ed.*4.

Car

Car il dit que le ten̄ per le cuſtome eſt ci= bien enheriter de a= uer ſon terre ſolonꝯ le cuſtome, come ceſtuy que ad frankte= nement al common ley.

For hee ſaith that tenant by the cuſtome is as well inheritour to haue his land accor= ding to the cuſtome as he which hath a free= hold at the Common Law.

tiels tenements, tant come ilz font les ſeruices que a lour te= nements appendent, ne nul ne poet lour ſeruices acreſtre ne changea faire autres ſeruices ou pluis. And herewith agree= eth Sir Robert Danby chiefe Iuſtice of the Court of Com= mon pleas M.7.E.4.19. and Sir Thomas Brian his ſuc= ceſſor M.21.E.4.80. viz. that the Copiholder doing his cu= ſtomes and ſeruices, if hee be put out by his Lord, hee ſhall haue an action of treſpaſſe againſt him.

Chap. 10. *Sect.* 78.

Tenant per le Verge.

Tenāts p le Verge, ſont en tiel na= ture come Tenants per le copy de Court Roll. Mes la cauſe pur que ils ſont ap= pelles tenāts per la Verge, eſt p ceo que quant ils voilēt ſur= render lour teneñts en le maine lour ſeig= nior al vſe dun au= ter, ils aueront vn petite verge (per le cuſtome) en lour maine, le quel ils bai= lera al Seneſchall, ou al bailife ſolon= que le cuſtome a vſe del manor, a ce= luy q̄ auera la terre, prendra m̄ la t̄re en le court, a ſon p̄ſel ſerra enter en le roll, a le Seneſchal, ou le bailife, ſolonꝯ le cu= ſtome deliuera a ce=

Tenants by the Verge are in the ſame nature as tenants by Copy of Court roll. But the reaſon why they bee called tenants by the Verge is, for that when they will ſur= render their tene= ments into the hands of their Lord to the vſe of another, they ſhall haue a little rod (by the cuſtome) in their hand, the which they ſhall deliuer to the ſteward, or to the bailife according to the cuſtome of the manor and hee which ſhall haue the land ſhal take vp the ſame land in Court, and his ta= king ſhalbe entred vp= on the roll, and the ſteward or bailiffe, ac= cording to the cuſtom

Tenants per le Verge. This Te= nant per le Verge is a meere Copiholder, and taketh his name of the Ceremony of the Verge. Tenure in Villenage or by baſe tenure is thus deſcribed by Britton, (a) Villenage eſt, teñ de demeynes de cheſ= cun Seignior baille a tener a ſon volunt p Villeines ſeruices de enprover al opes le Seig= nior, & liuere per verge & nient per title de eſtrit, ne per ſucceſſion de heritage dont gards de mariages ne auters ſeruices reals come homage & reliefes ne ponent des amnones de demeynes ne de villenage eſts demand. 14.H.4.33.

(a) *Britton fol.*165.a. *F.N.B. fol.*12. *Liber alio per Virgam.*

A le ſeneſchall. (which wee call a ſteward) Seneſchallus is deriued of ſein a houſe or place, and Schalc an officer or gouernour, ſome ſay that ſen is an anci= ent word for Iuſtice, ſo as Seneſchall ſhould ſignifie officiarius Iuſtitiæ, and ſome ſay that ſteward is deriued of Srewe (that is) a place, and Ward, that ſignifieth a Kee= per, Warden or Gouernour; And others that it is deriued of Stede, that ſignifieth a place alſo and Ward as it were the Keeper or gouernour of that place; but it is a word of

Vid.Sect.92.& 379. Fleta lib.2 cap.66. Vid Statut.de extent. maner.14.E.1.

of many ſignifications. In this place it ſignifieth an officer of Iuſtice viz.a keeper of Courts,&c. Fleta deſcribeth the office and duty of this officer at large moſt excellently; Prouideat ſibi dominus de ſeneſchallo circumſpecto & fideli, viro prouido & diſcreto & gratioſo, humili, pudico, pacifico & modeſto, qui in legibus conſuetudinibuſque prouinciæ & officio ſeneſchalciæ ſe cognoſcat & jura domini ſui in omnibus teneri affectet, quique ſubballivos domini in ſuis erroribus & ambiguis ſciat inſtruere & docere, quique egenis parcere, & qui nec prece vel pretio velit à tramite juſticiæ deviare, & peruerſe judicare, cuius officium eſt curias tenere manerioru̇m & de ſubtractionibus conſuetudinum, ſeruiciorum, reddituum, ſectarum ad cur', mercata, molendina domini & ad viſus francpledg: aliarumque libertatum domino pertinentium inquirat, &c. The reſidue pertaining to his office is worth your reading at large. Euery ſteward of Courts is either by Deed or without Deed; for a man may be retayned a ſteward to keepe his Court baron and Leete alſo belonging to the Mannor without Deed, and that reteyner ſhall continue vntill hee be diſcharged. The Lord of a Mannor may make admittances out of Court and out of the Mannor alſo, as at large appeareth in my reports.

lup que prift la terre, meſme l'verge, ou vn auter verge en noſme del ſeiſin, & pur cel cauſe ils ſont appelles tenants per le verge, mes ils nont auter euidence, ſinon pur copy de Court roll.

ſhall deliuer to him that taketh the land the ſame rod, or another rod in the name of ſeiſin, and for this cauſe they are called tenants by the verge but they haue no other euidence but by copy of Court roll.

Vid.lib.4.Caſes de Copiholds, fo.26.27.30.

Section 79.

Vid.Lamb.expoſition of Saxon words.

CA *Le bailie.* This word bailie as ſome ſay commeth of the French word Baylife, in Latyn balivus but in truth Bailie is an old Saxon word and ſignifieth a ſafe keeper or protector, and baile or ballium is ſafe keeping or protection, And thereupon we ſay when a man vpon ſuretie is deliuered out of priſon traditur in ballium he is deliuered into baile, that is, into their ſafe keeping or protection from priſon; and the ſheriffe that hath Cuſtodiam comitatus, is called balivus and the Countie baliva ſua.

Fleta lib.2.ca.67.

C *Reue* is deriued of the Saxon word gereſa or gereve, and by contraction or rather corruption Gereue or Reue and is in Latyn præfectus or præpoſitus. It ſignifies as much as appruator a diſpoſor or director, as woodreeue, ſheepe reeue, ſhire reeue, &c. whereof more ſhalbe ſaid hereafter. Vide Fleta lib.2. cap.67. where hee treateth of the office of the Bailife, and cap.69. de officio præpoſiti of

CEt auxy en diuers ſeignories & manors, il y ad tiel cuſtome, ſi tiel tenant que tient per cuſtome voloit alener ſes terres ou tenements, il poit ſurrender ſes tenemẽts a le Baily, ou a le Reeue, ou a deux probes homes del ſeignior, al vſe ceſtuy que auera le terre, dauer en fee ſimple, fee taile, ou pur terme de vie, &c. Et tout ceo ils preſenteront al procheine Court, & donq̃ celuy q̃ auera la t̃re p Copy de Court Rol, auera meſme la t̃re ſolonq̃ lentẽt del ſurrender.

AND alſo in diuers Lordſhips and mannors there is this cuſtome, viz. if ſuch a tenant which holdeth by cuſtome will alien his lands or tenements hee may ſurrender his tenemẽts to the Bailife or to the Reeue or to two honeſt men of the ſame Lordſhip to the vſe of him which ſhall haue the land to haue in fee ſimple, fee taile, or for terme of life, &c. and they ſhall preſent all this at the next court, & thẽ he which ſhall haue the land by copy of Court Roll, ſhall haue the ſame according to the intent of the ſurrender.

the

the office of the reue, and what belongeth of dutie and right to either of them, which words are too long here to be inserted, only this I will take out of him, balivus autem cuiuscunque manerij esse debet in verbo verax, & in opere diligens & fidelis ac pro discreto appruatore plegiatu- & electus qui de moribus & legibus pro tanto officio sufficient' se cognscat, & quod sit ita justus quod obvindictam seu cupiditatem non quærat versus tenentes domini nec alios, &c. Præpositus autem tanquam appruator & cultor optimus, &c. domino vel eius seneschallo palam debet presentari cui injungatur officium illud indilate, non ergo sit puer aut somnolentus sed efficaciter & continue comodum domini adipisci nitatur & exarare, &c. The residue concerning both the Offices being worth your reading.

¶ *A le bailie ou a le Reeue.* Littleton intendeth into the hands of the Lord by the hands of the Bailiffe or the Reeue.

¶ *Ou al deux probes homes del seigniorie.* The custome doth guide these surrenders out of Court, and the custome must be pursued.

℄ *Et tout ceo ils presenteront al procheine court, &c.* By the surrender out of Court the Copihold estate passeth to the Lord vnder a secret condition that it be presented at the next Court according to the customs of the mannor. And therefore if after such a surrender, and before the next Court he that made the surrender dieth, yet the surrender standeth good, and if it be presented at the next Court Ce' a que vie shalbe admitted therunto; but if it be not presented at the next Court according to the custome, then the surrender becommeth voide, and so was it clerely holden Pasch. 14 Eliz. in the court of Common pleas which I my selfe heard. *Vid. lib. 4. fol. 24. Ke & Quaintins case.*

Sect. 80.

℄ Tillint est acauoire, que en diuers seigniories, & diuers manors, sont pluſors & diuers customes en tielx cases, quant a prender tenements, & quant a pleder, & quant as auters choses & customes a faire, & tout ceo que nest pas encounter reason, poit bien estre admitte & allow.

And so it is to bee vnderstood, that in diuers Lordships, and in diuers manners, therebe many and diuers customes, in such cases as to take tenements, and as to plead, and as to other things and customes to bee done, and whatsoeuer is not against reason, may well bee admitted and allowed.

℄ *Sont pluſors & diuers customes.* This was cautiously set downe, for in respect of the varietie of the customes in most Mannors, it is not possible to set downe any certaintie, only this incident inseparable euery custome must haue, viz. that it be consonant to reason, for how long soeuer it hath continued, if it be against reason, it is of no force in Law.

℄ *Enconter reason.* This is not to be vnderstood of euery vnlearned mans reason, but of artificiall and legal reason warranted by authority of Law: Lex est summa ratio.

Section 81.

¶ *Ils sont appelles tenants per baſe tenure.* Of this sufficient hath beene spoken before.

℄ Tiels tenants q̄ teignont solonq̄ le custome dun seigniorie, ou dun manor, coment que ils ont estate denheritance solonq̄ le custome del Seignior ou mañ, vn̄ pur ceo q̄ ils nōt aſc

And these tenants which hold according to the custome of a Lordship or Mannor, albeit they haue an estate of inheritance according to the custome of the Lordship or Mannor, yet becauſe

frankstenement per le cours del common ley, ils sont appelles Tenants p base tenure.

they haue no freehold by the course of the common law, they are called tenants by base tenure.

Sect. 82.

¶ *Tenant a volunt solonque le custome puit auer estate denheritance, &c.* Here note that Littleton alloweth that by the custome of the Manor, the Copiholder hath an Inheritance, and consequently the Lord cannot put him out without cause.

¶ *Mes si home, &c. voile Lesser Terres ou tenements a vn auter a auer & tener a luy & ses heires a volunt le lessor, ceux parols (a les heires de le lessee) sont voides, car en cest case si le lessee deuie, & son heire enter le lessor auera action de trespasse enuers luy, &c.* By which it is proued that by the death of the lessee, the Lease is absolutely determined, which is proued by this that if the heire enter the Lessor shall haue an action of trespasse, quare vi & armis, before any entrie made by the Lessor.

10.*E.*4.18. 22.*E.*4.13. 2.*R.*2.*barre* 237. 11.*H.*7.22. 21.*H.*7.12.

¶ Et diuers diuersities p sont perenter tenant a volunt, que est eins per lease son lessor per le course del common ley, & tenant solonq; le custome del manor en le forme auantdit. Car t a volūt solonq; le custom puit auer estate denheritance (cōe est auantdit.) al volūt le seignior solōq; le custome & vsage del manor. Mes si home ad terres ou Tenements, queux ne sont deins tiel manor ou Seigniorie, ou tiel custome ad este vse en le forme auantdit, & voile lesser tiels terres ou tenemnts a vn auter, a auer & tener a luy & a ses heires a le volunt le lessor, ceux parolx (a les heires de le lessee) sont voids, Car en cest case si le lessee deuie & son heire enter le lessor auera bon action de trespas enuers luy, mes nemy illint enuers lheire le terre per le custome en ascun cas, &c. pur ceo que le custome de le manor en ascun cas luy puit aide de barrer son seignior en action de tresposse, &c.

AND there are diuers diuersities betweene tenant at wil which is in by lease of his lessor by the course of the Common Law, and tenant according to the custome of the Manor in forme aforesaid. For tenant at will according to the custome may haue an estate of inheritance (as is aforesaid) at the will of the Lord, according to the custome and vsage of the Manor. But if a man hath lands or tenements which bee not within such a Manor or Lordship, where such a custome hath beene vsed in forme aforesaid, and will let such lands or tenements to another, to haue and to hold to him and to his heires at the wil of the lessor, these words (to the heires of the Lessee) are void. For in this case if the lessee dieth, and his heire enter, the Lessor shal haue a good Action of trespasse against him, but not so against the heire of tenant by the custome in any case, &c. for that the custome of the Manor in some case may aide him to barre his Lord in an action of Trespasse, &c.

¶ *Pur*

¶ *Pur ceo que le cuſtome de le Manor en aſcun caſe luy puit aider de barrer ſon ſeignior en action de treſpaſſe, &c.* Hereby it appeareth that by the opinion of Littleton, the Lord againſt the cuſtome of the Manor cannot ouſt the Copiholder.

Section 83.

¶ Item lun tenãt per le cuſtome ẽ aſcuns lieux doit repairer & ſuſteiner ſes meaſons, & lauter tenant a volunt nemy.

ALſo the one tenant by the cuſtome in ſome places ought to repaire and vphold his houſes, and the other Tenant at will ought not.

¶ *Per le Cuſtome.* For what a Copiholder may or ought to doe, or not doe, the cuſtome of the Manor (a) muſt direct it, for Conſuetudo Manerij eſt obſeruanda. (b) But if their be no cuſtome to the contrary, waſt either permiſſiue or voluntarie of a Copiholder, is a forfeiture of his Copihold.

(a) *Bracton. lib.* 2. *fol.* 76.

(b) *Vide lib.* 4. *fol.* 21. 22. *&c. in caſes de Copiholds.*

Sect. 84.

¶ Item lun tenant per le cuſtome ferra fealtie, & lauter nemy. Et pluſors auters diuerſities y ſont perenter eux.

ALſo the one tenãt by the cuſtome ſhall do fealtie and the other not, and many other diuerſities there be betweene them.

¶ *Lvn tenant per le cuſtome ferra fealtie, & lauter nemy.* And the doing of fealtie by a Copiholder, proueth that a Copiholder ſo long as he obſerues the cuſtome of the Manor & payeth his ſeruices

Vide Sect. 132.

hath a fired Eſtate. For Tenant at will that may bee put out at pleaſure ſhall not doe fealtie. For to what end ſhould a man ſweare to bee faithfull and true to his Lord, and ſhould beare faith to him which he claymeth to hold of him, and that lawfully hee ſhall doe his cuſtomes and ſeruices, &c. when hee hath no certaine eſtate, but may bee put out at the pleaſure of the Lord, or hee himſelfe may determine it at his pleaſure, of theſe kind of cuſtomarie Tenants, and of many things concerning them, you may read more in the fourth Booke of my Reports, fol. 21. 22. 23. &c.

Lib. 4. *fol.* 21. 22. 23. *&c.*

Thus much as I haue here ſet downe, may ſuffice, for the vnderſtanding of ſuch Caſes and Opinions as Littleton hath expreſſed.

Finis Libri primi.

THE SECOND BOOKE of the first part of the Institutes of the LAWES of ENGLAND.

CHAP. I. *Homage.* *Sect.* 85.

CHomage eſt le pluis honorable ſeruice, & pluis humble ſeruice de reuerence, q̃ franktenant puit faire a ſon Seignior. Car quãt le tenant ferra homage a ſon Seignior, il ſerra diſcinct & ſon teſt diſcouer, & ſon Seignior ſeera, & le tenant genulera deuant luy ſur ambideux genues, & tiendra ſes maines extendes, & ioyntes enſemble enter les maines le Seignior, & iſſint dirra: Jeo

HOmage is the moſt honorable ſeruice & moſt humble ſeruice of reuerence that a Franktenant may doe to his Lord: For when the Tenant ſhall make Homage to his Lord, hee ſhall be vngirt, and his head vncouered, and his Lord ſhall ſit, and the Tenant ſhal kneele before him on both his knees, and hold his hands ioyntly together betweene the hands of his Lord, and ſhall ſay thus: I become your man

OVr Author hauing taught vs in his former booke the ſeuerall diſtinct eſtates of lands and tenements as moſt neceſſary to be knowne, for the vnderſtanding of theſe two other bookes doth in this ſecond booke treat of the tenures and ſeruices, whereby the ſaid lands and tenements beene holden, which he deuideth into twelue parts, viz. Homage, Fealtie, Eſcuage, Knight ſeruice, Socage, Frankalmoigne, homage auncеſtrel, grand Serieantie, petit Seriantie, tenure in Burgage, in Villenage, and into Rents, wherein his method is moſt excellent, for hee beginneth with homage, becauſe it is the moſt humble ſeruice of reuerence expreſſing the dutie of the tenant to his Lord, and the affectionate loue and protection of the Lord towards his tenant as hereafter ſhall appeare. Secondly, Fealty & ſacred

facred ſeruice, expreſſing by oath his fidelitie to his Lord.

Thirdly, Eſcuage, which is Scutum ſcuti, the ſeruice of the Shield.

Fourthly, Knights Seruice, for the defence of the Realme againſt outward hoſtilitie and inuaſions, which the better might be effected, if ſuch dutie, fidelitie, & loue were betweene Lords and tenants, as ought to be, and as the law expecteth.

Fiftly, Socage, the ſeruice of the Plough, aptly placed next Knights ſeruice, for that the Ploughman maketh the beſt ſouldier, as ſhall appeare in his proper place.

deueigne voſtre hõe de ceſtiour en auant, de vie, & de member, & de terrest honor, & a vous ſerra foiall & loiall, & foy a vous porta ds teñts q̃ ieo claime de teñ de vous, ſalue la foy que ieo doy a nr̃e Sñr le Roy, & donq̃s le ſñr iſſint ſeyant, luy baſera.

from this day forward of life and limme, and of earthly worſhip, & vnto you ſhall be true and faithful, and beare you faith for the Tenements that I claime to hold of you, (ſauing the Faith that I owe vnto our Soueraigne Lord the King.) And then the Lord ſo ſitting ſhall kiſſe him.

Sixtly, Frankalmoigne, Seruice due to Almightie God, placed towards the middeſt for two cauſes; Firſt, for that the middeſt is the moſt worthie and moſt honourable place; And ſecondly, becauſe the firſt fiue preceding Tenures and Seruices, and the other ſixe ſubſequent, muſt all become proſperous and vſefull, by reaſon of Gods true Religion and ſeruice, for Nunquam proſpere ſuccedunt res humanæ, vbi negliguntur diuinæ: Wherein I would haue our Student follow the aduice giuen in theſe antient Verſes, for the good ſpending of the day.

Sex horas ſomno, totidem des Legibus æquis.
Quatuor orabis, des Epuliſque duas.
Quod ſupereſt vitro ſacris largire camænis.

Seuenthly, Homage auncſtrel, Antient Families enioying with their blood the antient inheritance of their forefathers, as a great bleſſing of the Almightie.

8, & 9. Serjeantie grand & petit, due to the King onely, to whom the higheſt and moſt eminent honour, ligeance, and reuerence of all kind is due; which hath two notable effects: Firſt, Imperij Maieſtas eſt tutelæ ſalus, according to the old rule. And ſecondly, it is an aſſured meanes of long continuance of houſes and families in proſperous eſtate, whereof our Authour ſpeaketh in the Chapter before.

10 Then followeth the Tenure of Burgage, of antient Burghes and Cities, &c. which are to be ſupported for the honour of the King, and for the maintenance of trade and traffique, the life of all Common wealths, eſpecially of Iſlands.

11 Villenage, for the performance of ſeruice, yet neceſſarie ſeruice for the cleanſing of Cities, Boroughs, Mannors, &c. and for the better manuring of arrable grounds, and increaſe of Husbandrie.

12 And laſtly, Tenure by Rents, which are called Viui redditus, becauſe the Lords and owners thereof doe liue by them, which they ſhall enioy the better, if trade and traffique be maintained, and our natiue commodities, which are rich and neceſſarie, holden vp and ſaleable at a reaſonable value. And now vnderſtanding his method, let vs peruſe our Authors words.

And as our Author began his firſt Booke with Fee ſimple, which is the moſt principall and worthieſt eſtate, ſo he beginneth his ſecond Booke with Homage, which is the moſt honourable and humble ſeruice.

(a) *Glanu. li.9.ca.1. Bract. fo.78 80. Brit. fo.170 172, 173. Flet. li.3.c.16. Mir.c.3. de Homage, & li.5.§.1.*

Homage is deriued of (a) Homo, **and it is called** Homage, **becauſe** when he doth this ſeruice, he ſaith, Ieo deueigne voſtre home: And in Engliſh Homage is called Manhood, ſo as the manhood of his Tenant, and the homage of his Tenant is al one. Mutua quidem debet eſſe Dominij & Homagij fidelitatis connexio ita quod quantum homo debet domino ex homagio, tantum illi debet Dominus ex Dominio præter ſolam reuerentiam.

(b) *Lib. Rub.ca.55.*

¶ *Foial & Loyal.* **Theſe words are of great extent, for they extend** to the obſeruation of the Lords Councell in whatſoeuer is honeſt and profitable, (b) Omnis homo debet fidem Domino ſuo de vita & membris ſuis, & terreno honore, & obſeruatione concilij ſui per honeſtum & vtile (**comprehended in theſe words** Foyall & Loyall) ſalua Fide Deo & terræ Principi.

¶ *Seruice.* (c) Seruitium in Lege Angliæ regulariter accipitur pro seruitio quod pertenentes Dominis ſuis debetur ratione feodi ſui: But ſeruitium eſt duplex, Spirituale, whereof more ſhall be ſaid in the Chapter of Frankalmoigne; & Temporale, whereof our Author here treateth: And he beginneth with Homage, firſt, becauſe it is moſt honourable, for, Honor plus eſt in honorante, quam in honorato. a It is Pluis humble de reuerence, and both of theſe for ſine cauſes on the part of the Tenant. Firſt, The Tenant when he doth his homage is diſcinctus, diſarmed or vngarded. Secondly, Nudo capite, bare headed. Thirdly, Ad pedes Domini ſuper genua proiectus. Fourthly, Ambas manus iunctas inter manus Domini porrigit. Fiftly, Per verba omni ſupplici veneratione plena, he ſaith, Ieo deueigne voſtre hõe, &c. And for three cauſes on the part of the Lord: Firſt, The Lord doth ſit. Secondly, Hæ incloſeth his Tenants hands betweene his owne. Thirdly, The Lord ſitting kiſſeth the Tenant. Prudent antiquitie did for the more ſolemnitie and better memorie and obſeruation of that which is to be done, expreſſe ſubſtances vnder ceremonies. (c) 2.H.4.6.

Nil ſine prudenti fecit ratione vetuſtas.

a *Glanuil & Mir. vbi ſupra.*

¶ *Ieo deueigne voſtre home de vie & de member.* And therefore he is diſcinctus, for that he muſt neuer be armed againſt, or oppoſite to his Lord, but both life and member muſt be readie for the lawfull defence of his Lord.

¶ 2 *De Terrene honor,* Expreſſed by kneeling at the feet of his Lord. *Bract.fo.80. Brit.f.173.b.ac. Flet.li.3.ca.16.*

3 Debet quidem tenens manus ſuas vtraſque ponere inter manus vtraſque domini ſui per quod ſignificatur ex parte Domini protectio, defenſio, & warrantia, & ex parte tenentis reuerentia & ſubiectio. So as the holding vp of the Tenants hands betokeneth reuerence and ſubiection, and the Lords incloſing of his Tenants hands betweene his owne, betokeneth protection and defence.

¶ 4 *Et à vous ſerra foyal & loyal, & foy a vous portera, &c.* This faith, Fides, or Fœdus perpetuum, this perpetuall league betweene the Lord and the Tenant, is expreſſed by the Lords kiſſing of the Tenant: And ſome ſay, That Fœdus dicitur à fide, quia fides interponitur: And ſo firme and ſtrong was this league betweene them, that by the antient Law of England, Nihil facere poteſt tenens propter obligationem homagij, quod vertatur Domino ad exhæredationem, vel aliam atrocem iniuriam. Nec Dominus tenenti è conuerſo, quod ſi fecerint diſſolnitur & extinguitur homagium omnino & homagij connexio & obligatio & erit inde iuſtum iudicium cum venerit contra homagium & fidelitatis Sacramentum quod in eo in quo delinquunt puniantur, s. in perſona Domini, quod amittat dominium, & in perſona tenentis, quod amittat tenementum. *Bract.vb ſup. Brit.fo.174.*

¶ *Des tenements queux ieo claime a tener de vous.* Britton ſaith, That (a) in doing of homage he muſt name the Lands or Tenements for which he doth homage in certaintie, and the reaſon is, Ne in captione homagij contingat Dominum per negligentiam decipi vel per errorem. (a) *Brit vbiſup. Bract.vb ſup. Glanuil.li 9.ca.1. Mir.Ca.3.de Homage.*

For the better vnderſtanding of that which ſhall be ſaid hereafter, it is to be known, That firſt, there is no land in England in the hands of any Subiect, (as it hath beene ſaid) but it is holden of ſome Lord by ſome kind of ſeruice, as partly hath beene touched before.

Secondly, All the Lands (b) within this realme were originally deriued from the Crown, and therefore the King is ſoueraigne Lord, or Lord paramont, either mediate or immediate of all and euery parcell of land within the Realme. (b) 18.E.3.35.44.E.3.5. 48.E.3.9.8.H.7.12.

Thirdly, That in antient time Lords vpon the creation of their Tenures did not onely reſerue rents, ſeruices, and profit, &c. for which they might diſtreyne and haue other remedie, but alſo tooke an humble ſubmiſſion of his Tenant by promiſe and oath, (for to homage fealtie is incident) to be true and faithfull to him for the Tenements holden of him, which ſubmiſſion is called homage and fealtie, according to the tenure reſerued.

¶ *Salue le foy que ieo doy a noſtre Seignior le Roy.* Both becauſe there is Homagium ligeum which is due to the King onely, and alſo becauſe he is ſoueraigne Lord ouer all. *Glanuil li.9.ca.1. Mir.cap.3. de Fealtie Bract. Vbi ſup. Brit.vbiſup.*

I haue ſeene an antient Record in Anno 6. Edw.1. in theſe words, Michael de North qui ſequitur pro Rege quæritur quod cum Dominus Rex ratione regiæ dignitatis & Coronæ ſuæ tale habeat priuilegium quod nullus in regno ſuo de aliquo qui ſit in regno Angliæ alicui homagium facere debeat, vel aliquis huiuſmodi homagium ab aliquo recipere debeat niſi facta mentione de homagio Domino Regi debit eidem Domino Regi fideliter obſeruand Walterus Exoñ Epus, *Inter Inquiſ. apud Lanceſton, anno 6.E.1. Cornub. in Theſ.*

in contemptu domini regis & ad manifeſtam quoad priuilegium predictum ipſius domini regis exhæredationem, & ad damnum & dedecus ipſius domini regis ad Valenciam decem Mill' librarum de Henrico de Pomeray Thoma de Kanc' Iohanne de bello prato Laurencio filio Ric. Iohanne le Soer, Willielmo de Alex', Eudone de Tranael Rogero le gros, Iohanne le Lunge, Radto de Beuill, Guidone Nouant, Willielmo de Rouskerrek, & Hen: Cannel accepit ſeruitia contra priuilegium predict', nulla facta mentione de homagio & fidelitate domino regi debitis. And iudgement in the end was giuen againſt the ſaid Biſhop.

¶ *Roy.* Our Anceſtors the Saxons termed him Coning or Cyning a name ſignifying power and ſkill, which by way of contraction we now call King. This name the Saxons with a ſmall alteration had from the Britaines who called him Koningh or Koninckc; in French he is called Roy, in Italian Re, in Spaniſh Rey all deriued from the Latyn Rex) of the true ſignification whereof you ſhall reade (d) plentifull matter in our old bookes.

So as homage is deuided firſt In homagium ligeum, & non ligeum.

2. In homagium anteceſſoriũ, & non anteceſſoriũ. It is here neceſſary to be knowne, what tenant, that holdeth by homage ſhall do homage. (e) Item videndũ quis poteſt homagium facere. Sciendũ eſt quod quilibet liber homo tam maſculus quam femina, clericus & laicus, maior & minor, dum tamen electi in epiſcopos, poſt conſecrationem homagium non faciant, quicquid fecerint ante, ſed tantum fidelitatem. Conuentus autem Homagium non faciet de jure ſicut nec Abbas, nec Prior eo quod tenent nomine alieno ſcilicet nomine Eccleſiarum.

(g) One within the age of 21. yeares may doe homage, but Bracton ſaith hee cannot doe fealty, becauſe in doing of fealty he ought to be ſworne which an infant cannot be. But ſome opinions be in our bookes to the contrary, viz. that an infant ſhall doe fealtie, but I take it to be meant of homage; and herewith (h) agreeth Britton who ſaith, Et tout ſoit que enfant deins age fait homage, pur ceo ne volons nous my que il face ſerement de fealtie, jeſque a taunt que il ſoit de pleine age; & tout ſoit ceo comon dit del people que fait de enfant fait deins age ne ſoit fait my a tener eſtable: volons nequedent que cheſcun home & cheſcun feme de quel age que ils ſoient, facent homage a lour ſeignour ſolonque leſtatut de la grand charter.

Glanvill ſaith, (i) women ſhall not doe homage, but Littleton ſaith that a woman ſhall doe homage, but ſhe ſhall not ſay, Ieo deveigne voſtre feme, but Ieo face a vous homage, and ſo is Glanuill to be vnderſtood, that ſhe ſhall not doe compleate homage.

(d) *Mirror ca.1. §.2. & ca.2 §.1. & 2. Bracton fo.5.107.368.369. 340. Fleta.lib.1.cap.5. Forteſcue cap.8. & 37. Staunf.pl.cor.58.99. & Prer. 65.*

(e) *Glanuill lib.9.ca.1. Bracton fo.78.b. Britton.ca.68.fo.170.171. Fleta lib 3. ca.16.*

(g) *Glanu l, lib.9.cap.1. Bracton.lib.2.78. Fleta lib.3.cap 16.acc. 21.E.3.40. 16.E.3.63.64. 32.E.3.age.80. & tit. per que ſeruitia.9. 13.H.4.5. 33.H.6.16. 20.E.3. per que ſeruic.24.*

(h) *Britton fo.171.*

(i) *Glanuil.lib.9 ca.1. F.N.B.157. Regiſt.296. Britton ubi ſupra Mirror ca.1.§.3.*

Sect. 86.

¶ NO man of Religion when (k) hee doth homage ſhall ſay, Ieo deueigne voſtre home, becauſe hee hath profeſſed himſelfe the man of God, yet ſhall he doe homage, and ſhall ſay, (l) Ieo face a vous homage, & à vous ſerra foyall & loyall, &c. and note that here religion is taken largely, for it extends not only to regular perſons as Abbots and the like, but alſo to all Eccleſiaſticall perſons, as Biſhops, Deanes or any other ſole Eccleſiaſticall body politique, and ſo it is in vſe at this day which alſo appeareth in our old bookes.

And it is to bee obſerued that in old bookes and records, the homage which a Biſhop, Abbot or other man of religion doth is called Fealtie, for that it wanteth theſe words (Ieo deveigne voſtre home.) But yet in iudgement of law it is homage, becauſe he ſaith (I doe to you homage, &c. and ſo of a woman.

¶ MEs ſi vn Abbe, ou vn Prior, ou auter hõe de religion ferra homage a ſon ſeignior, il ne dirra: Jeo deueigne voſtre home, &c. pur ẽ q̃ il ad luy profeſſe pur eſtr̃ tant ſolement le home de Dieu: mes il dirra iſſint, Jeo vous face homage & a vous ſerra foial & loial, & foy a vous portera des tenements que ieo teigne de vous, ſalue la foy que ieo doy a noſtre Seignior le Roy.

BVt if an Abbot or a Pryor or other man of religion ſhall doe homage to his Lord, he ſhall not ſay, I become your man, &c. for that hee hath profeſſed himſelfe to be only the man of God. But hee ſhall ſay thus. I doe homage vnto you, and to you I ſhall bee true and faithfull, and faith to you beare for the tenements which I hold of you (ſauing the faith which I doe owe vnto our Lord the King.

(k) *Glanuill lib.1.cap.9. in fine. Britton lib.2.78. Bracton cap.68. Fleta lib.3.cap.16.*

(l) *Vid.Sect.96.& 133.*

Sect. 87.

¶ *Pur ceo que nest conuenient, &c.* **By this it appeareth** (m) **that** argumentum ab inconuenienti plurimum valet in lege, as often shall bee obserued hereafter. Non solum quod licet, sed quid est conueniens est considerandum, nihil quod est inconueniens est licitum.

(m) *For like reasons ab inconuenienti. Vid. Sect.138. 139.231.269.440.478. 665.722.730. 21.H.7.13. F.N.B.230.d. 16.H.7.9.*

¶ Item si feme sole ferra homage a son seignior, el ne derra: Jeo deueigne vostre feme, pur ceo que nest conuenient que feme dirra q̄l el deuiendra feme a aſcun home forſque a ſa baron quant el eſt eſpouſe, mes el dirra: Jeo face a vous homage, & a vous ſerra foial & loial, & foy a vous porterai des tenements que ieo teigne de vous, ſalue la foy que ieo doy a noſtre ſeignior le Roy.

Also if a woman sole shall ~~doe~~ doe homage, shee shall not say I become your woman, for it is not fitting that a woman should say that she will become a woman to any man but to her husband when shee is married, but she shall say, I doe to you homage, and to you shall bee faithfull and true and faith to you shall beare for the tenements I hold of you. Sauing the faith I owe to our Soueraigne Lord the King.

Sect. 88.

¶ Item home puit veier en vn bone note M.15.E.3. Lou vn home & ſa feme fiēt homage & fealty en le common banke, q̄l eſt eſcrie en tiel forin. Nota que J. Leukner & Elizabeth ſa feme, fiēt homage a W. Thorpe en ceſt maner, lun & laut tiendront iointiñt lour mains enter les mains W.T. & le baron dit en ceſt forme: Nous vous ferromus homage, & foy a vous porterons, pur les tenements q̄ nous teignomus de A. vr̄e conuſor, q̄ a vous ad graunt noſtre ſeruices en B. & C. et autres villes, &c.

Also a man may see a good note in M. 15.E.3. where a man and his wife did homage and fealtie in the Common place which is written in this forme. Note that *I. Lewknor* & *Eliz.* his wife did homage to *W.Thorpe* in this manner. The one and the other held their hands ioyntly betweene the hands of *W.T.* and the husband saith in this forme. Wee doe to you homage, and faith to you shall beare for the tenements which wee hold of *A.* your Conusor, who hath granted to you our seruices in *B.* and *C.* and other townes, &c. against all nations,

¶ In this (n) record three things are to bee obserued.

(n) *Mich.15.E.3. tit. Nuisance 109.*

1. How necessary, and profitable records and obseruations are; albeit they were not published in print, for at the time when Littleton wrote, this record was not printed.

2. That the husband and wife doing homage, the husband shall speake the words for them both, viz. (Wee doe you homage, &c.

3. That the homage which the husband and wife doe, is the very homage which the wife should doe alone but this ioynt homage done by the husband and wife is intended to bee before issue had betweene them whereof more shall bee said hereafter. (o) And it is to bee obserued that very

(o) *Vid. Hill: 17.E.2. Rot. Pertia. &c.*

very few cases ruled or resolued in the raigne of Edward the Third, but the same or the like had been ruled or resolued in the Raignes of Edward the Second, Edward the First, or before, as for example for warrant hereof.

encounter touts gents: ſalue la foy que nous deuons a noſtre Seignior le Roy, & a ſes heires, & a noſtre auters ſeigniors: & lun & lauter luy baſerõt. En puis ils fierẽt fealtie, et lun et lautr tyendrõt lour mains ſur vn liure, & le barõ dit les poſx, et ambiõ baſeront le liure.

ſauing the faith which we owe to our Lord the King and to his heires, and to our other Lords, and both the one and the other kiſſed him. And after they did fealtie, and both of them hold their hands vpon the Booke, and the husband ſaid the words, and both kiſſed the Book.

Sect. 89.

¶ *Et a mes auters Seigniours.* This ſauing for other Lords is good for explanation, albeit the homage is referred only to the Tenements which he holdeth of him to whom he doth the homage.

¶ Nota ſi vn home ad ſeueral tenancies queux il tient de ſeuerals Seigniors, ſ. cheſcun tenancy per homage, donque quant il fait homage a vn des Seigniors, il dirra en le fine de ſon homage fait, ſalue la foy que ieo doy a noſtre Seignior le Roy, & a mes auters Seigniors.

NOte if a man hath ſeuerall Tenancies which he holdeth of ſeuerall Lords, that is to ſay, euery tenancie by homage, then when hee doth homage to one of his Lords, hee ſhall ſay in the end of his homage done, ſauing the faith which I owe to our Lord the King, and to my other Lords.

Sect. 90.

¶ E*n droit dun auter.* As the Husband and Wife in the right of his Wife; the Biſhop in right of his Biſhoprike, &c. the Abbot or Prior in right of his Monaſterie, &c. But no Corporation aggregate of many perſons capable, bee the ſame Eccleſiaſticall or Temporall can doe homage, as a Deane and Chapter, Maior, and Comminaltie; and ſuch like, albeit they bee ſeiſed in fee of lands holden by homage yet ſhall not they doe homage. And the reaſon is because that homage muſt be done in perſon, and a Corporation aggregate of many cannot ap-

(p) 33. H.8. tit. fealtie Br. 15. Lib.4. fol.11. Lib.7. fol.10. Lib.10. fol.31.

¶ Nota que nul ferra homage, mes tiel que ad eſtate en fee ſimple, ou en fee taile, en ſon droit demeſne, ou en droit dun auter. Car il eſt vn Maxime en ley que il q̃ ad eſtate forſq; pur terme de vie, ne ferra homage, ne prendra homage. Car ſi feme ad terres ou tenements en fee ſimple, ou ẽ fee taile, queux

NOte, none ſhall do homage but ſuch, as haue an eſtate in fee ſimple, or fee taile in his owne right, or in the right of another. For it is a maxime in law, that hee which hath an eſtate but for terme of life, ſhall neither doe homage or take homage. For if a woman hath lands or tenements in fee ſimple or in fee taile

queux el tient de ſon Seignior per homage, & prent baron, & ont iſſue, donque le baron en la vie la feme ferra homage, pur ceo que il ad title dauer les tenements per le curteſie Dengleterre ſil ſuruelquiſt la feme, & auxy il tient en droit de ſa feme. Mes ſi la feme deuy deuant homage fait per le baron en la vie ſa feme, & le baron ſoy tient eins come tenant per le curteſie, donques il ne ferra homage a ſon ſeignior, pur ceo que il adonque nad eſtate forſque pur terme de vie.

which ſhee holdeth of her Lord by homage and taketh husband, & haue iſſue, then the husband in the life of the wife ſhall doe homage, becauſe he hath title to haue the tenemẽts by the curteſie of *Eng.* if he ſuruiueth his wife, and alſo hee holdeth in right of his wife, but if the wife dies before homage done by the husband in the life of his wife, and the husband holdeth himſelfe in as tenant by the curteſie, then hee ſhall not doe homage to his Lord, becauſe hee then hath an eſtate but for terme of life.

¶ Plus ſerra dit d homage ẽ le tenure per homage aunceſtrel.

¶ More ſhall bee ſaid of homage in the tenure of homage anceſtrell.

peare in perſon, for albeit the bodies naturall whereupon the bodie Politique conſiſts may bee ſeene, yet the bodie Politique or Corporate it ſelfe cannot bee ſeene, nor doe any act but by Atturney, and homage, muſt euer be done in perſon, &c. And albeit an Abbot and Couent is a Corporation aggregate of many, yet becauſe the Couent are all dead perſons in law, the Abbot alone in nature of a ſole Corporation ſhall doe homage.

¶ *Vn maxime en-Ley.* A maxime is a propoſition, to bee of all men confeſſed & granted without proofe, argument, or diſcourſe Contra negantem principia non eſt diſputandum. But of this ſomewhat hath beene ſaid before.

¶ *Il que ad eſtate forſque pur terme de vie.* (q) A Parſon or Vicar of a Church that hath a qualified fee, (r) and yet to many intents vpon the matter but an eſtate for life can neither receiue homage nor doe homage as a Biſhop an Abbot, or any ſuch like that hath a fee abſolute may. (ſ) So if a man and his wife be ſeiſed in fee of a Seignior in the right of his wife, the husband ſhall not receiue homage alone but he and his wife together. (t) But if the husband in that caſe hath iſſue by his wife, then he ſhall receiue homage alone during the life of his wife, and the reaſon is becauſe he by hauing of iſſue is intitled to an eſtate for terme of his owne life, in his owne right, and yet is ſeiſed in fee in the right of his wife, ſo as he is not a bare tenant for life. But if his wife die, then he hath only but an eſtate for life, and then he cannot receiue homage. Yet tenant for life or yeares of a Seignior, (u) ſhall haue Ward, Marriage and Reliefe, and ſhall ſuppoſe that the Tenant died in the fealtie of the Pl. (w) Fieri poſſunt homagia libero homini tam maſculo quàm feminæ tam Maiori quàm minori tam clerico quam laico.

(q) *Glanvil. lib.9.cap.2. Britton. fol.170. Temps E.1.tit. Iurisdictions 13.*
(r) *8 E.4.28. 39.E.3.15. 3.E.3. auowrie 175.*
(ſ) *2.E.2. auowrie 183. F.N.B. 257. 13.E.3. gard. 39.*
(t) *27.Aſſ.p.51. F.N.B.257. 13.H.6. auowrie 21. 43.E.3.13.44.E 3.41. 3.E.3. auowrie 175. 13.E.3.2.gard.39. 22.E.3.fol.19.gard.44.*
(u) *6.E.2.gard.122. 13.E.3.gard 39. 22.E.3.gard.44.*
(w) *Glanvil lib.9.cap.3. 18.E.3.7.43.E.3.13. 44.E.3.41. 13.H.6.auowrie.21. 8.H.6.13.7.E.4.27. F.N.B.257.*

¶ *Et ount iſſue, donque le baron en la vie la feme ferra homage.* The reaſon hereof is rendred before, & alſo that after the death of his wife he being but a bare tenant for life ſhall doe no homage; for regularly it is true that hee that cannot receiue homage in reſpect of the weakneſſe of his eſtate in the Seignior, ſhall not do homage if he hath a like eſtate in the tenancie.

If a man hold of the King and hath iſſue diuers daughters and dieth, the King ſhall haue homage of euery one of theſe Daughters And this (a) appeareth by the Statute de Hibernia anno 14.H.3. to be the Common Law, for that Act ſaith. In regno noſtro Angliæ talis eſt lex & conſuetudo quod ſi quis tenuent de nobis in capite, & habuerit filias herædes ipſo patre defuncto anteceſſores noſtri habuerunt & ſemper nos habuimus & cepimus homagium de omnibus huiuſmodi filiabus, & ſingulæ eatum tenerent de nobis in capite in hoc caſu. And therefore where by the (b) Statute De prærogatiua Regis, it is prouided, Si vna hæreditas, &c. that is but an affermance of the Common Law. (c) But this is to bee vnderſtood where the coheires be of full age, for if they within age and in ward to the King, Primogenita tantum faciet

(a) *14.H.3.tit.prærog.5.*
(b) *Prærog. Regis cap.5.*
(c) *Statut. de homagio capiendo Temps E.1.*

homagium pro ſe & ſororibus ſuis, & aliæ ſorores cum ad ætatem peruenerint faciẽt ſeruitia Dominis fœdorum per manum primogenitæ. (d) And therefore if a man holds of a common perſon by the ſeruice of homage, and hath iſſue diuers daughters and dieth, the eldeſt daughter only ſhall doe homage for her and all her ſiſters. And this appeareth alſo by the Statuts of Hibernia. Primogenita tantum faciet homagium Domino pro ſe & omnibus ſororibus ſuis. And the reaſon is there rendred afterward, Quia omnes ſorores ſunt quaſi vnus hæres de vna hæreditate. (e) But if the Copercencrs in that caſe make partition, then euery one ſhall doe homage, becauſe now it is not Vna ſed diuerſa hæreditas. (f) And ſo it is if one make a feoffment in fee (which is a partition in law for that part) that feoffee ſhall doe homage, for euery Tenant in common ſhall doe ſeuerall ſeruices. And it hath been adiudged (g) in our Bookes that if the eldeſt Copercener doe homage to the Lord, and afterwards the younger ſiſter maketh a feoffment in fee of her part, the Lord ſhall haue homage for the part of the younger ſiſter, for that which was vna hæreditas, one Inheritance by law, by the alienation which is her act is (as hath been ſaid) diuided and become in groſſe and the Copercenarie defeated.

(d) Glanuill. lib.7.cap.3. & lib.9.cap.2. Bract. lib.1. de horag. cap. end. & lib.2.fol. 78.80. Britton. fol.168.b. 171.172. Fleta lib.3.cap.16. & lib.2.cap.60. & lib.5.ca.9. F.N.B.161.159.259. Stauf. prer.23.24.
(e) F.N.B.162. Vide 11.E.3.auowrie.101.
(f) 45.E.3.23.24.E.3 73. Marlbrid.cap.9. F.N.B.162.
(g) 2.E.2. auowrie.179.

But if Tenant enſeoffe diuers men in fee iointly, (h) all theſe iointenants ſhall iointly doe their homage, and their fealtie alſo. (i) If homage bee done by the Tenant, and hee maketh a feoffment in fee, the Feoffor ſhall not doe homage, becauſe albeit he is ſuppoſed to be Tenant in ſome Caſes quant al auowrie, yet the Feoffee is very Tenant, and homage ſhall euer bee done by the verie Tenant, but that very Tenant needeth not to be very Tenant of the Land, and therefore the Meſne becauſe he is very Tenant to the Lord Paramont (though he be not Tenant of the land) ſhall doe homage. And ſo it is of the Diſſeiſee, and of Tenant in taile, after a feoffment in fee, for in that caſe the Donee is very Tenant to the Donor.

(h) 7.E.4.27.28. 14.H.4.38. 1.H.5.grant.43. 31.E.3.gard.116.
(i) 48.E.3.8. 15.E.4.13. 5.E.4.3.

If a Tenant that holdeth by homage maketh a feoffment in fee of part (k) that Feoffee ſhall doe homage, and ſo ſhall euery Feoffee of what part ſoeuer.

(k) 22.E.4.22.

If there be two Copercenors or Iointenants of a Seigniorie, if the Tenant doth homage and fealtie to one of them (l) he ſhall be excuſed againſt the other.

(l) 3.E.2. auowrie 187. 13.H.4.5. 13.R.2.tit. auowrie 89. 8.H.3.tit. preſcription 38. Hill.22.E.1. coram Rege Rot.43.

If homage be parcell of a tenure, it is a preſumption that the tenure is by Knights ſeruice, vnles the contrarie be proued, but of it ſelfe it maketh not Knights ſeruice. And yet by cuſtome the heire of him that holds by homage only may be in ward.

More ſhall be ſaid of homage in the title of homage anceſtrell.

CHAP. 2. *Section* 91.

Fealtie.

(a) Bract.lib.2.fol.80. Britton. Regiſt.origin.302. Mirror.cap.3. de ſerement. & de fealt. Statut.de 17.E.2.tit.homage.

(b) Bracton.lib.2.fol.80.a. Britton.fol.173. Fleta lib.3.cap.16. Littleton.fol.29.m.132. 40.E.3.34.9.H.6.43. 10.H.6.13. 5.H.5.12. 9.E.4.1. 21.E.4.29. 5.H.7.11.

FEaltie in French is feaulty, and is (a) deriued of the Latine word fides, or fidelitas.

Et quant franktenant. Euery Freeholder except Tenant in Frankalmoigne ſhall doe Fealtie. (b) And yet ſome that are not tenants of any Freehold ſhall doe fealtie, as a tenant for yeares ſhall doe fealtie. Bracton ſaith, De nullo tenemento quod tenetur ad terminum, ſit homagij ſit tamen inde fidelitatis Sacramentum.

Que a vous ſerra foial & loial, &c. & foy a vous portera des tenements que ieo claime a tener de vous, & que loialment a vous ferra les cuſtomes & ſeruices, &c.

FEaltie, idem eſt quod fidelitas ẽ Latin, Et quãt frãktenant ferra fealtie a ſ̃ Seignior, il tiendra ſa maine dexter ſur vn Lieur et dirra iſſint; Ceo oyes vous mon Seignior, que ieo a vous ferra foial et loial, et foy a vous portera des teneñts que ieo claiñ a tener de vous, et que loialment a vous ferra les cuſtomes & ſeruices q̃z faire a vous doy as termes aſſignes, ſicome moy aide Dieu & ſes Saints, &c.

FEaltie is the ſame that *fidelitas* is in Latine. And when a freeholder doth fealtie to his Lord, he ſhall hold his right hand vpon a Booke, and ſhall ſay thus. Know ye this my Lord, that I ſhall bee faithfull and true vnto you, and faith to you ſhall beare for the Lands which I claime to hold of you, and that I ſhall lawfully do to you the cuſtomes and ſeruices which I ought to doe at the termes aſſigned, ſo helpe me God and his Saints, &c.

(c) Fealtie is a part of homage, for all the words of Fealtie are comprehended within homage, and therefore fealtie is incident to Homage. (c) *Mirror. cap.3. de ſerend. & de Fealtie.*

¶ *Sicome moy aide Dieu.* As homage is the more honourable ſeruice, ſo Fealtie is a ſeruice more ſacred becauſe he is ſworne thereunto. And the reaſon wherefore the Tenant is not ſworne in doing his homage to his Lord is, for that no ſubiect is ſworne to another ſubiect to become his man of life and member but to the King only, and that is called the oath of Allegiance or homagium ligeum. And thoſe words for that purpoſe are omitted out of Fealtie, which is to be done vpon oath. And Littleton ſaid well (when a Freeholder doth Fealtie) (d) for the Fealtie of him that holdeth in Villenage differeth from the fealtie of the Freeholder. For the Villeine holding his right hand vpon the booke ſhall ſay thus to his Lord, Heare you my Lord A. that I A.B. from this day forward ſhall be to you true and faithfull, and ſhall owe you Fealtie for the land that I hold of you in Villenage and ſhall be iuſtified by you in body and goods ſo helpe me God, &c. as by the act appeareth. (d) *Stat. de 17.E.2.tit. Homage, in le abridgement.*

Section 92.

¶ Et graund diuerſitie y ad p enter fealans ô fealtie et de homage, car homage ne poit eſtre fait forſq; al ſñr ñ: Mes le Seneſchal de court le Sñr, ou Bailife, puit prender fealtie pur le Seignior.

AND there is great diuerſitie betweene the doing of fealty, and of homage; for homage cannot be done to any but to the Lord himſelfe, but the ſteward of the Lords Court, or Bailife may take fealtie for the Lord.

¶ Bracton lib. 2. fo. 80. ſaith thus; Sciendum eſt quod non per procuratores nec per litteras fieri poterit homagium ſed in propria perſona tam domini quam tenentis, capi debet & fieri. *Bracton. lib. 2. fo. 8. 21.E.4.17. acc. 2.E.3.10. 32.H.6 23. lib.9.fo.76.*

¶ *Mes le ſeneſchal &c. ou Bailife poet prender fealtie.* This is ſo euident as it needeth no explanation. (e) *Vid. For the ſignification of Seneſchal and Bailife Sect.78.79.248.& 379.*

Sect. 93.

¶ Item tenant a terme de vie ferra fealtie, et vncore il ne ferra homage. Et diuers auters diuerſities y ſont perenter homage et fealtie.

ALſo tenant for terme of life ſhall doe fealtie, and yet hee ſhall not doe Homage. And diuers other diuerſities there be between Homage and fealtie.

¶ The Tenant muſt do fealtie in perſon becauſe hee muſt bee ſworne vnto it, and no man can ſweare by the Common Law by Attorney or Procter. *Lib.9.fo.76.*

Section 94.

¶ Item home poit veier 15. E. 3. coment home et ſa feme fieront homage et fealtie en common banke, que eſt eſcript deuant en Tenure de homage.

ALſo a man may ſee in 15. *E.* 3. how a man and his wife ſhall doe homage and fealty in the Common place, which is written before in the tenure of Homage.

¶ This is euident and appeareth before, and if Lords knew what benefit they may reape by receiuing of Homage and Fealtie they would not neglect them, (e) for by the receiuing of either of them, it is a ſufficient ſeiſin of all manner of ſeruices as by the words (f) of either of them appeareth. Now if it be demanded, what (e) *Lib.4.fo.8.& 9. Bewlis caſe. 13.E.4.5.*

(f) *Vid. Sect.118.130. 131.138.*

What difference is betweene the oath of Fealtie, when it is done to the King in reſpect of a Tenure, and the oath which euerie Subiect ought to take in reſpect of his allegeance, Littleton here ſetteth downe the oath of Fealtie. Now the (g) Oath of Allegeance is thus, You ſhall ſweare, &c.

Plus ſerra dit de Fealtie en le tenure en Socage, & en l'tenure en Frankealmoigne, & en le tenur̃ per homage Aunceſtrel.

More ſhall bee ſayd of Fealtie in the Tenure in Socage, and in Frankealmoigne, and in the Tenure by homage Auncestrell.

(g) *Brit.ca.29. Calvins caſe. li.7.fo.6.b.12.H.7.18.*

Then it may be demanded, where and when is this oath to be taken, and it is anſwered, That whoſoeuer is aboue the age of twelue yeares, is to be ſworne in the Tourne, vnleſſe hee bee within ſome Leet, and then in the Leet: And I read amongſt the lawes of Saint Edward, Quod hanc Legem inuenit Arthurus, qui quondam fuit inclitiſſimus Rex Britanorum, & ita conſolidauit & confederauit Regnum Britanniæ vniuerſum ſemper in vnum. Huius legis authoritate expulit Arthurus prædictus Saracenos & inimicos a regno. Lex enim iſta diu ſopita fuit & ſepulta donec Eadgarus Rex Anglorum excitarit, & erexit in lucem, & illam per totum Regnum obſeruari præcepit. Which law in ſome maner is obſerued at this day. But to returne to Littleton.

Lambert 135.

(a) *Mir.ca.1.§.3. Brit.fo.162. &c. Ockam cap. Quid ſit ſcutagium.*

¶ *Eſcuage.* (a) In Latine Scutagium, (id eſt) Seruitium ſcuti, Seruice of the Shield, whereby it appeareth, that right interpretations and etymologies are neceſſarie: For, ad recte docendum oportet primum inquirere nomina, quia rerum cognitio a nominibus rerum dependet.

Nomina ſi neſcis, perit cognitio rerum.

And herewith agreeth that which is ſaid, Primo executienda eſt verbi vis ne ſermonis vitio obſtruetur oratio, ſiue lex ſiue argumentis.

Scutum in French is Eſcue, and thereof commeth the Eſcuer, (i.) Scutifer, which wee vſually call Armiger. (b) Of this Bracton ſaith, Item ſcutagium dicitur quòd talis præſtatio ptinet ad ſcutum quòd aſſumitur & ſeruitium militare. And Fleta ſaith, Sunt quædam ſeruitia forinſeca, & dici poſſunt regalia quæ ad ſcutum præſtantur, & inde habemus ſcutagium, & ratione ſcuti pro feodo militari reputatur. And Ockam ſaith, Hæc itaq; ſumma quia nomine ſcutorum ſoluitur, ſcutagium nuncupatur.

(b) *Bract.li.2.fo.35.a. Flet.li.3.ca.14. Ockam vbi ſupr. 27. Aſſ.52. 31. Aſſ.38.*

CE Scuage eſt appel en Latine Scutagium, **ceſta-ſcauoire**, Seruitium Scuti. **Et tiel tenant que tient ſa terre per Eſcuage, tient p ſeruice de Chiualer. Et auxy il eſt commune-ment dit, que aſcun tient per vn fee ô ſeruice de Chiualer. Et aſcun per le moity dun fee ô Seruice ô chiualer, &c. Et il eſt dit, que quant le Roy face voyage royall en Eſcoce pur ſubduer les Scotes, donqs il que tient per vn fee de Seruice de chiualer, couient eſtr̃ oue le Roy per 40. iours, bien et cõuena-blement array pur le Guerre. Et celuy que tient ſa Terre per le**

Scuage is called in Latine, *Scutagium*, that is, Seruice of the Shield; and that Tenant which holdeth his Land by Eſcuage, holdeth by Knights ſeruice. And alſo it is commonly ſaid, That ſome hold by the ſeruice of one Knights fee, and ſome by the halfe of a Knights Fee. And it is ſaid, That when the King makes a voyage royall into Scotland to ſubdue the Scots, then he which holdeth by the ſeruice of one Knights Fee, ought to be with the King fortie dayes, well and conueniently arrayed for the War: and hee which holdeth his land by the moity of a Knights

moity

moitie dun Fee de chiualer couient eſte oue le Roy per 20. iours. Et il que tient ſon Terre per le quart part dun Fee de chiualer couient eſte oue le Roy per 10. iours, et iſſint que pluis, pluis, et que meins, meins.

fee, ought to bee with the King twentie dayes: and hee which holdeth his land by the fourth part of a Knights fee, ought to be with the King ten dayes, and ſo he that hath more, more, and he that hath leſſe, leſſe.

¶ (c) *Et tiel tenaunt que tient ſon terre per Eſcuage tient per ſeruice de Chiualer.* (d) For as fealty is incident to homage, ſo homage and Knight Seruice be incident to Eſcuage, and by the grant of Seruices, Eſcuage paſſeth with the reſt. Euerie Tenure by Eſcuage is a tenure by Knights Seruice: but euerie Tenant that holdeth by Knights ſeruice, holdeth not by Eſcuage, as ſhall be ſaid hereafter. But note here the wiſedome of Antiquitie, (e) mavult enim Princeps domeſticos quam ſtipendiarios bellicis apponere caſibus, that is, to be ſerued in his warres by his owne ſubiects, rather than by ſtipendarie Forreners.

(c) *Mir.ca.1.§.3.*

(d) *2.E.3.8.b.19.E.3.Auowrie 294.26.H.§.1.a. 20 E.3.Pergus Seruic.11. 43.E.3.22.F.N.B.83.84.*

(e) *Lib.rub.*

¶ *Vn fee de ſeruice de Chiualer.* (f) There is great diuerſitie of opinions concerning the Contents of a Knights Fee, that is, how much land goeth to the liuelyhood of a Knight; for ſome ſay that a Knights fee conſiſteth of eight hides, and euery hide containeth an hundred acres, and ſo a Knights fee ſhould containe 800. acres; others ſay that a Knights fee containeth 680. acres; others ſay that an organge of lands containeth 15. acres, and eight organgs make a plowland; by which account a plowland containes 120. acres, and that virgata terræ, or a yardland containeth 20. acres. But I hold that a Knights fee, an hide or plowland a yardland or Organge of land doe not containe any certaine number of acres. But a knights fee is properly to be eſtæmed according to the qualitie and not according to the quantitie of the land, that is to ſay, by the value and not by the content. And therefore it is very true which Maſter Camden in his Brittannia pa.136. ſaith, viz. Subſequenti ætate ex cenſu vt colligitur facti fuerunt equites, &c. And Antiquitie thought that twenty pound land was ſufficient to maintaine the degree of a Knight, as appeareth in the ancient treatiſe de modo tenendi Parliamentum tempore regis Edw: filij regis Etheldredi. Where it appeareth that comitatus (to wit) an Earledome conſtat ex viginti feodis vnius militis, quolibet feodo computato ad viginti libratas: Baronia conſtat ex 13. feodis, & 3. parte vnius feodi militis ſecundum computationem predictam; Vnum feodum militis conſtat ex terris ad valentiam 20.l. which Antiquitie I cite for that it concurreth with the act of Parliament, anno 1.E 2. de militibus, by which act Cenſus militaris the ſtate of a Knight is meaſured by the value of xx. pound per annum, and not by any certaine content of acres; and with this agreeth the ſtatute of W.1.cap.35. and F.N.B.fol.82. where twenty pound of land in Socage is put in Equipage of a Knights fee, and this is the moſt reaſonable eſtimate, for one acre may be better then many others, ſo as he which hath 680. or 800. acres of ſome barren land had not according to the ancient account a ſufficient reuenue to maintaine the degree of a Knight, and he which had a leſſe number of acres of ſome land of the value of xx. pound per annum had a ſufficient liuelyhood in thoſe dayes for the maintainance of a Knight. So Antiquity thought that 400. markes of land per Annum was a competent liuelihood for a Baron and 400. pound per annum, Ad ſuſtinendum nomen & onus of an Earle, and of late time 800. markes per Annum of a Marqueſſe, and 800. pound per Annum of a Duke, ſo that their yearely reuenue was eſtimated by the value and not by the content. And one plowland, carucata terræ, or a hide of land, hida terræ (which is all one) is not of any certaine content, but as much as a plow can by courſe of husbandry plow in a yeare. And therewith agreeth Lambard verbo Hide. And a plow land may containe a meſſuage wood meadow and paſture, becauſe that by them the plowmen and the cattell belonging to the plow are maintained. Vide Temps E.t.tit.Brieſe 860. 4.E.3.47. Pl.com.in Hill and Granges caſe, fo.168. Vid.6.E.3. fo.42. and 39.H.6 8.a. And venerable Beda calleth a Plowland familiam a family, becauſe it containeth neceſſary things for the maintenance of a family. And Priſot well ſaith in 35.H.6. fo.29 that a plow may till more land in a yeare in one Country then in another, and therefore it ſtands with reaſon, that a plowland ſhould be leſſe in one place than in another. 41.E.3. tit.fine 40. and 13.E.3. fine 67. A fine ſhall not be receiued De vna virgata terræ for the vncertaintie vid.39.H 6,8. But an acre of land is certaine by the ſtatute De terris menſurandis. Note alſo (Reader) that euery plowland of ancient time was of the yearely value of fiue nobles per Annum, and theſe was the liuing of a plowman or Yeoman, and Ex duodecim carucatis conſtabat vnum feodum militis which amount to 20. pound per Annum. And this you may ſee Termino paſch. anno 3.E.1. Coram Rogero de Seyton & ſocijs ſuis Iuſticiarijs apud

(f) *Lib.8.fo.123. in Lowes caſe.*

Vid.lib.7.fol.33.34. Newis caſe.

Weſtm. Ebor. Ro. 10. Radulphus de Normanville petens in brevi de medio queritur contra Luciam de Kyme quod cum ipſa teneat de ipſo duas carectatas terræ in Coningſton per homagium & ſervitium militare, vnde duodecim carucatæ terræ faciunt vnum feodum militis pro omni ſervitio, ipſa diſtrinxit ipſum ad faciendū ſectam ad curiam ſuam de Thorneton in Craven, &c.

And it is to be obſerued that the reliefe of a Knight and all aboue him which be noble, is the fourth part of their yearely Reuenue, as of a Knight fiue pound which is the fourth part of 20. pound. So Vna baronia conſtat ex 13 feodis militum & de 3. parte vnius feodi militis, which amount to 400. Markes, and therefore his reliefe is the fourth part of this, viz. 100. markes; and an Earledome conſiſts of twenty Knights fees which amount to 400. pound (as before it appeareth by the ſaid ancient Record De modo tenendi Parliamentum, &c.) and therefore his reliefe is 100. pound. And this alſo appeareth by the ſtatute of Magna Carta, cap. 2. and by the equitie of this ſtatute, inſomuch as a Marquiſdome which conſiſts of the reuenue of two Baronies which amount to 800. markes, ſhall pay according to that iuſt proportion for his reliefe 200. markes, and becauſe a Dukedome conſiſt of the reuenues of two Earledomes, viz. 800. pound per Annum, a Duke ſhall pay 200. for a reliefe, which is alſo the fourth part of his reuenue, and with this agree the Records of the Exchequer.

Note (Reader) At the time of the making of the ſtatute of Magna Carta, 5. 9. H. 3. there was not any Duke, Marqueſſe or Viſcount in England (and therefore the ſtatute could not make mention of them) and Edward the eldeſt ſonne of King E. 2. called the blacke Prince was the firſt Duke in England after the Conqueſt, and Robert Earle of Oxford in the raigne of R. 2. was the firſt Marqueſſe. Sic enim inter ordines Angliæ in ſua Brittannia teſtatur Camden vbi ſupra. Et titulus Marchionis ſerius ad nos devenit, nec ante R. 2. tempore cuiquam delatus ille enim Robertum Vere Oxoniæ comitem delicias ſuas primum marchionem Dubliniæ deſignavit, merumque erat honoris nomen. Hæc ille. And before the raigne of H. 6. there was not any Viſcount. Sic enim idem Author vbi ſupra aſſerit. Poſt comites vicecomites ordine ſequuntur Vicounts nos vocamus; hæc vetus officij ſed nova dignitatis appellatio, & H. 6. tempore ad nos primum audita, Hæc ille, Et dominus de Bello monte was the firſt Viſcount Created by King H. 6. Vide Caſſianeum in gloria mundi parte 4. conſider 55. that this Dignity of a Viſcount is of great antiquitie in other Realmes.

7 H.4.9. 31. Aſſ.30. 26. Aſſ.66. 27. Aſſ.52. 8.E.3. 154.

Bracton lib. 2. 36. Item ſunt quædam ſervitia quæ dicuntur forinſeca, quamvis ſunt in carta de feoffamentis expreſſa & nominata, & quæ ideo dici poſſunt forinſeca, quia pertinent ad dominum regem, & non ad dominum capitalem, niſi cum in propria perſona profectus fuerit in ſervitio, vel niſi cum pro ſervitio ſuo ſatiſfecerit domino regi, &c.

7.E.3.29. 22.H.4.7. F.N.B.28.b. & 83.g. 3.H.4.16. 28.H.6.1.b. 39.H.6.38. 6.R.2.protection. 46.19.R.2.gard.165. 27.H.6. Protection 56. 7.E.4.27. 11.H.4.7. 3.H.4.16.

¶ *En Eſcoce.* In Scotiam, this is put but for an example, for if the tenure be to go in Walliam Hiberniã Vaſconiã, Pictaviã, &c. it is all one. See an ancient record Rott. De finibus Termino, Mich. 11. E. 2. Sir Rich: Rockeſley Knight did hold lands at Seaton by Serianty to be Vantrarius Regis, that is to be the Kings fore-footman when the King went into Gaſcoigne, donec per vſus fuit pari ſolutarum precij 4.d. that is vntill he had worne out a paire of ſhoes of the price of foure pence. And this ſeruice being admitted to be perform'd when the King went to Gaſcoigne to make warre, is Knight ſeruice.

Lib. Rub in Scace. 47. 48. 19. R. 2. gard. 95. 6. R 2. Protection 46. 6. H. 3. Auowrie 242. Vid. Rot. Clauſ. 8. H. 3. & Finius 8. H. 3. & patent. 9. H. 3. multi ſolverunt ſcutagium pro exercit. in Walliam. memb. 30. & ante. Clauſ. 6. H. 3. memb. 3.

¶ *Il que tient per vn fee de ſeruice de chivalier covient eſte ove le Roy per 40. iours.* But this is to be vnderſtood of a Tenant that holdeth of the King immediately, for euery man is bound by his tenure to defend his Lord, and both he and his Lord the King and his Countrie, and therefore if the Lord goeth not his tenant is excuſed. But yet if the tenant perauaile goeth with the King, it excuſeth all the meanes

And it is to be obſerued that for euery pound of the ancient value of a Knights fee accounting twenty pound land, the Tenant muſt goe with the King two dayes, which commeth iuſt to 40. dayes for a whole Knights fee by the Statute of Magna Carta it is prouided that ſcutagium de ceter' capiatur ſicut capi conſueuit tempore Henr: regis aui noſtri.

Magna Carta cap. 37. Fleta lib. cap. 60.

Section 96.

¶ Mes il appiert p les plees & arguments faits en vn bon plee ſur briefe de Detinue de vn eſcript obligatorie port per vn H: Gray T.7.E.3. que ne beſoigne a celuy q̄ tient per Eſcuage de aler oue le Roy luy meſm̄, ſil voile trouer vn auter perſon able pur luy conuenablement array pur le guerre, de aler oue le Roy. Et ceo ſemble eſtre bon reaſon, car poit eſtre q̄ celuy que tient per tiels ſeruices eſt languiſhant, iſſint q̄ il ne poit aler ne chiuaucher. Et auxy vn Abbe, ou auter home de Religion, ou feme ſole q̄ tient per tiels ſeruices, ne doit en tiel cas aler en proper perſon. Et Sir W. Herle adonque chiefe Juſtice d̄ common bank, diſoit en tiel plee, que eſcuage ne ſerra graunt, mes lou le Roy alaſt luy meſme en ſon proper perſon. Et fuiſt demurre en iudgement en meſme le plee, le quel les xl. iours ſerront accompts de le primer iour del mu-

BVut it appeareth by the pleas and arguments made in a plea vpon a Writte of detinue of a writing obligatorie brought by one *H.Gray* 7. *E.*3. that it is not needfull for him which holdeth by Eſcuage to goe himſelfe with the King if hee will finde another able perſon for him conueniently arrayed for the warre to goe with the King. And this ſeemeth to be good reaſon. For it may be that he which holdeth by ſuch ſeruices is languiſhing, ſo as he can neither goe nor ride. And alſo an Abbot or other man of Religion, or a feme ſole, which hold by ſuch ſeruices ought not in ſuch caſe to goe in proper perſon. And Sir *William Herle* then chiefe Iuſtice of the Common place ſaid in this plea, that eſcuage ſhall not bee granted but where the King goes himſelfe in his proper perſon. And it was demured in iudgement in the ſame plea, whither the 40. dayes ſhould bee accounted from the firſt day of

¶ TR.7.E.3.&c. This is the firſt booke at large that our Author hath cited & it is to be obſerued that this point is not debated in the ſaid booke, but only it is there admitted, & yet is good authority in law, for our Author ſaith that it appeareth by this booke, now both by Littleton himſelfe, and by the booke of 7.E 3. it is apparant that albeit the tenure is that he which holdeth by a whole Knights fee ought to be with the King, &c. to doe a corporall ſeruice, yet he may finde another able man to doe it for him. *T.7.E.3.fol.29.*

By the ſtatute of Magna Carta, cap.20. it is prouided, that no Knight that holdeth by Caſtle-gard ſhall bee diſtreyned to giue money for the keeping of the Caſtle, Si ipſe eam facere voluerit in propria perſona ſua vel per alium probum hominem faciet ſi ipſe eam facere non poſſit propter rationabilem cauſam.

Some haue thought that he that holds by eſcuage is taken by the equitie of this ſtatute that ſpeaketh only of Caſtle gard, but it is holden that this ſtatute is but an affirmance of the Common law. For where that Act ſaith, (propter rationabilem cauſam) that reaſonable cauſe is referred to the Tenants owne diſcretion and choyce, and the cauſe is not materiall or iſſuable no more then in the caſe that Littleton here putteth as hereafter appeareth. And I would aduiſe our Student, that when hee ſhall be enabled and armed to ſet vpon the yeare bookes, or reports of Law, that hee bee furniſhed with all the whole courſe of the Lawe that when hee heareth a caſe vouched and applied either in Weſtminſter Hall, (where it is neceſſary for him to bee a diligent hearer, and obſeruer of caſes of Law) or at readings or other exerciſes of learning, hee may finde out and reade the caſe ſo vouched, for that will both faſten it

it in his memory, and bee to him as good as an expoſition of that caſe, but that muſt not hinder his timely and orderly reading (which (all excuſes ſet apart) he muſt bind himſelfe vnto, for there be two things to be auoyded by him, as enemies to learning, præpoſtera lectio, and præpropera praxis. But let vs now heare what our Author will ſay.

ſter de hoſt le Roy, fait per les Commons, & per commãdement le Roy, ou de la iour que le Roy primes entra en Eſcoce: Ideo Quære de hoc.

the muſter of the kings hoſt made by the commons, & by the commandement of the King or from the day that the King firſt entred into *Scotland*. Therefore inquire of this.

¶ *Et ceo ſemble bone reaſon, &c.* **Here** Littleton **ſheweth three reaſons** wherefore the Tenant ſhould not be conſtrained to doe his ſeruice in perſon.

Firſt. It may be the Tenant is ſicke, ſo as he is neither able to goe nor ride. And euer ſuch conſtruction muſt be made in matters concerning the defence of the Realme or common good, as the ſame may be effected and performed. To the former diſabilitie may be added where a Corporation aggregate of many, as Deane and Chapter, Maior and Comminaltie, &c. or an Infant being a Purchaſer, for theſe alſo muſt finde an able man. But it may bee obiected that in theſe particular Caſes the Tenant might find a man, but not when he himſelfe is able without all excuſe or impediment. To this it is anſwered, that Sapiens incipit à fine. And the end of this ſeruice is for defence of the Realme, and ſo it be done by an able and ſufficient man, the end is effected.

Secondly, Seeing there are ſo many iuſt excuſes of the Tenant it were dangerous, and tending to the hindrance of the ſeruice, if theſe excuſes ſhould bee iſſuable, Multa in iure communi contra rationem diſputandi pro communi vtilitate introducta ſunt.

Laſtly, both Littleton and the Booke in the ſeuenth of Edward the Third, giueth the Tenant power, without any cauſe to be ſhewed to find an able and ſufficient man, and oftentimes Iura publica ex priuato promiſcue decidi non debent.

¶ *Vn Abbe ou auter home de religion.* **Note that if the King had** giuen Lands to an Abbot and his Succeſſors to hold by Knights ſeruice, this had been good, and the Abbot ſhould doe homage & find a man, &c. or pay Eſcuage, but there was no Wardſhip or reliefe or other incident belonging thereunto. And though the Law ſaith that this was a Mortmayne, that is, that they held faſt their Inheritances, yet if the Abbot with the aſſent of his Couent, had conueyed the land to a naturall man and his heires, now Wardſhip and Reliefe and other incidents belonged of common right to the tenure. And ſo it is, if the King giue Lands to a Maior and Comminaltie, and their Succeſſors to be holden by Knights Seruice. In this caſe the Patentees (as hath beene ſaid) ſhall doe no homage, neither ſhall there be any Wardſhip or Reliefe: only they alſo ſhall find a man, &c. or pay Eſcuage. But if they conuey ouer the lands to any naturall man and his heires, now Homage, Ward, Mariage, and Reliefe, and other incidents belong hereunto. And yet this poſſibilitie was remota potentia, but the reaſon hereof is, Ceſſante ratione legis ceſſat ipſa lex, the reaſon of the immunitie was in reſpect of the Bodie Politique, which by the conueyance ouer ceaſeth, which is worthy of obſeruation.

And it is to bee obſerued, that euery Biſhop in England hath a Baronie, and that Baronie is holden of the King in Capite, and yet the King can neither haue Wardſhip or Reliefe.

If two ioyntenants bee of Land holden by Knights Seruice, if one goeth with the King, it ſufficeth for both, and both of them cannot be compelled to goe, for by their tenure one man is only to goe.

6. H. 3. Auowry 242. F. N. B. 83. 84.

If the Tenant perauaile goeth, it diſchargeth the Meſne, for one Tenancie ſhall pay but one Eſcuage.

¶ *Ou auter home de Religion.* **Here this word (Religion) is taken** largely, viz. not only for regular, or dead perſons, as Abbots, Monkes, or the like. But for Secular perſons alſo, as Biſhops, Parſons, Vicars, and the like, for neither of them are bound to goe in proper perſon. For nemo militans Deo implicet ſecularibus negotiis.

¶ *Languiſhant.* **So it may be ſaid of an Ideot, a mad Man, a** Leaper, a man maymed, Blind, Deafe, of decrepit age, or the like.

¶ *Ou fem ſole.* **Seeing that a fem ſole, that cannot performe** Knights Seruice may ſerue by deputie, it may bee demanded wherefore an heire male being within

within age of 21. yeares may not serue also by Deputie, being not able to serue himselfe.

To this it is answered, that in cases of Minoritie, all is one to both sexes, viz. if the heire male be at the death of the Ancestor vnder the age of one and twentie, or the heire female vnder the age of fourteene, they can make no Deputie but the Lord shall haue Wardship as an incident to the tenure: therefore Littleton is here to be vnderstood of a femsole of full age, and seised of Land holden by Knights Seruice either by purchase or discent.

¶ *Couenablement arraie pur le guerre.* **So as here are foure things** to be obserued.

First (as hath beene said) that he may find another.

Secondly, That he that is found must be an able person.

Thirdly, He must be armed at the costs and charge of the Tenant; and herein is to be noted, Quod non definitur in iure, with what manner of Armor the Souldier shall be arrayed with for time, place, and occasion doe alter the manner and kind of the Armour.

Fourthly, He must haue such Armour, as shall be necessarie, and so appointed in readinesse.

Ferdwit is a Saxon word & significat quietanciam murdri in exercitu. Worscott is an old English word and signifieth, Liberum esse de oneribus armorum. *Fleta.lib.1.cap.42.*

It is truly said, Quod miles hæc tria curare debet, corpus vt validissimum & pernicissimum, habeat arma apta ad subita imperia, cætera Deo, & Imperatori Curæ esse. *Livius.*

Sapiens non semper it vno gradu, sed vna via, non se mutat sed aptat. Qui secundos optat euentus, diuinet arte, non casu. In omni conflictu non tam prodest multitudo quam virtus. *Vegetius.*

Est optimi ducis scire & vincere, & cedere prudenter tempori. Multum potest in rebus humanis occasio, plurimum in bellicis. *Polibius.*

Quid tam necessarium est quam tenere semper arma quibus tectus esse possis. But I will take my leaue of these excellent Authors of Art Militarie, and referre them to those that profesle the same, and will returne to Littleton. *Vegetius.*

¶ *Muster.* **I find this word in the Statute of** 18.H.6.cap.19. and the ancient Militarie Order is worthy of obseruation, for before and long after that statute, when the King was to be serued with Souldiers for his warre. A Knight or Esquire of the Countrie, that had Reuenues, Farmors and Tenants would couenant with the King by Indenture inrolled in the Exchequer to serue the King for such a terme with so many men (specially named in a List) in his warre, &c. an excellent institution that they should serue vnder him, whom they knew and honored, and with whom they must liue at their returne, these men being mustered before the Kings Commissioners, and receiuing any part of their wages, and their names so recorded, if they after departed from their Captaine within the Terme, contrarie to the forme of that Statute it was felonie. But now that Statute is of no force, because that ancient and excellent forme of militarie course is altogether antiquated: but later Statutes haue prouided for that mischiefe. *Lib.6.fol.27. the Souldiers Case.*

To muster is to make a shew of Souldiers well armed and trained before the Kings Commissioners in some open field. Vbi se ostendentes præludunt prælio. In Latine it is Censere, seu lustrare exercitum.

By the Law before the conquest that musters and shewing of Armour should be Vno eodem die per vniuersum regnum ne aliqui possint arma familiaribus & notis accommodare, ne ipsi illa mutuo accipere, ac iustitiam Domini Regis defraudare, & Dominum Regem & Regnum offendere. *Lamb. fol.155.*

Concerning the point in Law, demurred in iudgement, in the seuenth of Edward the third, here mentioned by our Author, The Law accounteth the beginning of the fortie dayes after the King entreth into the forreine Nation, for then the warre beginneth, and till he come there, he and his hoste are said to goe towards the warre, and no Militarie seruice is to be done, till the King and his hoste come thither.

¶ *Sir William Herle.* **A famous Lawyer constituted chiefe Iustice** of the Common Pleas by Letters Patents dated, 2.die Martij anno 5.E.3. It appeareth by Littleton, and by the Record that he was a Knight against the conceit of those, that thinke, that the Chiefe Iustices of the Court of Common Pleas were not Knighted till long after.

Our Student shall obserue that the knowledge of the Law is like a deepe Well, out of which each man draweth according to the strength of his vnderstanding. Hee that reacheth deepest, he seeth the amiable, and admirable secrets of the Law, wherein, I assure you, the Sages of the Law in former times, (whereof Sir William Herle was a principall one) haue had the deepest reach. And as the Bucket in the depth is easily drawne to the vppermost part of the water, (for Nullum elementum in suo proprio loco est graue) but take it from the water, it cannot bee drawne vp but with great difficultie. So albeit beginnings of this studie seeme difficult, yet when the Professor of the Law can diue into the depth it is delightfull, easie, and without any heauie burthen, so long as he keepe himselfe in his owne proper element.

Glanuile lib.2.cap.6.&c.

¶ *Iuſtice.* In Glanuill he is called Iuſtitia in ipſo abſtracto, as it were Juſtice it ſelfe, which appellation remaines ſtill in Engliſh and French, to put them in mind of their duties and functions. But now in legall Latine they are called Iuſticiarij tanquam iuſti in Concreto: and they are called Iuſticiarij de Banco, &c. and neuer Iudices de Banco, &c.

¶ *De Comon Banke. Banke* is a Saxon word, and ſignifieth a Bench or high ſeate, or a tribunall, and is properly applyed to the Juſtices of the Court of Common Pleas, becauſe the Juſtices of that Court ſet there as in a certaine place: for all writs returnable into that Court are Coram Iuſticiarijs noſtris apud Weſtmon. or any other certaine place where the Court ſet, and Legall Records tearme them Iuſticiarij de Banco. But writs returnable into the Court called the Kings Bench, are Coram nobis (i. Rege) vbicunque fuerimus in Anglia. And all iudiciall Records there are ſtiled coram Rege. But for diſtinction ſake it is called the Kings Bench, both becauſe the Records of that Court are ſtiled (as hath beene ſaid) Coram Rege, and becauſe Kings in former times haue often perſonally ſet there. For the antiquitie of the Court of Common Pleas they erre, that hold that before the Statute of Magna Charta there was no Court of Common Pleas, but had his Creation by, or after that Charter: for the learned know, that in the fixe and twentieth yeare of Edward the Third. The Abbot of B. in a Writ of Aſſize brought before the Juſtices in Eire claymed Conuſance and to haue writs of Aſſize, and other originall writs out of the Kings Court by preſcription, time out of mind of man, in the raignes of Saint Edmond, and Saint Edward the Confeſſor before the Conqueſt. And on the behalfe of the Abbot were ſhewed diuers allowances thereof in former times in the Kings Courts, and that King Henrie the firſt confirmed their vſages, and that they ſhould haue Conuſance of Pleas, ſo that the Iuſtices of the one Bench, or the other ſhould not intermeddle. And the Statute of Magna Charta, erecteth no Court, but giueth direction for the proper iuriſdiction thereof in theſe words. Communia Placita non ſequantur Curiam noſtram, ſed teneantur in aliquo certo loco. And properly the Statute ſaith, non ſequantur, for that the Kings Bench did in thoſe dayes follow the King vbicunque fuerit in Anglia, and therefore enacteth that Common Pleas ſhould be holden in a Court reſident in a certaine place. In the next Chapter of Magna Charta (made at one and the ſame time) it is prouided. Et ea quæ per eoſdem (s. Iuſticiarios itinerantes) propter difficultatem aliquorum articulorum terminari non poſſunt, referantur ad Iuſticiarios noſtros de Banco, & ibi terminentur. And in the next to that (Aſſiſæ de vltima præſentatione ſemper capiantur coram Iuſticiarijs de Banco, & ibi terminentur. Therefore it manifeſtly appeareth that at the making of the Statute of Magna Charta, there were Iuſticiarij de Banco, which all men confeſſe to be the Court of Common Pleas. And therefore that Court was not erected by or after that Statute. For the Authoritie of this Court, it is euident by that which hath beene ſaid, that it hath iuriſdiction of all Common Pleas. But let vs returne to Littleton.

26.Aſſ.p.24.4.E.3.fol.19.
Bracton.lib.3.fol.105.b.
Brian.fol.1.& 2.
Fleta lib.2.cap.2.
Mirror.cap.5.§.1.
Forteſcue cap.51.
See in the Preface to the third part of my Reports.

Mirror.cap.5.§.2.
Fleta.lib.2.cap.54.

¶ *Demurre en iudgement.* A Demurrer commeth of the Latine word demorari to abide, and therefore he which demurreth in Law, is ſaid, he that abideth in Law, Moratur, or demoratur in lege. Whenſoeuer the Councell learned of the partie is of opinion, that the Count or Plea, of the aduerſe partie is inſufficient in Law, then he demurreth or abideth in Law, and referreth the ſame to the iudgement of the Court, and therefore well ſaith Littleton, here demurre en iudgement, the words of a Demurrer being Quia narratio, &c. materiaque in eadem contenta minus ſufficiens in lege exiſtit, &c. and ſo of a Plea, Quia Placitum, &c. materiaque in eodem content minus ſufficiens in lege exiſtit, &c. vnde pro defectu, ſufficientis narrationis ſiue placiti &c. petit iudicium, &c. But if the Plea be ſufficient in Law, but the matter of fact is faiſe, then the aduerſe partie taketh iſſue thereupon, and that is tried by a Jury, for matters in Law are decided by the Judges, and matters in fact by Juries, as elſewhere is ſaid more at large.

Now as there is no iſſue vpon the fact, but when it is ioyned betweene the parties, ſo there is no Demurrer in Law, but when it is ioyned, and therfore when a Demurrer is offered by the one partie as is aforeſaid, the aduerſe partie ioyneth with him, (for example) ſaith, Quod Placitum prædictum &c. materiaque in eodem contenta bonum & ſufficiens in lege exiſtunt, &c. & petit iudicium, and thereupon the Demurrer is ſaid to be ioyned, and then the Caſe is argued by Councell learned of both ſides, and if the points bee difficult, then it is argued openly by the Judges of that Court, and if they or the greater part concurre in opinion, accordingly iudgement is giuen, and if the Court bee equally deuided, or conceiue great doubt of the caſe, then may they adiorne it into the Exchequer Chamber, where the caſe ſhall be argued by all the Judges of England, where if the Judges ſhall bee equally diuided, then (if none of them change their opinion) it ſhall bee decided at the next Parliament by a Prelate, two Earles, and two Barons which ſhall haue power and Commiſſion of the King in that behalfe, and by aduice of themſelues, the Chancellor, Treaſurer, the Juſtices of the

Vid.Brakt.lib.5.fol.352.b.

14.E.3.cap.5. Statut.1.

the one Bench and the other, and other of the Kings Councell, as many and ſuch as ſhall ſeeme conuenient, ſhall make a good iudgement, &c. And if the difficultie be ſo great as they cannot determine it, then it ſhall be determined by the Lords in the vpper houſe of Parliament. See the ſtatute, for it extends not only to the caſe aboueſaid, but alſo where iudgements are delayed in the Chancery, Kings bench, Common bench, and the Exchequer, the Iuſtices aſſigned, and other Iuſtices of Oyer and Terminer, ſometime by difficultie, ſometime by diuers opinions of Iuſtices, and ſometime for other cauſes. (a) Before which Statute, if iudgements were not giuen by reaſon of difficultie, the doubt was decided at the next Parliament (which then was to be holden once euery yeare at the leaſt) (b) Si autem talia nunquam prius euenerint, & obſcurum & difficile fit eorum judicium, tunc ponatur judicium in reſpectum vſque ad magnam curiam vt ibi per concilium curiæ terminentur. But hereof thus much ſhall ſuffice. (c) He that demurreth in Law confeſſeth all ſuch matters of fact as are well and ſufficiently pleaded. If there be a demurrer for part and an iſſue for part, the more orderly courſe is to giue iudgement vpon the demurrer firſt, but yet it is in the diſcretion of the Court to trie the iſſue firſt if they will. After demurrer ioyned in any Court of record, the iudges ſhall giue iudgement according as the very right of the cauſe and matter in Law ſhall appeare, without regarding any want of forme in any writ, Returne, Pleint, Declaration, or other pleading, Proces, or courſe of proceeding, except thoſe only which the partie demurring ſhall ſpecially and particularly ſet downe and expreſſe in his demurrer. (a) Now what is ſubſtance and what is forme you ſhall reade in my Reports.

And in ſome caſes a man ſhall alledge ſpeciall matter, and conclude with a Demurrer, (b) as in an action of treſpaſſe brought by I.S. for the taking of his horſe, the defendant pleades that he himſelfe was poſſeſſed of the horſe vntill he was by one I.S. diſpoſſeſſed, who gaue him to the plaintife, &c. the plaintife ſaith that I.S. named in the barre, and I.S the plaintife were all one perſon & not diuers; and to the plea pleaded by the defendant in the manner, he demurred in Law, and the Court did hold the plea and demurrer good, for without the matter alledged hee could not demurre. Now as there may be a demurrer vpon counts and pleas, ſo there may be of Ideptior, Voucher, Receite, Waging of Law, and the like. (c) By that which hath beene ſaid it appeareth, that there is a generall demurrer that is ſhewing no cauſe, and a ſpeciall demurrer which ſheweth the cauſe of his demurrer. Alſo by that which hath beene ſaid, there is a demurrer vpon pleading, &c. and there is alſo a demurrer vpon euidence. (d) As if the plaintife in euidence ſhew any matter of Record, or Deeds or writings, or any ſentence in the Eccleſiaſticall Court, or other matter of euidence by teſtimony of witneſſes, or otherwiſe whereupon doubt in Law ariſeth, and the defendant offer to demurre in Law thereupon, the plaintife cannot refuſe to ioyne in demurrer, no more then in a demurrer vpon a Count, replication, &c and ſo E converſo may the plaintife demurre in Law vpon the euidence of the defendant.

But if euidence for the King in an Information or any other ſuite be giuen, and the Defendant offer to demurre in Law vpon the Euidence, the Kings counſell ſhall not be enforced to ioyne in Demurrer: but in that caſe, the Court may direct the Jury to finde the ſpeciall matter.

¶ *En iudgement.* For the ſignification of this word, Vid. Sect. 366

Rot Parliam. 14.E.3. nu.31. a proceeding in Sir Iohn Stanrons Caſe vpon difficultie in the Court of Common Pleas. Vid Britton, fo.41. 21.E.3.37.38. 39.E.3.fo.1.21.35. 40.E.3.34. 13.H.4.3.4.

(a) *4.E.3.ca.14.*

(b) *Bracton lib.1.cap.2. nu.7. Britt.fo.41. 1.E.3.7.8. 2.E.3.6.7.*

(c) *17.E.3.50.b. 47.E.3.13.14. 5.H.7.1. 13.E.4.7.b. Pl.Com.85. 411.172. 48.E.3.15. 2.R.2. inqueſt.2. 38.E.3.25. 11.H.4 5.75. 3.E.4.2.*

(a) *Lib.3.fo.57. Linc.Coll. caſe. Lib.5.fo.74. Wymeks caſe. Lib.10.fo.88. vſque 98. Doctor Leyfields caſe.*

(b) *13.E.4.7. 31.E 3. eſtoppel.244. 33 H.6.9.10. 22.E.4.50. 1.H.7.21.*

(c) *14 H.4.31.37. H.6.8.*

(d) *Lib.5.fo.104.a. Bakers caſe.*

(c) *38.H.8.Dyer 53.*

Sect.97.

¶ ET apres tiel voyage royal en Eſcoce, il eſt communement dit, que p authoritie de Parliament leſcuage ſerra aſſeſſe & mis en certaine, s. certeine ſume dargent, quant cheſcun que tient per entier fee de ſeruice de chiualer, ql ne fuit

AND after ſuch a voyage royall into Scotland, it is commonly ſaid, that by authority of Parliament, the eſcuage ſhall be aſſeſſed and put in certeine, s. a certaine ſumme of money; how much euery one which holdeth by a whole Knights fee,

¶ *Apres voiage royal, &c. il eſt communement dit que per Authority de Parliament eſcuage ſerra aſſeſſe.* Nota here is a ſecret of Law included, that albeit eſcuage incertaine bee due by tenure, yet becauſe the aſſeſſment thereof concerned ſo many and ſo great a number of the ſubiects of the realme, it could not bee aſſeſſed by the King or any other but by Parliament:

(a) and

(a) and this was by the common Law.

(b) No Eſcuage was aſſeſſed by Parliament ſince the raigne of Edward the ſecond, and in the eighth yeare of his raigne Eſcuage was aſſeſſed.

If the Tenant goeth with the King, and dieth in exercitu, in the hoſt or armie, hee is excuſed by Law, and no Eſcuage ſhall be demanded.

And it is to obſerued, that if he that hold of the King by Eſcuage, goeth, or findeth another to goe for him with the King, &c. then hee ſhall haue eſcuage of his Tenants that hold of him by ſuch ſeruice. which muſt be aſſeſſed by parliament.

But if the Kings Tenant goeth not with the King, then he ſhal pay for his default Eſcuage, and ſhall haue no eſcuage of his Tenants. Richard the ſecond making a voyage Royall into Scotland, at the petition of his Commons pardoned the payment of Eſcuage.

(a)13.H.4.5.

(b)8.H.3.Rot.Claus.& Rot. finium memb.30.& ante.

Staff.p.14.E.1.de Banco.

F.N.B.84.

Brac.lib.2.36.a.

F.N.B.84.

Rot.Parl.9.R.2.nu.42.

per luy meſme, ne per vn auter pur luy, oue le Roy paiera a ſon Seignior de que il tient la Terr̃ per eſcuage. Sicome mittomus, que il fuit ordaine per authoritie de la Parliament, que cheſcun que tiēt per entire fee d̄ Seruice de chiualer, que ne fuit oue le Roy, payera a ſon Seignior 40. ſ. donque celuy que tient per moitie dun fee de chiualer ne payera a ſon ſeignior forſqz xx. ſ. & celuy que tient p̄ la quart part de fee de chiualer ne payera forſque x. ſ. & ſic que pluis, pluis, & que meins, meins.

who was neither by himſelfe nor by any other, with the King, ſhall pay to his Lord of whom he holds his land by Eſcuage. As put the caſe that it was ordained by the authoritie of the Parliament, That euery one which holdeth by a whole Knights fee, who was not with the King, ſhall pay to his Lord fortie ſhillings; then he which holdeth by the moitie of a Knights fee, ſhall pay to his Lord but twentie ſhillings, and hee which holdeth by the fourth part of a knights Fee, ſhall pay but x. s. & he which hath more more, and which leſſe, leſſe.

Sect. 98.

Vide Sect.120.

¶ *Aſcuns teignont per cuſtome, &c.* Nota, that Eſcuage is directed by cuſtoms.

¶ *Mes auterment eſt de Eſcuage certain.*

15.E.2.Tit.Auow.215. 36.ff.65. 30.E.3.23.b, Lib.4.fo.88.in Lumleis caſe.

Here it appeareth, that Eſcuage is two fold, viz. Eſcuage incertaine, wherof Littleton here ſpeaketh; and eſcuage certaine, Quemadmodum incertitudo ſcutagij facit ſeruitium militare, ita certitudo ſcu-

¶ Et aſcuns teignont per la cuſtome que ſi leſcuage courge per authoritie de Parliament, a aſcun ſumme de money, que ils ne paieront forſque la moitie de ceo, & aſcuns teignont que ils ne payeront forſque le quart part de ceo. Mes pur ceo que leſcuage que ils paieront eſt non certain pur ceo que neſt certaine coment le Parliament

And ſome hold by the cuſtome, That if Eſcuage bee aſſeſſed by authoritie of Parliament, at any ſumme of mony, that they ſhal pay but the moitie of that ſumme, and ſome but the fourth part of that ſumme. But becauſe the Eſcuage that they ſhould pay is vncertaine, for that it is not certaine how the Parliament will aſſeſſe the eſcuage they hold by Knights ſer-

aſſeſſera

aſſeſſera leſcuage cuy teignont per Seruice de Chiualer. Mes autrement eſt de leſcuage certaine, de que ſerra parle en le teuure de Socage.

uice. But otherwiſe it is of Eſcuage certaine, of which ſhall be ſpoken in the tenure of Socage.

tagij facit Socagium. But more of this in the Chapter of Socage Sect.120.

¶ *Per Parliament.*

Of the Antiquitie and Authoritie of this Court ſee Sect.164.

Sect. 99.

¶ ET ſi hõe parle generalment deſcuage, il ſerra entendue per l'common parlance deſcuage noncertaine, que eſt Seruice de chiualer, & tiel eſcuage trait a luy homage, & homage trait a luy Fealtie, car fealtie eſt incident a cheſcun manner de ſeruice forſque a le Tenure en Frankalmoigne, come ſerra dit apres en le Tenure de Frankalmoigne. Et iſſint il que tient per Eſcuage, tient p homage fealtie & Eſcuage.

AND if one ſpeake generally of Eſcuage, it ſhall be intended by the common ſpeech of Eſcuage incertaine, which is Knights ſeruice: And ſuch Eſcuage draweth to it Homage, and Homage draweth to it fealtie; for Fealtie is incident to euerie manner of ſeruice, vnleſſe it be to the Tenure in Frankalmoigne, as ſhall bee ſaid afterward in the Tenure of Frankealmoigne. And ſo he which holdeth by Eſcuage, holds by Homage, Fealtie and Eſcuage.

¶ *ET ſi home parle generalment deſcuage il ſerra intend per le common parlance deſcuage non certain.*

Verba æquiuoca & in dubio poſita intelliguntur in digniori & potentiori ſenſu. Tenure in Capite ex vi termini is a Tenure in Groſſe, and it may be holden of a Subiect, but being ſpoken generally, it is ſecundum excellentiam, intended of the King, for he is Caput Reipublicæ.

Entendments en Ley Sect.100. 110.367.377,373.406.462. 463. 5.E.2.Ref.165.20.H.6.23. 21.H.6.8.37.H. 29. 13.H.4.4.6.El.Dyer 236. 10.E.4.11.32.E.3. Gard.38

Brit.fo.163.

¶ *Et tiel eſcuage trait a luy homage, & homage trait a luy Fealtie, car Fealtie eſt incident a cheſcun manner de ſeruice forſque a tenure en Frankealmoigne.*

40.E.3.21.8.H.7.4.

Sect.100.

This is gathered by the effects of their Tenure, for eſſences are found out by properties, fountains by Riuers, and cauſes by effects: for amongſt others, the Lords ſhal haue Eſcuage. Of their Tenants, &c. as it followeth.

¶ ET eſt aſcauoire, Que quant eſcuage eſt tielment aſſeſſe per authority de Parliament cheſcun Seignior de que la terre eſt tenus per Eſcuage, auera leſcuage iſſint aſſeſſe per Parliament pur ceo que il eſt intendus

AND it is to be vnderſtood, that when Eſcuage is ſo aſſeſſed by authoritie of Parliament, euerie Lord of whom the land is holden by Eſcuage, ſhall haue the Eſcuage ſo aſſeſſed by Parliament, becauſe it is intended by the Law, That at

T tendus

tendus p la ley, q̃ al cõmencemẽt tiels tenemẽts fuer dones p les Sñrs a lez tenãts de tener per tielx ſeruices a defender lour Sñrs, auxy bien come le Roy, & mitter en quiet lour Sñrs & le Roy, de les Scotes auandits.

the beginning ſuch tenements were by the Lords to the tenants to hold by ſuch ſeruices to defend their Lords aſwell as the King, and to put in quiet their Lords and the King from the Scots aforeſaid.

Sect. 101.

F.N.B.84. Regiſter.88. de Scutagio habendo.

¶ *Les ſeigniours aueront leſcuage, &c.* This is euident.

¶ *Breife le roy.* This commeth of the Latyne word Breue.

Fitz. in his Preface to his N.B. ſaith of them, that they be thoſe foundations whereupon the whole Law doth depend.

(a) Bracton lib. 5. fol. 413. Fleta lib. 2. cap. 12. Britton, fol. 122, 227.

(a) Bracton deſcribeth a writ thus, Breve quidem cum ſit formatum ad ſimilitudinem regulæ juris quia breuiter & paucis verbis intentionem proferentis exponit & explanat ſicut regula iuris rem que eſt breviter enarrat, non tamen ita breve eſſe debeat quin rationem & vim intentionis contineat.

Of writs ſome be originall, brevia originalia, and ſome be iudiciall, brevia judicialia.

Alſo of Originals, quædam ſunt formata ſub ſuis caſibus & de curſu, & de communi conſilio totius regni conceſſa & approbata, que quidem nullatenus mutari poterint abſque conſenſu & voluntate eorum; & quædam ſunt Magiſtralia, & ſæpe variantur ſecundum varietatem caſuum factorum & querelarum, as for example actions vpon the caſe which varie according to the varietie of euery mans caſe and the like, and theſe being not of courſe, the maſters being learned men did make: Item breuium originalium alia ſunt realia, alia perſonalia, alia mixta. Item breuium originalium, alia ſunt patentia ſiue aperta, & alia clauſa. Certaine it is that the originall writs are ſo artificially and briefely compiled, as there is nothing redundant or wanting in them, of which an honourable Secretary of ſtate once ſaid, that it was not poſſible to comprehend ſo much matter, ſo perſpicuouſly in fewer words: of all theſe kinde of writs you ſhall reade plentifully in the Regiſter whereof Littleton maketh mention in this place, and alſo in Fitz N.B.

¶ *Sicome appiert per le Regiſter.* Regiſter, is the name of a moſt ancient booke and of great authority in Law, containing all the originall writts of the Common Law, of which booke ſee more in the Preface to the ninth part of my Reports, & containeth alſo Breuia iudicialia quæ ſepius variantur ſecundũ varietatẽ placitorũ proponentis & reſpondentis.

Bracton vbi ſupra. Britton vbi ſupra. Regiſt. 88. F.N.B. 84.

Alſo it appeareth by the Regiſter that the King ſhall haue eſcuage of his tenants which hold of him as of a Mannor which he hath in Ward, or by reaſon of a vacation of a Biſhoprickie.

F.N.B. 84.

And ſo ſhall a common perſon, if he hath an eſtate for life or for yeares of a Seigniory.

Section

¶ Et pur ceo que tiels tenemẽts deuiendront primes des ſeigniors, il eſt reaſon q̃ ils aueront leſcuage de lour tenants. Et les Seigniors ẽ tiel caſe purront diſtreiñ pur leſcuage iſſint aſſeſſe, ou ils en aſcuns caſes purront aũ bꝛe le roy, direct as Vicõts de ñ les Counties, &c. de leuier tiel eſcuage pur eux, ſicome appiert p le Regiſter. Mes ỏ tiels tenants queux teignont per eſcuage de Roy, q̃x ne fueront oue le roy en Eſcoce, le Roy meſme auera leſcuage.

And becauſe ſuch tenements came firſt from the Lords, it is reaſon that they ſhould haue the Eſcuage of their tenants. And the Lords in ſuch caſe may diſtreine for the eſcuage ſo aſſeſſed, or they in ſome caſes may haue the kings Writts directed to the Sheriffs of the ſame Counties, &c. to leuie ſuch eſcuage for them, as it appeareth by the Regiſter. But of ſuch tenants as hold of the King by eſcuage which were not with the King in Scotland, the King himſelfe ſhall haue the eſcuage.

Section 102.

¶ Item en tiel caſe auandit, lou le Roy face vn voyage royall en Eſcoce, & leſcuage eſt aſſeſſe per Parliament, ſi le ſñr diſtreine ſon tenant que tient de luy per ſeruice dentier fee de chiualer pur leſcuage iſſint aſſeſſe, &c. & le tenãt plede, & voit auerrer que il fuit oue le Roy en Eſcoce &c. per xl. iours, & le Seignior voit auerrer le contrarie, il eſt dit, que il ſerra trie per le certificat del Marſhal del hoſt le Roy en eſcript ſouth ſ ſeale q̃ ſerra mis a les Juſtices.

ITem, in ſuch caſe aforeſaid, where the King maketh a voyage royall into Scotland, and the Eſcuage is aſſeſſed by Parliament, if the Lord diſtraine his tenant that holdeth of him by ſeruice of a whole Knights fee, for the Eſcuage ſo aſſeſſed, &c. and the tenant pleadeth and will auer that he was with the King in Scotland, &c. by 40. daies, and the Lord will auerre the contrary, it is ſaid that it ſhall bee tried by the certificat of the Marſhall of the kings hoſt in writing vnder his ſeale, which ſhall be ſent to the Iuſtices.

¶ *Et voet averre, que il fuit ove le roy en Eſcoce per* 40. *iours, &c.* (a) *il eſt dit que il ſerra trie per le certificat del Marſhall.* This is a triall appointed by the Law, Ne curia regis deficeret in Iuſticia exhibenda, (b) Herewith agreeth the Regiſter, where the Marſhall is is called Conſtabularius exercitus noſtri.

(a) 2.E.4.11. 4.E.4.10. 23.E.4.10. F.N.B.85. 11.H.7.5. Lib.9.fo.32 Caſe de Strat. Marc.

(b) Regiſt.88. F.N.B.54. 2.E.4.1.4.E.4.10. 9.H.4.3. 11.H.7.5. 21.H.6.50. 33.H.6.1.45.

¶ *Marſhall de hoſte le roy.* Mareſchallus exercitus, in Saxon Mariſchalk. i. equitum magiſter. This word Marſhall is either deriued of Mars or of Marc an horſe and ſchalc which ſignifieth in the Saxon tongue, a Maſter or Gouernour. (c) In the Lawes before the Conqueſt it is ſaid. Mareſchalli exercitus, ſeu ductores exercitus Heretoches per Anglos vocabantur, illi ordinabant acies denſiſſimas in prælijs & alas conſtituebant prout decuit, & prout ei melius viſum fuerit ad honorem coronæ & ad vtilitatem regni. (d) And here it is to be obſerued, that his Certificate in this caſe is a triall in Law. I read of ſixe kindes of Certificates allowed for trialls by the Common Law; the Firſt whereof Littleton hereſpeaketh of, in time of warre out of the Realme, 2. In time of peace out of the Realme: (e) As if it be alledged in auoydance of an Outlawrie, that the defendant was in priſon at Burdeaux in the ſeruice of the Maior of Burdeaux, it ſhall bee tried by the Certificate of the Major of Burdeaux. 3. For matters within the Realme, (f) the Cuſtome of London ſhall be certified by the Maior & Aldermen by the mouth of the Recorder. 4. By certificate of the Sherife vpon a Writ to him directed (g) in caſe of priuiledge if one be a Citizen or a Forreiner. 5. Triall of Records by certificate of the Judges in whoſe cuſtody they are by Law. All theſe be in temporall cauſes. 6. In cauſes Eccleſiaſticall, as loyaltie of marriage, generall baſtardie, excommengement, profeſſion. Theſe and the like are regularly to be tried by the Certificate of the ordinarie.

(c) Lamb.fo.136.

(d) 2.E.4.1.b.4 E.4.10. 23.E.4.47. F.N.B.85.

(e) 4.E.4.10.

(f) 5.E.4.30. 21.E.4.16.

(g) 10.H.6.10.

And there be diuers other trialls allowed by the Common Law, then by a Jury of 12. men which you may reade at large in the ninth booke of my Reports, fo.30.31. &c. in the caſe of the Abbot of Strata Marcella, which are as plainely ſet downe there, as they can be here: and in this caſe, if the triall ſhould not be by Certificate, it ſhould want triall which ſhould be inconuenient; Only in this place I will adde ſomething of a forreine triall which I finde not in any of the Treatiſes lately publiſhed againſt ſingle combats, becauſe it may deterre men from that vngodly and vnlawfull kinde of reuenge, whereupon many murders haue enſued, and preuent all hope of impunitie for default of triall in that caſe

If a ſubiect of the King be killed by another of his ſubiects out of England in any forreine Countrey, the wife or he that is heire of the dead may haue an appeale for this murder or homicide before the Conſtable and the Marſhall, whoſe ſentence is vpon teſtimony of witneſſes or combate. And accordingly where a ſubiect of the King was ſlaine in Scotland by others of

Stat.de 1.H.4.cap.14. 13.H.4.fo.5. Vid.Ror.Parliam. 8.H.6. m.38.Staunf.pl.Cor.fo.65.

the Kings subiects, the wife of the dead had her appeale therefore before the Constable and the Marshall. And so it was (*) resolued in the Raigne of Quene Elizabeth in the case of Sir Francis Drake who stroke off the head of Dowtie, in partibus transmarinis, that his brother and heire might haue an Appeale, Sed Regina noluit constituere Constabularium Angliæ, &c. & ideo dormitur appellum.

(*) Anno 25. Eliz.

If a man be mortally wounded in France, and dieth thereof in England, it is said that an Appeale doth lie vpon the said Statute, for it is not punishable by the Common Law, and the proceeding there (as hath beene said) is vpon Witnesses or combate, and not by Iurie, and the mortall wound was giuen out of the Realme.

CHAP. 4. *Sect.* 103.

Knights Seruice.

SEruice de Chiualer. Nota, it appeareth by (a) the Register, that it is (b) said vnum fœdum militis, and not fœdum vnius militis, as it was said (c) by some of old, and so duo fœda militis, &c. and sometime these fees are called fœda militaria. Our Authour hauing before treated of Homage, Fealtie and Escuage, now commeth, to Knight Seruice it selfe. In Domesday, it is thus recorded Episcopus Baiocensis ille qui tenet de Modardoreddit ei 50.s. & seruitium vnius militis.

(a) *Glanuil. lib.7. cap.10.*
(b) *Regist.2. 30.E.3.24.*
(c) *Glanuil. lib.7. cap.14.*

(d) *Glanuil. lib.7. cap.9. & 10. Fleta, lib.1. cap.8. Bract. lib.2. fol.85. Britton. fol.162. & fol.28. & 95. Ockam in diuersis locis. Mirror cap.1. §.3. Sudey Diten.*

Chiualer .i. eques, Knight is a Saxon word, and by them written, Cnite. Chiualer taketh his name from the horse, because they alwayes serued in warres on horsebacke. The Latines called them Equites, the Spaniards, Caualleroes, the Frenchmen, Chiualiers, the Italians Cauallieri, and the Germanes Reiters, all from the horse. It is necessary to bee seene by what names this seruice of a Knight is called. It is called (e) Seruitium forinsecum quia pertinet ad Dominum Regem & non ad capitalem Dominum nisi cum in propria persona profectus fuerit in seruitio, & nisi cum pro seruitio suo, satisfecerit Domino Regi, &c. ideo forinsecum dici potest, quia fit & capitur foris siue extra seruitium quod fit

(e) *Bracton. lib.2. fol.36.37. Britton. fol.164.165. Fleta lib.3. cap.14. 19.E 2. anowrite 224. 26. Ass.65. 31. Ass 30. 30.E...23. 8.E.3.67. 7 H.4.19.*

TEnure p homage, fealtie, & escuage, est a tener per seruice de chiualer, & trait a luy garde, mariage, & reliefe. Car quant tiel tenant mourust, & son heire male est deins lage de 21. ans, le seignior aũa la terre tenus de luy tanque al age del heire de 21. ans, le quel est appell pleine age, pur ceo que tiel home per entendement del ley nest pas able de faire tiel seruice de chiualer, deuant lage de 21. ans: Et auxy si tiel heire ne soit marie al tẽps de mort de tiel auncester, donque le seignior auera le garde & le mariage de luy. Mes si tiel tenant deuie, son heire female esteant dage de 14. ans, ou de plus, donque le Seignior

TEnure by homage, fealtie and escuage is to hold by Knights Seruice, and it draweth to it Ward, Mariage, and reliefe. For when such tenant dieth, and his heire male bee within the age of 21. yeares, the Lord shall haue the land holden of him vntill the age of the heire of 21. yeares, the which is called full age, because such heire by intendement of the Law is not able to doe such Knights Seruice before his age of 21. yeares. And also if such heire be not married at the time of the death of his Ancestor, then the Lord shall haue the Wardship & mariage of him, but if such Tenant dieth, his heire female being of the age of 14. yeares, or more, then the Lord shall not haue the

nauera my le garde del terre ne de corps pur ceo que feme de tiel age poit auer baron able de faire ſeruice de chiuāler. Mes ſi tiel heire female ſoit deins lage de 14. ans, & nient marie al temps de la mort ſon auncеſter, donque le Seignior auera le garde de la terre tenus de luy, tanque al age de tiel heire female de 16. ans, pur ceo que il eſt done per le Statute de Weſtm. 1. cap. 22. Que per 2. ans procheine enſuant les dits 14. ans, le ſeignior poit tender conuenable mariage ſāns diſparagement a tiel heire female. Et ſi le Seignior deins les dits 2. ans ne luy tend tiel mariage, &c. donque el al fine des dits 2. ans, poit enter & ouſte ſon Seignior. Mes ſi tiel hēre female ſoy marie deins lage de 14. ans en la vie ſō anceſter, & ſon auncеſter deuy el eſteant deins lage de 14. ans, le Seignior nauera forſq; la garde de la terre, jeſques a fine de 14. ans, dage de tiel heire female, & donq; Wardſhip of the land, nor of the bodie, becauſe that a woman of ſuch age may haue a husband able to doe Knights Seruice, but if ſuch heire female bee within the age of 14. yeares, and vnmaried at the time of the death of her anceſtors, the Lord ſhal haue the Wardſhip of the Land holden of him vntill the age of ſuch heire female of 16. yeares. For it is giuen by the Statute of W. 1. cap. 22. that by the ſpace of two yeares next enſuing the ſaid 14. yeares, the Lord may tēder conuenable mariage without diſparagement to ſuch heire female. And if the Lord within the ſaid two yeares do not tender ſuch mariage, &c. then ſhee at the end of the ſaid two yeres may enter, and put out her Lord; but if ſuch heire female bee maried within the age of 14. yeres in the life of her Anceſter, & her Anceſter dieth, ſhee beeing within the age of 14. yeares, the Lord ſhall haue only the Wardſhip of the Land vntill the end of the 14. yeares of age of ſuch Domino capitali. And it is called Scutagium, as it appeareth (f) by Littleton and many authorities before recited. Sometime droit de eſpee. Alſo it is called (g) Regale ſeruitium, quia ſpecialiter pertinet ad Dominum Regem. Vt ſi dicatur in Carta, faciendo inde forniſecum ſeruitium, vel Regale ſeruitium, vel ſeruitium Domini Regis quod idem eſt, &c. And another saith. Et ſunt quædam ſeruitia forniſeca quæ dici poterunt Regalia quæ ad ſcutum præſtantur, & inde habemus Scutagium, & ratione ſcuti pro fœdo militari reputatur, &c. So as in reſpect of him that doth it, it is called ſeruitium militis, but in reſpect of him for & to whom it is done, viz. to the King, & for the Realme it is called ſeruitium Regale, or ſeruitium Domini Regis, &c. (h) In ancient time they which held by Knights Seruice were called Milites, qui per loricas, &c. defendunt & deſeruiunt, &c. and ſometime this ſeruice is called ſeruitium haubertic-um. And in ancient time ſuch as held by Knights ſeruice for the defence of the Realme had many Priuiledges granted to them by Law: as for example they might haue a writ De eſſend' quiet' de tallagio, the effect whereof was (i) Si Th. filius Ranulphi terram ſuam teneat per ſeruitium militare, ſicut Domino Regi monſtrauit, tunc nullum ab eodem Thoma capiant tallagium nec pro eo dando ipſum diſtringant, vel homines ſuos qui per conſimile ſeruitium tenent. And this agreeth with the ancient Charter of King Henrie the firſt, before mentioned, which hee made on the day of his Coronation for the reſtitution of the Ancient Lawes. (k) Militibus qui p̄ loricas terras ſuas defendunt & deſeruiunt terras Dominicarum carucar' ſuarum quietas ab omnibus gildis, & omni opere &c. concedo.) and the reaſon thereof is there yelded, Sicut tam magno grauamine alleuati ſint;

(f) *Bract. vbi ſupra. Fleta lib. 3. cap. 14.*
(g) *Britton. fol. 187. Bract. n. vbi ſupra.*
(h) *Carta Hen. primi. Mat. Paris. Mirror. cap. 2. §. 17.*
(i) *Rot. claus. 19. H. 3. m. 22.*
(k) *Carta H. 1. in libro rub. fol. 41. in Scaccario.*

sint, ita equis & armis se bene instruant vt apti & parati sint ad seruitium meum, & defensionem Regni mei. But these Priuiledges and Quittances are discontinued, and the charge remayneth.

(l) *Glanvil.lib.9.cap.9.10. Fleta lib.1.cap.8 & 9. & lib. 3.cap.16.17.&c. Bracton.lib.2 cap.16. Mirror.cap.5.§.2. Britton.162.*

It is called commonly in (l) our Bookes seruitium militare, &c. or seruitium militis. And this seruice was created and prouided for the defence of the Realme, to performe which seruice the heires are not accounted in Law able till the age of one and twentie yeares. Therefore during their minoritie, the Lord shall haue the custodie of them, not for benefit only, but that the Lord might see, that they be in their young yeares taught the deeds of Chiualrie, and other vertuous and worthy Sciences.

(m) *Fortescue cap.44.*

(m) Si hæreditas teneatur per seruitium militare, tunc per leges infans ipse, & hæreditas eius, &c. per Dominum fœdi illius custodientur, &c quis, putas, infantem talem in artibus bellicis quos facere, ratione tenuræ suæ, ipse astringitur Domino fœdi sui, melius instruere poterit, aut velit, quam Dominus ille, cui ab eo seruitium tale debetur, & qui maioris potentiæ & honoris æstimatur, quam sunt alij amici propinqui tenentis sui? Ipse namque vt sibi ab eodem tenente melius seruiatur diligentem Curam adhibebit, & melius in hijs eum erudire expertus esse censetur quam reliqui amici iuuenis, &c. & reuera non minimum erit Regno accommodum, vt incolæ eius in armis sint experti, nam audacter quilibet facit, quod se scire ipse non diffidit.

(n) *Lamb. fol.135.4.*

(n) Amongst the Lawes of Saint Edward the Confessor, it is thus prouided. Debent enim vniuersi liberi homines, &c. secundum fœdum suum, & secundum tenementa sua arma habere, & illa semper prompta conseruare ad tuitionem Regni, & seruitium Dominorum suorum iuxta preceptum Domini Regis explendum & peragendum. And William the Conquerour confirmed that Law in these words. Statuimus & firmiter præcipimus, vt omnes Comites, & Barones, & Milites, & seruientes, & vniuersi liberi homines totius Regni

son baron & luy poient enter ẽ la terre & ouste le seignior, car ceo est hors de cas de le dit estatute, entant que le Seignior ne poit tender mariage a luy que est marie, &c. Car deuant le dit estatute Westm. 1. tiel issue female que fuit deins age de 14. ans, al tẽps de mort son auncestor, & puis que el auoit accomplish lage de 14 ans, sans ascun tender de mariage per le Seignior a luy, tiel heire female donque puissoit enter en le terre, & ouste le seignior sicome appiert per le rehersall & parolx de le dit statute, issint que le dit Statute fuit fait en tiel cas, tout pur laduantage de Seigniors come il semble. Mes vncore ẽ touts foits est entendue per les parolx de m̃ le Statute que le Seignior nauera les deux ans apres les, 14. ans, come est auantdit, mes lou tiel heire female soit deins lage de 14. ans, nient marie al temps de mort s̃ auncestor.

heire female, and then her husband and shee may enter into the Land, & oust the Lord, For this is out of the case of the said statute insomuch as the Lord cannot tender mariage to her which is maried &c. For before the said statute of W. 1. such issue female which was within the age of 14. yeares at the time of the death of her ancestor, & after she had accomplished the age of 14. yeares, without any tender of mariage by the Lord vnto her, such heire Female might haue entred into the land, and ousted the Lord as appeareth by the rehearsall and words of the said statute, so as the said statute was made (as it seemeth) in such case altogether for the aduantage of Lords. But yet this is alwayes intended by the words of the same Statute, that the Lord shall not haue these two yeares after the 14. yeares as is aforesaid, but where such heire female is within the age of 14. yeares, and vnmarried at the time of the death of her ancestor.

regni noſtri prædicti habeant & teneant ſe ſemper in armis & in equis vt decet, & oportet, & quod ſint ſemper prompti & parati ad ſervitium ſuum integrum nobis explendum & peragendum cum ſemper opus adfuerit ſecundum quod nobis debent de feodis & tenementis ſuis de jure facere, &c. Out of theſe two Lawes the ſtudious and learned reader will gather diuers notable things. And therefore if after the Lord hath the Wardſhip of the body and the land, the Lord doth releaſe to the infant his right in the Seigniorie, or the Seigniorie diſcendeth to the infant, he ſhall be out of Ward both for the body and the land, for he was in ward in reſpect he was not able to doe thoſe ſeruices which he ought to doe to his Lord, which now are extinct, and Ceſſante cauſa, ceſſat cauſatum? And our Author ſaith, that the tenure by Knights ſeruice draweth vnto it Ward; Marriage, &c. ſo as there muſt be a tenure continuing. As if the Conuſor in a ſtatute Merchant be in execution, and his land alſo, and the Conuſee releaſe to him all debts, this ſhall diſcharge the execution, for the debt was the cauſe of the Execution, and of the continuance of it till the debt be ſatisfied, therefore the diſcharge of the debt which is the cauſe, diſchargeth the execution which is the effect.

See W.1.ca.48. the ſecond part of the Inſtitutes.

20. *Aſſ. p.7.*

¶ *Et trait a luy gard, marriage, & releife.* **So as regularly there** be three incidents to Knights ſeruice, (viz.) two of honour and ſubmiſſion, as Homage and Fealtie. And foure of profit, viz. Eſcuage, whereof he hath treated before, Ward (i. Wardſhip of the land) Marriage, and Releife; of all which our Author hath ſpoken. But there be other incidents to Knights ſeruice beſides theſe, (a) as Aide pur faire fits chivalier, & aide pur file marier, &c. which at the Common Law were vncertaine, and were called rationabilia auxilia, becauſe if they were exceſſiue and vnreaſonable in the iudgement of the Court where they were queſtioned, they ought not to be paide: But now aſwell in the Kings caſe, as in the caſe of the ſubiect, they are by Acts of Parliament reduced to certaintie which are worthy your reading.

(a) *Grand Cuſt. de Norm. ca.35. Regiſt. orig. fo.87. Glanuil lib.9. ca.8.35. Fleta lib.2.cap.40. & lib.3. ca.14. Mirror ca.1.§.3. Britton fo.55. & 90. F.N.B. 82.b W.1.ca.35.25.E.3. ca.11.11.H.4.34.5.E.3.11. Vid. Sect.110.*

¶ *Gard*, or Ward, **in Latyne** Cuſtodia, **and hereof the Lord is** called Gardian, Cuſtos, and the minor is called a ward or one in ward. (b) And albeit (as our Author ſaith) Knight ſeruice draweth with it ward, &c. yet by cuſtome the heire of him that holdeth in Socage may be in ward.

(b) *8.H.3. Preſcript. 38. P ſch.21.E.1.Coram rege Rot.43 Nota pro Hibernia Prior del Sr. Trinity de Dublins caſe.*

¶ *Marriage.* Maritagium, **betokeneth not only the copulation of** man and wife in marriage, but alſo (as in this place here) the intereſt of the Gardian in beſtowing of a Ward in marriage, which the Law gaue to the Lord not for his benefit only, but that he ſhould match him vertuouſly, and in a good family without diſparagement as ſhall be ſaid hereafter, which is the principall foundation of his eſtate.

¶ (c) *Releife.* Relevium, **is deriued from the Latyne word** Relevare; for ſo (d) ancient Authors ſay and giue this reaſon, Quia hæreditas quæ jacens fuit per anteceſſoris deceſſum, relevatur in manus hæredum, & propter factam relevationem facienda erit ab hærede quædam preſtatio que dicitur relevium. And in Domeſday it is called relevamentum and relevatio.

(c) *Vid. Sect.112.*
(d) *Bracton lib.2.ca.36. fo.84. Fleta lib.1.ca.10. & lib.3.ca.16.17. Britt.ca.69.70. Glanu.l.b.9.ca.4. & lib.7.ca.9. Ockam de differentiis rel vietum.*

The releife of a whole Knights fee is fiue pound, and ſo according to that rate. And this releife was as ſome hold certaine by the Common Law,* but the releife of Earles and Barons were incertaine, and therefore were called relevia rationabilia but the ſtatute of Magna carta, cap.2. limits them in certaine, and mentioneth alſo a Knights fee. But I reade in the booke of Domeſday, Quod Tainus vel miles regis dominicus moriens pro relevamento dimittebat regi omnia arma ſua & equum vnum cum ſella & alium ſine ſella, quod ſi eſſent ei canes vel accipitres præſtabantur regi, vt ſi vellet, acciperet.

(*) *Ockam. vbi ſupra. Bracton lib.2.fo.85.*

Since Littleton wrote (e) there is a good Law made againſt fraudulent Feoffments, Gifts, Grants, &c. contriued of fraude to hinder or defraude Lords, &c. of their Releifes and Herriots amongſt other things for the expoſition of which ſtatute reade the Authorities quoted in the margent. And it is to be obſerued that the words of the ſaid Act of 13.Eliz. are, (bee it therefore declared, ordeyned, and enacted) and therefore like caſes and in ſemblable miſchiefe ſhall bee taken within the remedy of this Act by reaſon of this word (declared) whereby it appeareth what the Law was before the making of this ſtatute.

(e) *13.Eliz.ca.5. 17.E.3.Reliefs 3 7.E.3.ib.11.lib.3.fo.80.&c. Twynes caſe. Lib.5.fo.60.Gooches caſe. Lib.6.fo.18. Pakemans caſe. lib.10.fo 56.b. See alſo the ſtatutes of 3.H.7. ca.4.& 50.E.3.ca.6. Vid.Mich.12.& 13.Eliz. Dier 295.*

¶ *Son heire male.* (f) **For regularly by the Common Law the** heire ſhall not be in Ward vnleſſe he clayme as heire by diſcent. The ſtatute of Merton, De his qui primogenitos feoffare ſolent; (g) Did helpe Feoffments by colluſion in certaine caſes. And Britton ſaith that Robert de Walrand a ſage of the Law did aduiſe the great Lords of the Realme to make the ſaid ſtatute, which when it was paſt the ſame Act tooke his firſt effect in the heire of Walrands owne heire, whereof Britton maketh a ſpeciall remembrance. But now (h) by the ſtatutes of 32. and 34.H.8. of Wills, he which holdeth lands by Knights ſeruice may by Act executed in his life time, or by his laſt Will in writing diſpoſe two parts as by the ſaid Acts appeareth. If hee diſpoſe all by act executed, then it ſhall ſtand good againſt the heire,

(f) *Britton.168. Fleta.lib.1.ca.9.*
(g) *Merton ca.6. Bract.fo.85. Britt.fo.65. 9.H.4.6.4.H.7.ca.17. 27.H.8.7.89. Partridges caſe pl.com.82.*
(h) *32.H.8.ca.1. 34.H.8.ca.5.*

(i) *Li.3.fo.25.26.in Bulers case. Li.6.fo.75 in Sir George Curſons caſe. Li.8.fo.163. Mights caſe Eod.lib.fo.171. in Vigil Parkers caſe.*
(k) *Mir.ca.1.§.3.*

ſo as nothing ſhall diſcend vnto the heire. But in caſe of a Deuiſe by his laſt will, a third part ſhall diſcend to the heire, though all be deuiſed away: & if the Tenant leaue a third part to diſcend, then the deuiſe is good for the reſidue. (i) But theſe things require ſo many diuerſities grounded vpon euident reaſons, and are ſo plainely expreſſed in my Commentaries, as they (being verie long) ſhall not need to be repeated here. (k) And that the tenure by Knights ſeruice driueth to it Ward, Marriage, and Reliefe, is of great antiquitie, for ſo it was in the time of King Alfred.

¶ *Quant tiel tenant mort.* Here Littleton ſpeaketh not of a dying ſeiſed by the Tenant, for in many caſes the heire ſhall be in Ward, albeit the Tenant died not ſeiſed, &c. nor in the homage of the Lord. As if the Tenant maketh a feoffement in fee vpon condition, and the feoffor dieth, after his death the condition is broken, the heire within age entreth for the condition broken, he ſhall be in Ward, and yet the feoffor had no eſtate or right in the land at the time of his death, but onely a condition, and which was broken after his deceaſe. (k) But becauſe the condition reſtoreth the tenant to the land in nature of a diſcent, (for he ſhall be in by diſcent) by the ſame reaſon ſhall it reſtore the Lord to the Wardſhip, ſeeing now (as Littleton ſaith) the heire of his Tenant is within age, and not able to doe him ſeruice, and no default in the Lord to barre him of his Wardſhip.

(k) *39.E.3.36.tit.Gard 92. 33.E.3.Gard 162. 11.H.7.12 19.E.3.Gard 114. 18.aſſ.18. 40.Aſſ.36.20.El.362. 4.H.6.16.b.F.N.B.143. 6.H.4.a.*

(l) And ſo I doe take it, that if the heire within age recouer in a Dum non fuit compos mentis, or Formedon en diſcender, or remainder as heire, or ſuch like, the heire ſhall be in Ward, for theſe be ſtronger caſes than the former, for here a right doth diſcend to the Demaundant, which right being by courſe of Law reſtored to the poſſeſſion of the heire within age, by conſequence the Lord is to haue the wardſhip of him, but in the caſe of the condition, no right at all diſcended to the heire, as hath beene ſaid.

(l) *7.H.4.12.11.H.7.12. 22.E.4.7.6.40.E.3.43. 4.M.136.15.E.4.10,11.*

33.E.3.Gard 162.

And ſo if tenant in tayle, the remainder in fee, maketh a feoffement in fee, and dieth leauing the iſſue in taile within age, if the feoffee infeoffe the iſſue in taile, whereby hee is remitted, hee ſhall be in Ward to the Lord: for as he is reſtored to the title of the land as heire, ſo is the Lord reſtored to his title of Wardſhip as Lord of the Fee. And as to this purpoſe herein I take no difference betweene a right of action and a right of entrie diſcending, when by action the right of the land is lawfully recouered by the heire within age, to his Tenant, and albeit hee dyed not in his homage, yet there was a right of homage, and no default or laches was in the Lord, or act done by him to preiudice himſelfe thereof.

11.H.7.12.

But if one leaſe a fine executorie (as ſur grant & render) to a man and his heires, and he to whom the land is granted and rendred, before execution dieth, his heire being within age entreth, he ſhall not be in ward, for his Anceſtor was neuer tenant to the Lord: and ſo there is a manifeſt diuerſitie betweene this and the other caſes. Et ſic de cæteris.

13.El.Dyer 298.

But if the Tenant maketh a feoffement in fee of lands holden by Knights ſeruice, to the vſe of the feoffee and his heires, vntill the time that the feoffor pay to the feoffee or his heires a hundred pounds, for the which a time and place is limitted; the feoffee dieth, his heire within age, the Lord ſhal haue the wardſhip of the bodie of the heire, and of the lands of the feoffee, conditionally, for he cannot haue a more abſolute intereſt in the wardſhip, than the heire hath in the tenancie: and therefore if the feoffor pay the mony at the day and place, and entreth into the land, in this caſe both the wardſhip of the bodie and lands is deueſted, becauſe the Lord had no abſolute intereſt in neither of them, but doth depend vpon the performance or not performance of the condition.

(l) *12.H.4.16.per Thirning.*

(l) So if the Conuſor of a fine executorie of lands holden by Knights ſeruice, dieth his heire within age, the Lord ſhal haue the wardſhip of the bodie and land: but if the Conuſee entreth, the heire is diſherited, and the Lord hath loſt the whole benefit of his wardſhip.

(m) *41.E.3.225.* (n) *15.E.4.11.*

If the Diſſeiſee dieth, his heire being within age, (m) the Lord ſhall haue the wardſhip of the heire of the bodie of the Diſſeiſee. (n) But put the caſe that in that caſe the Diſſeiſor dieth ſeiſed, and his heire within age, the Lord may ſeiſe the wardſhip of his heire alſo, and of the land alſo: but the doubt is, whither the heire of the Diſſeiſee ſhall after the diſcent to the heire of the Diſſeiſor, continue in ward, for that after the diſcent the heire of the Diſſeiſor is become his lawfull tenant, and the heire of the Diſſeiſee is not tenant vnto him vntil he hath recouered the land.

(o) *14.H.8.5. 4.H.7.cap.* (p) *41.E.3. 26.tit. Auowrie,264.20.H.6.9 48.E.3.8.b 10.E.3.26. 31.E.3.tit.Gard. 116. 18 E.3.7.14.H.4.38. 1.H.5.Grant 43.5.E.4.3. 7.E.4.27.15.E.4 13.2.E.2 Auow.181.*

If Ceſty que vſe before the Statute of 27.H.8. had died, his heire within age, the Lord (o) ſhould haue the wardſhip of his heire: and if the feoffee had died, his heire within age, the Lord ſhould haue had the wardſhip of his heire alſo, and ſo a double wardſhip for one and the ſame land, the one by the Statute of 4 H.7. the other by the Common law.

(p) Tenant by Knights ſeruice maketh a gift in taile, the remainder in fee, Tenant in taile maketh a feoffement in fee, and dieth, his heire within age, the Lord ſhall haue the wardſhip of him: and if the Feoffee dieth, his heire within age, the Lord ſhall haue the wardſhip alſo of his heire, and of the land.

If Tenant by Knights ſeruice maketh a gift in taile, and the Donee maketh a feoffement in fee, and the donee dieth his heire within age, the Donor ſhall haue the Wardſhip of him, becauſe he is his tenant in right. (q) But if the Feoffee dieth, his heire within age, the Donor ſhall not haue the wardſhip of his heire, but the Lord paramount, becauſe he is tenaunt in fait to him, neither ſhall the donor auow vpon the Feoffee or his heyre, for the ſeruices due vnto him, becauſe he muſt in his auowrie ſhew the reuerſion in fee to be out of him by the feoffement, and conſequently the ſeruices incident to the reuerſion are alſo out of him, but he ſhall auow vpon the Donee and his iſſues: and thus are all the bookes that ſeeme to be at variance, either anſwered or reconciled.

(q) *So was it holden Tr.* 18. *El. in Com Banc per Cur. Which myſelfe heard and ſeene in our Tho. Wyats caſe.*
(r) *So was it reſolued in Sir Tho. Wyats caſe. vbi ſupr.*

(a) *La terre tenus de luy, &c.* Littleton **here ſpeaketh of Lands holden** of a Subiect: for if a man hold land of the King by Knights ſeruice in Capite, and other lands of other lords, and dieth his heire within age, the King ſhall haue the wardſhip of all the lands by his Prerogatiue: and this was due to the King by the Common Law, the fees of certaine excepted, as in the Statute of Prærogatiua Regis cap. 1. appeareth.

(a) *Glanuil. li.* 7. *c.* 10. *Bract. li.* 2. *fo.* 85, 86, 87. *Brit. li.* 3. *ca.* 2. *Flet. li.* 1. *c.* 10. 9. *H.* 3. *Prerog.* 25. 21. *H.* 3. *ib.* 26. *Rot Finium.* 6. *Iohan. Stat. Prerog. Reg. cap.* 1.

But if a man holdeth lands of the King by Knights ſeruice, as of an Honour or Mannor, &c. (b) in that caſe the King ſhall onely haue the lands holden of him, and not of any other. Yet by reaſon of tenures of the King by Knights ſeruice, of certaine honours, (while they were in the Kings hands) the King (as ſome haue ſaid) had (as it were by preſcription) his Prerogatiue, viz Raleigh hage net bonony and Peverel, and ſo of lands holden by Knights ſeruice of the Duchie of Lancaſter in the countie Palatine.

(b) *Bract. vb. ſupr. Mag. carta ca.* 31. 1. *E.* 6. *c.* 4. 5. *E.* 3. 5. 47. *E.* 3. 21. 29 *H* 8. *Ir. tit. Liuery* 58. 28. *H.* 8. *ib.* 55.

(c) When an heire hath bin in ward to the King by reaſon of a tenure in Capite, after his full age he muſt ſue liuerie, which is halfe a yeares profit of his lands holden. But if he bee of full age at the time of the death of his Anceſtor, then he ſhall pay for lands in poſſeſſion a whole yeares profit for Primer ſeiſin: but if it be of a reuerſion expectant vpon an eſtate for life, as tenant in Dower, Tenant by the Curteſie, or Tenant for life, then he ſhall pay but the moity of one yeares profit.

(c) *Lib.* 8. *fo.* 172. *Halts caſe.* 38. *H.* 8. *Br. tit. Liuerie* 60. *Vi. Sect.* 154.

(d) If the heire be in ward by reaſon of a tenure of an Honour or Mannor (except as before) he ſhall not ſue liuerie, but an Ouſter le maine cum exitibus, albeit he neuer made tender.

(d) 1. *El. Dy.* 168.

(e) And if he be of full age, the King ſhall haue no Primer ſeiſin, but Reliefe. But where the tenure is in Capite, there the King ſhall haue the meane profits vntill the tender be made, and if the tender be made, and not duly purſued, the King ſhall alſo haue all the meane profits.

(e) 32. *H.* 8. *tit. Liu. Br.* 62.

(f) He that holdeth of the King by Socage in chiefe, and dieth, his heire of full age, the King ſhall haue liuerie and Primer ſeiſin onely of the lands ſo holden, and not of the lands holden of others. (g) But if the heire of ſuch a Tenant in Socage in chiefe, be within the age of fourteene at the death of his Anceſtor, he ſhall neither ſue liuerie, nor pay Primer ſeiſin, either then or any time after: and the reaſon thereof is, for that the cuſtodie of his bodie and lands in that caſe, belong to the Prochein amy, as Gardein in Socage. (h) Neither ſhall the King haue Primer ſeiſin of Lands holden in Burgage, (as ſome haue ſayd) for that it is no Tenure in Capite.

(f) 38. *H.* 8. *Liuer. Br* 60. 45. *E.* 3. 11. 35. *H.* 6. 52. *Stanf.* 13. *b.*
(g) 20. *El. Dy* 362. *F. N. B.* 259. *b.*
(h) *F. N. B.* 263. 7. *E.* 4. 17. *Stanf. Prer.* 13. *Br. tit. Liu.* 64

Note, there is a generall liuerie, and a ſpeciall liuerie: A generall liuerie hath two properties:

Firſt, it is full of charge to the heire, for he muſt find an office in euerie Countie where he hath land, or elſe he cannot ſue a generall liuerie, and hee muſt ſue out his writ of Ætate probanda, &c.

(i) The ſecond propertie is, that it is full of danger: Firſt, It concludeth the heire for euer after to denie any Tenure found in the Office. Secondly, If Liuerie be not ſued of all and of euerie parcell which the King ought to haue, whither it be found in the office, or not found (for a generall liuerie could not be ſued by parcels) the liuerie is void, and the King may reſeiſe the lands, and be anſwered of the meane profits. So it is if the Office be inſufficient, or the Proceſſe whereof the Liuerie was made be inſufficient, or the like, the King ſhall reſeiſe, as is afore ſaid. (a) Therefore for the eaſe of the heire, and for auoyding of ſuch danger, the heire for the moſt part ſueth out a ſpeciall liuerie, which containeth a beneficiall pardon, and ſaueth the ſayd charges, and preuenteth the ſaid concluſion, and the other dangers, which being of grace, and not of right, as the generall liuerie is, the King may well and iuſtly take more for a ſpecial liuerie, than for a generall, for the cauſes aforeſaid,, but euer with ſuch moderation as the heyre may chearefully go through therewith.

(i) 46. *E.* 3. 33. 47. *E.* 3 21. 21. *H.* 6. 28. *b.* 33. *H.* 6. 50. 29. *Aſſ.* 8. *Pl. Com. Countee of Leic. caſe.* 44. *E.* 3. 1. *&* 25. 12 *R.* 2. *Lin.* 28. 1. *H.* 7. *fo.* 12.

(a) 1. *H.* 4. 6. *b.* 37. *H.* 8 *Eſſop. Br.* 218. 7. *E.* 6 *ib.* 222. *Scutfields caſe. Tr.* 8. *Ia. in cur. Ward.* 23. *El. Dy.* 377. 28. *H.* 8. *Br. tit. Liuery* 56.

Note that a liuerie is in nature of a reſtitution, which is to bee taken fauourably: for if liuerie be made of a mannor cum pertinentijs, the heire ſhall thereby haue the aduowſon appendant, otherwiſe it is in Grants by Letters Patents.

41. *E.* 3. 5. 5. *E.* 66. 27. *aſſ.* 48. *Pl. Com.* 252. 20. *El. Dy* 360.

Since the time that Littleton wrote (c) there is a Court of Wards and Liueries erected by Authority of Parliament concerning the order of the Kings Wards, &c. to be holden before the Maſter of the Wards, and the Councell of that Court appointed by theſe Acts. This hath

(c) 32. *H.* 8. 46. 33. *H.* 8. *c.* 21.

made ſuch a manifold alteration, as were too long here to be inſerted, & doth belong to another Treatiſe mentioned in the Epiſtle of the iuriſdiction of Courts, where it were neceſſary, that the true iuriſdiction of that Court ſhould be ſet downe, a matter of no great difficultie, ſeeing it began ſo late by Authority of Parliament. And ſince Littletons time, (d) there is a right profitable Statute made concerning the finding of Offices and other things, not only concerning the Kings Wards, or their rights and poſſeſſions, but ſome other prouiſions very beneficiall for the ſubiect, in all to the number of 12. (e) Firſt that ſuch perſons as hold for terme of yeares, or by copy of Court Rolle, or haue any Rent, common or profit apprender out of any lands found in any office, wherby the King is intituled to the wardſhip of the Lands or Tenements, or to the forfeiture of the Lands or tenements vpon attainder of treaſon, felony, præmunire, or any other offence, yet may they haue, hold, enioy, and perceiue their ſeuerall eſtates, intereſts and profits, although they be not found in the office. And this being a beneficiall Law the eſtates of Tenant by ſtatute ſtaple, Merchant, and elegit, & Executors that hold lands for payment of debts are taken to be within the benefit of the clauſe: (f) and ſo is a doubt in 14. Eli. Dier clæred.

(d) 2.*E.*6.*ca.*8.

(e) 4.*E.*4.23.33.*H.*8.*tit. entre congeab.* Br.125.

(f) 14.*Eliz. Dier.fo.*319.

2. Where it is found, that the heire is of fewer yeares than in truth hee is, hee ſhall not bee concluded hereby, (g) but euery ſuch heire at his very full age may proſecute a Writ of ætate probanda, and ſue his Liuery or ouſter le maine: in which caſe he had no remedy by the Common Law, but the King may trauerſe ſuch an Office found.

(g) 5.*Mar. Dier.*135.

(a) 3. Where one perſon or more be found heire, where another perſon is heire, the partie grieued had no remedy.

(a) 24.*E.*3.31.38. 9.*H.*6.18. 12.*E.*4.16. 30.*Aſſ.*28.*lib.*4.*fo.*56.& 60.*Sadlers caſe. Stanf. prerog.* 58.*b.* 52. 5.*E.*4.4.16.*E.*4.4. 1.*H.*7.14.2.*H.*7.12. 4.*H.*7.15.8.*H.*7.11. *F.N.B.*262.12.*R.*2. *Liuery* 28.*F.N.B.*233. *Lib.*7.*fo.*44.45. *Kens caſe.*

4. Or where one perſon or more be found heire in one County, and another perſon or perſons found heire in another County, there could haue beene no interpleading.

5. Or if any perſon be vntruly found by office Lunaticke, or Ideot, or dead, the party grieued may trauerſe the ſaid office; and you may reade in Kens caſe how the office ſhall be trauerſed vpon this Act.

(b) 4.*E.*4.23.10.*H.*6.19. *Lib.*4.*fo.*56.*&c. Sadlers caſe.* 32.*H.*8.*entre Conge.Br.*125. 14.*E.*3.*ca.*14.

(b) 6. Where it is vntruly found by office that any perſon attainted of Treaſon, Felony, or Præmunire is ſeiſed of any lands, &c. the party grieued hauing iuſt title of freehold, ſhall haue his trauerſe or Mſans de droit (without being driuen by this double matter of Record to his petition of right as he was before this Statute, which is much more ſpeedy then the petition; for vpon the petition there be foure Writs of ſearch, and euery one muſt haue 40. dayes before the ſerning, and now but two Writs of ſearch.

(c) *Vid.lib.*6.*fo.*6. *Wheelers caſe.*

7. Where an office is found by theſe words or the like quod de quo vel de quibus tenementa predicta tenentur, iuratores pred' ignorant, or holden of the King per quæ ſervitia iuratores ignorant, it ſhall not be taken for any immediate tenure of the King in chiefe, but in ſuch caſes a melius inquirendum to be awarded as hath beene accuſtomed of old time. This branch hath beene well (d) expounded, for if the firſt Office finde a tenure of the King per que ſervitia, &c. yet if vpon the Melius inquirendum the tenure be found of a ſubiect, the firſt office hath loſt his force per ſenſum huius ſtatuti, and need not be trauerſed, and the Melius, &c. is in nature of the Diem clauſit extremum or mandamus, &c. and this was but a declaration of the auncient Common Law, as by the words of the Statute (as hath beene accuſtomed of old) it appeareth; but if vpon the melius it be found againe as vncertainely as before is ſaid, then it is in iudgement of Law a tenure in Capite, and ſo it was before the making of this Act, and ſo are the bookes that ſpeake hereof to be intended; but if vpon the melius a tenure be found of the King Vt de manerio per que ſervitia, &c. it ſhall be taken for Knights ſeruice.

(d) 12.*Eliz. Dier fo.*292.*a. Lib.*8.*fo.*168.*Pars Stoughters caſe.*

13.*Eliz. Dier.*306. 4.*H.*6.13.10.*H.*4.2.*b.*

8. Where it is found that Lands, &c. are holden of the King immediately where in truth they are holden of a common perſon and not of the King immediatly, and that the heire is within age, ſuch heire within age ſhall haue his trauerſe, &c. which he could not haue had by the Common Law.

9. The meane Lords of whom the lands are holden which the King hath by his prerogatiue during the minority of the heire ſhall receiue and take ſuch Rents as are due vnto them by the hands of ſuch of the Kings officers as receiue the profits of the ſame lands, where before that Act, the Lords vſed to ſpare the Rents due, &c. during the Kings poſſeſſion, and after Liuery ſued, charged the heire with all the arrerages.

10. There is a prouiſion for offices found before the ſtatute or before the 20. day of March next after the Act.

11. A ſpeciall clauſe is that a Scire fac' ſhall be awarded vpon euery trauers by force of this Act, and where the partie was put to his petition, there vpon the trauers there ſhall bee two Writs of ſearch granted.

12. And laſtly, if iudgement ſhall be giuen againſt the King vpon a trauerſe by vertue of this Act, all former rights appearing of Record are ſaued to the King. But albeit theſe points are moſt neceſſary to be knowne, yet let vs now returne to Littleton.

15.*F.*4.12. 4*E.*3.12. 21.*H.*6.11.3.*H.*7.5.

Littleton warily and materially (treating of a common perſon) ſaith tenus de luy holden of him, for he ſhall haue nothing in Ward but that which is holden of him. But the King by his

prerogatiue

prerogatiue ſhall not only haue ſuch lands and tenements which (as hath beene ſaid) the heire of his Tenant by Knights ſeruice in capite holdeth of others, but ſuch inheritances alſo as are not holden at all of any, as Rent charges, Rent ſecke, Faires, Markets, warrens, Annuities, and the like; and ſo is the Law cleerely holden at this day, as it hath beene reſolued; and ſo experience teacheth, that the King by his prerogatiue giuen to him by the ancient Common Law ſhall haue thoſe inheritances not holden, and ſo the Quære made by (o) Stanford is cleered and made without queſtion.

(o) *Stanf.prer.fo.8.*

The Law is changed ſince Littleton wrote in many caſes both for the marriage of the body, and for the Wardſhip of the lands, and a farre greater benefit giuen to the Lords then the Common Law gaue them, and ſome aduantage giuen to the heires, which before they had not, which ſhall be touched briefly.

If the Father had made an eſtate for life or a gift in tayle of lands holden by Knights ſeruice to his eldeſt ſonne, or other heire apparant within age, the remainder in fee to any other, and died, the heire ſhould not haue beene in ward, for this was out of the ſtatute of Merlebridge: But at this day the heire ſhall be in that caſe in ward for his body, and a third part of his land.

Marlebridge,ca.1. pl.com.82. 27.H.(.10. 33.H.6.14.

(a) So if the father had infeoffed his eldeſt ſonne within age and a ſtranger and the heires of the ſonne, and died, the ſonne ſhould haue beene out of ward, but at this day he ſhall bee in ward for his body, and for a third part of his moitie. (b) So if the father had infeoffed any of his younger ſonnes or others for the making of his wife a ioynture, or for the aduancement of his daughters, or for the payment of his debts, and after infeoffe or conuey the the land to his heire and died, his heire within age, his heire ſhould not haue beene in ward, becauſe hee was bound by the law of nature and nations to prouide for them, but now in all theſe caſes the heire ſhall be in ward for his body, and a third part of the land, and all this groweth by conſtruction vpon the Statutes of 32.and 34.H.8 (c) But if either the eldeſt ſonne, or any of the younger ſonnes purchaſe lands of his father which are holden by Knights ſeruice, bona fide for the reaſonable value, this is out of theſe ſtatutes, and the heire ſhall neither bee in ward nor pay Primer ſeiſon.

(a) *31.E.3. Collusion 29. 33.H.6.14.*
(b) *33.H.6.14 27.H.8.7. Lib.6.fo 76.77. Sir George Curſons caſe. 10.Eliz 260.3.Eliz.193. 20.Eliz. 361. 19.Liz 276. 5.Marie.158.*
(c) *Lib.8.fo.83. Leonard Loueys caſe.*

And in all the caſes aboueſaid (for example) if a Feoffment be made to the vſe of his wife for life, or to the vſe of any of his younger ſonnes for life, or to the vſe of ſome perſons for life for payment of debts, and vpon all theſe eſtates a remainder is limitted ouer, if the wife or Tenant for life die in the life of the father, (d) or if it be conueyed to the vſe of the wife or younger children in fee, or fee taile, or in fee for payment of debts, and theſe lands are conueyed away in the life time of the father, after the deceaſe of the father no Wardſhip, &c. accrueth by force of any of the ſaid Statutes, for ſuch eſtates muſt continue till the title of Wardſhip doe growe.

(d) *Lib.2.fo.91. Bingham caſe. lib 6.vbi ſupra 84. Lib.8 fo.165. Digges caſe.*

(e) If the father conuey his lands holden by Knights ſeruice either of the King or of any meane Lord to his middle ſonne in taile, the remainder to the youngeſt ſonne in fee and dieth the eldeſt being within age, and the King or Lord ſeize the body and two parts of the land, if the middle brother die without iſſue, the King or the Lord ſhall not haue any benefit of the ſtatute againſt him in remainder, for the ſtatute was once ſatisfied and the ſtatute extendeth not to him in remainder.

(e) *14.Eliz.Dier 308. 3.Marie Dier.130. Lib.2.fo.93.94. Bingham caſe, & Northcots caſe. Lib.10.fo.80.b.Leonard Loueys caſe.*

(f) If there be a grandfather, father, and diuers ſonnes, and the grandfather in the life of the father conuey his lands holden by Knights ſeruice to any of the ſonnes, this is out of the ſtatute of 32.H.8. and if the grandfather die, there is neither Wardſhip nor Primer ſeiſon due, For the father hath the immediate care of his ſonnes, but if the father be dead, then the care of them belong to the grandfather, and then if the granfather conuey any of the lands to any of the ſonnes, it is within the ſaid ſtatute: (g) and a conueyance to the vſe of any of his collaterall blood, which is not his heire apparant is out of the ſaid ſtatute. And ſo are conueyances eyther by father, either by father or mother to or to the vſe of baſtard children out of the ſtatute, for qui ex damnato coitu naſcuntur, inter liberos non computentur. And the Preamble ſpeaketh of lawfull generations. If a man ſeiſed of lands holden in Socage conuey them to the vſe of his wife, or of his children, or payment of his debts and after purchaſe lands holden by Knights ſeruice in Capite, and dieth his heire within age, the King ſhall haue no part of the Socage land. (h) But if in that caſe he had by his will in writing deuiſed his Socage lands in fee, and after purchaſed lands holden in capite, and dieth, the King ſhall haue ſo much of the Socage lands as will make a full third part of all. The benefit that grew to the ſubiect by thoſe Acts of Parliament, were that tenants in Fee ſimple might deuiſe their lands by their laſt wills in writing in ſuch manner and forme, as by the ſaid Acts appeareth. Alſo that the father might infeoffe his eldeſt ſonne or other heire lineall or collaterall of his lands holden by Knights ſeruice, and two parts of the lands ſhalbe out of ward. And in * Mightes caſe you ſhall reade excellent matter of eſtates made vpon colluſion.

(f) *Lib 6.fo.77. Sir George Curſons caſe. 2.Eliz.Dier.181. 8.Eliz.Dier 252.*

(g) *Lib.10.fo.83. Leonard Loueys caſe. 18.Eliz.Dier.385.*

(h) *Leon. Loueys caſe vbi ſupra. Butler & Bakers caſe.lib.3.fo.25.&c.*

* *Lib.8.fo.163. Mightes caſe.*

And both the Statutes of 32. and 34.H.8. concerning Wills and wardſhips are many wayes preiudiciall to the heires, as taking one example for many. If Tenant by Knights

ſeruice make a feoffment in fee to the vſe of his wife and her heires, or to the vſe of a younger ſonne and his heires, or wholy for the payment of his debts. In theſe caſes although nothing at all of the lands ſo holden diſcend to the heire, but hee is diſherited of the ſame, yet his bodie ſhall be in ward: but this for a little taſte may ſuffice, more hereof you may reade in my Reports in the ſeuerall Caſes noted in the margent.

Leon. Loueys caſe. vbi ſupra. 22. Eliz. Dier. 367.

32. E. 3. gard. 61.

¶ *Pleine age.* **Full age regularly is one and twentie yeares.**

2. H. 5. 4.

¶ *Entendement del ley. Entendement .i. intellectus* **the vnderſtanding** or intelligence of the Law. Regularly Iudges ought to adiudge according to the common intendement of Law.

10. H. 6. 8. 21. E. 3. 33. a. 27. H. 8.

By intendement of Law euery Parſon or Rector of a Church is ſuppoſed to be reſident on his Benefice, vnleſſe the contrarie be proued.

Of common intendement one part of a Mano^r ſhall not be of another nature then the reſt.

Of common intendement a will ſhall not be ſuppoſed to be made by collusion. In facto quod ſe habet ad bonum & malum magis de bono, quam de malo lex intendit. Lex intendit vicinum vicini facta ſcire. Nulla impoſſibilia aut inhoneſta ſunt præſumenda, vera autem & honeſta, & poſſibilia. Lex ſemper intendit quod conuenit rationi. As in this caſe the Gardeine ſhall haue the cuſtodie of the land vntill the heire come to his full age of one and twentie yeares, becauſe by intendement of law the heire is not able to doe Knights Seruice before that age, which is grounded vpon apparant reaſon. There note that the full age of a man or a woman to alien, demiſe, let, contract, &c. is one and twentie yeares, the ciuill Law fiue and twentie yeares, for then the Romans accounted men to haue plenam maturitatem, and the Lombards at eightéene yeares.

Vide Britton. fol. 169.

¶ *Si le heire ne ſoit marie al temps del mort de tiel Aunceſter, &c. Aunceſter* **is deriued of the Latine word** anteceſſor, **and in Law there** is a difference betweene anteceſſor and prædeceſſor. For anteceſſor is applyed to a naturall perſon, as I. S. & anteceſſores ſui, but Prædeceſſor is applyed to a bodie Politique or Corporate, as Epiſcopus London & prædeceſſores ſui. Rector de D. & prædeceſſores ſui, &c.

Glanuil. lib. 7. cap. 1. Mirror. cap. 5. §. 2. Britton. fol. 168. b. 39. H. 6. cap. 2.

¶ *Mes ſi tiel tenant deuie ſon heire female eſteant del age de* 14. *ans, &c.* **And the reaſon as I find in Antiquitie, wherefore** the Law gaue the marriage of the heire female if ſhe were within the age of fourtéene, and that ſhe ſhould not marrie her ſelfe, was pur ceo que les heires females de noſtre terre ne ſe marieront a nous enemies, & dount il nous couiendroit lour homage prendre, ũ eux ſe puiſſent marier a lour volunt. This is a ſpeciall age for an heire female to bee out of ward, if ſhee attaine vnto it in the life time of her anceſter, for at that age ſhe may haue a huſband able to do Knights Seruice. A woman hath ſeuen ages for ſeuerall purpoſes appointed to her by Law: as ſeuen yeares for the Lord to haue aide pur file marier: nine yeares to deſerue Dower, Twelue yeares to conſent to mariage, vntill fourtéene yeares to be in ward, fourtéene yeares to bee out of ward, if ſhe attained thereunto in the life of her Anceſter; Sixtéene yeeres for to tender her mariage if ſhe were vnder the age of fourtéene at the death of her anceſter, and one and twentie yeares to alienate her Lands, Goods and Chattels.

35. H. 6. 40. Bracton. lib. 2. cap. 37.

34. E. 1 Stat. 3. Glanuil. lib. 7. cap. 9. Dier 5. Marie 162. Bracton. lib. 2. cap. 37. F. N. B. 202.

A man alſo by the Law for ſeuerall purpoſes hath diuers ages aſſigned vnto him, viz. twelue yeares to take the oath of Allegeance in the Toune or Leet. Fourtéene yeares to conſent to mariage, fourtéene yeeres for the heire in ſocage to chooſe his Gardein, and fourtéene yeares is alſo accounted his age of diſcretion. Fiftéene yeares for the Lord to haue aide pur faire fitz Chiualer. Vnder one and twentie to be in ward to the Lord by Knights Seruice. Vnder fourtéene to be in ward to Gardein in Socage. Fourtéene to be out of Ward of Gardein in Socage, and one and twentie to be out of ward of Gardein in Chiualrie, and to alien his Lands Goods and Chattels.

35. H. 6. 52. tit. gard. 71. Stanford. 3. b. F. N. B. 256. 259. 35. H. 6. 40.

Britton. fol. 169. 35. H. 6. 52.

¶ *Mes ſi tiel heire female ſoit deins lage de* 14. *ans & nient marie, &c. Le Seignior auera la gard del terre.* **But put caſe that the Lord cannot** haue the Wardſhip of the Land, as if the Lord before the age of fourtéene granteth ouer the Wardſhip of the bodie, in this caſe the grantee of the bodie cannot enioy the benefit of the two yeares, becauſe he cannot hold ouer the land, and the Lord, which hath the Wardſhip of the Land only ſhould loſe the benefit of the two yeares, becauſe he hath the lands only and cannot tender any mariage, therefore in this caſe the heire female ſhal enter into her land at her age of 14. yeares. So if a tenant holdeth of one Lord by priorities, & of another by poſteriority & dieth, his heire female within the age of 14. yeares, the Lord by poſteriourie ſhall haue the lands, but vntill her age of 14. yeares, becauſe the mariage belongeth not to him. Alſo if the Lord marieth the heire female within the two yeares, her huſband and ſhee ſhall preſently enter into the lands. For Ceſſante cauſa, ceſſat effectus: & ceſſante ratione legis, ceſſat beneficium legis.

If the Lord tender a conuenable mariage to the heire within the two yeares, and shee marie else where within those two yeares, the Lord shall not haue the forfeiture of the mariage, for the Statute giueth the two yeares only to make a tender. 35.H.6.52.35.H.6.tit.gard. 71. Lib.6.fol.71. the Lord Darcies Case.

¶ *Et si le seignior deins les dits 2. ans ne luy tender tiel mariage, &c. donque el al fine del dits 2. ans poet enter, & ouste le seignior.* This is so euident, as it needeth no explication.

¶ *Mes si tiel heire female soit marie deins lage de 14. ans en la vie son Ancestor, & son ancestor deuie il esteant deins age de 14. ans le seignior nauera la gard forsque de la terre iesque al age de 14. ans &c.* Note, albeit the heire female be maried at the age of twelue yeares in the life of her ancestor, (at which age shee may consent to Mattrimony) to a man of full age, that is able to doe Knights Seruice, yet if the Ancestor die before her age of fourteene, the Gardein shall haue the Land vntill her age of fourteene, because (as hath beene said) that is the time appointed by the Common Law. And so if the heire male be married in the life of the Ancestor at his age of fourteene yeares, and the Ancestor dieth, the Lord shall haue the Land vntill the Ward commeth to the age of one and twentie. E.N.B.143.

¶ *Car ceo est hors del case del dit statute, intant que le seignior ne poet tender mariage a luy que est marie.*

Natura non facit vacuum, nec lex supervacuum. The Law doth neuer enforce a man to doe a vaine thing.

And where the said Statute of W.1. giueth vnto the Lord the said two yeares, thereby is implyed, that if he dieth within the two yeares, his Executors or Administrators shall haue the same. For when the Statute vesteth an interest in the Lord, the Law giueth the same to his Executors or Administrators. Then put case, That a Lord hath the Wardship of the bodie and land of an heire female, and maketh his Executor and dieth before her age of fourteene yeares, whether the Executor shall haue the two yeares, because the Executor is not Lord. But I take it, the Executor hauing the Wardship of the bodie and land, shall in that case haue the two yeares, for that they were vested in the Lord. 27.H.8.3.11.E.3.Executors 77.4.E.3.55. 28.Ass.p.7.

It is further prouided by the said Statute, that if the Lord tender a Conuenable marriage to the heire female, within the said two yeares, and the heire female refuseth, then the Lord shall hold the land vntill her age of one and twentie yeares, and further vntill he hath leuied the value of her mariage. But if the Lord doth not tender a mariage within the two yeares, he shal lose the value of the mariage, and content himselfe with the two yeares value. 31.Ass.p.26. Lib.6 fol.71. L.Darcies case.

¶ *Car deuant le dit statut &c. sicome appiert per le reherfall & parols de le dit statute.* Nota, the reherfall or preamble of the Statute is a good mean to find out the meaning of the statute, and as it were a key to open the vnderstanding thereof. The tender of a mariage to an heire female before the age of fourteene is void, which must be vnderstood where the Lord may hold the land for the said two yeares, for then the Statute appointeth the time of the tender, but where the Lord cannot haue the two yeares, he may tender a mariage to the heire female at any time after the age of twelue and before fourteene, for so he might haue done at the Common Law. 35.H.6.52.gard.71. 35.H.6.52.gard.71. Lib.6.fo.71. Lord Darcies case Britton.169.

Sect. 104.

¶ Nota que le plein age de male & female solonque le common parlance, est dit lage de 21. ans. Et lage de discretion est dit lage de 14. ans, car a tiel age le enf. que est marie deins tiel age a vn feme, puit agreer

NOte that the full age of male and female according to common speech is said the age of 21. yeares. And the age of discretion is called the age of 14. yeares, For at this age, the Infant which is maried within such age to a wo-

¶ Of full age, which is the age of one and twentie, and of the age of discretion, which is the age of fourteene somwhat hath beene spoken before. But now to the point of agreement or disagreement in this case. The time of agreement, or disagreement, when they marrie infra annos nubiles, is for the woman at 12. or after, and for the man, at fourteene, or after, and there need no new mariage, if they so agree, but disagree they cannot 5.Mar.gard.Br.pl.vltimo. 39.E.3.32.33.prer.reg cap.6. Tr.24.Eliz. Rot.842. in bank le roy Ennistors case.

not before the said ages, and then they may disagree and marie againe to others without any diuorce: and if they once after giue consent, they can neuer disagree after. If a man of the age of fourteene marie a woman of the age of ten, at her age of twelue he may aswell disagree, as she may, though he were of the age of consent, because in contracts of Matrimonie either both must be bound, or equall election of disagreement giuen to both, and so è conuerso, if the woman be of the age of consent, and the man vnder.

a tiel mariage, ou disagreer. man, may agree or disagree to such mariage.

Sect. 105.

13.E.1.gard.137. Britton.fol.169.acc.

IT is a maxime in law. Quod Dominus non maritabit minorem in custodia sua nisi semel, And another saith, Si semel legitimè nupt' fuer', &c. postmodum non tenebuntur sub custodia dominorum esse. Albeit this mariage is de facto, and not de iure, and though the disagreement dissolueth it ab initio, yet the Lord shall neuer haue the mariage of him.

Glanuil.lib.7.cap.12.

27.H.6.gard.118.

27.H.6.gard.118.

And so if the Gardein marieth his Ward to a woman, and after the mariage is dissolued by reason of a precontract, yet the Gardein shall neuer haue the mariage of the Ward againe.

27.H.6.gard.118.

But if one rauisheth a Ward from the Lord, and marieth him within the age of consent, in that case if the Lord taketh again his ward, and hee at the age of consent disagreeth to the mariage, the Lord shall haue the mariage of him, for hee neuer had it before.

F.N.B.143.

So likewise, if the Ancestor marieth his heire apparant infra annos nubiles, and dieth his heire within age, the Ward disagreeth, the Gardein shall haue the wardship of him. The same Law it is in the same case, if the wife dieth before the age of consent, the Lord shall haue the mariage of the heire.

7.H.6.11.

(a) 30.E.1.gard.156. 12.E.1.gard.138. 21.E.3.19. 20.E.3.gard.41. Temps E.1.ibidem.128. 35.H.6.45. 7.H.6.11. Vide prærogat.Regis cap.6. 13.H.3.gard.147. Stanf.prær.26.27. (b) 27.H.6.gard.118. F.N.B.143.m. 39.E.3 iudgement 123. 45.E.3.16. (c) 47.E.3.tit.action sur le statut.38. and the Bookes aboue said.

ET si la gardeine ē chiualrie marie vn foits le garde deins lage de 14. ans, a vn feme, & puis sil al age de 14. ans disagree a le mariage, il est dit per ascuns, que lenfant nest pas tenuz per le ley destre auterfoits marie per son gardeine pur ceo que le gardeine auoit vn foits le mariage de luy, & pur ceo il fuit hors de son garde, quant al garde ď son corps. Et quant il auoit vn foits le mariage ď luy & vn foits fuit hors de son garde, il nauera plus auant le mariage de luy.

AND if the gardeine in Chiualrie doth once marie the Ward within his age of 14. yeares to a woman, & if afterward at his age of 14. yeares he disagree to the mariage, it is said by some, that the Infant is not tied by the Law, to bee againe maried by his Gardein, for that the Gardein had once the mariage of him, and because hee was once out of his ward, as to the ward of his bodie. And when hee had once the mariage of him, and hee was once out of his wardship, he shall no more haue the mariage of him.

And so note a diuersitie when the Ward is maried by the Ancestor or by a Rauisher, and when by the Gardein himselfe. (a) For if the Ancestor marie his heire apparant infra annos nubiles and dieth: In this case if the mariage be dissolued by disagreement, either of the Ward or of his wife, the Gardein shall haue the mariage of him (b) And so it is if a Rauisher marie a Ward infra annos nubiles, and the mariage is dissolued vt supra, the Gardein shall haue the mariage If the heire male in Ward of the age of ten yeares be maried without the consent of the Lord, he may tender vnto the heire infra annos nubiles a mariage, albeit he be so maried. and if he refuse and agree to the former mariage, the Lord shall haue the forfeiture of his mariage, as it hath beene holden, [redacted] But otherwise it is (c) (saith Littleton) where the Gardein himselfe marieth the Ward, vt supra, And the reason of the diuersitie is, because in this case the Gardein had once the mariage of him, but so had not he in either of the other cases, and it is a maxime in Law Quod Dominus non maritabit pupillum nisi semel.

It

It appeareth vpon conſideration of all the bookes aforeſaid that where the Anceſtor marrieth his heire apparant within the age of conſent, and dieth, the enfant ſtill being within the age of Conſent, the Lord may take the infant (if he will) into his poſſeſſion, in reſpect the infant may diſagree to the marriage, and if the infant be deteyned from him, he ſhall recouer him in a writ of Rauiſhment of ward, and thereupon haue the infant deliuered to him. (d) But if the Anceſtor marrieth his heire apparant infra annos nubiles, and dieth his heire being infra annos nubiles, and after age of Conſent the heire agreeth to the marriage, neither the King nor the Lord ſhall haue the marriage, for now it is a marriage ab initio, and there neede no other marriage.

(d) 7.H.6.11. adiudged in the booke at large.

Section 106.

¶ Et meſme le maner eſt, ſi le gardein luy marie, & la feme deuie eſteant lenfant deins lage de xiiii. ans, ou xxi.

IN the ſame manner it is if the gardian marry him & the wife die the infant being within the age of 14. yeares or 21.

¶ This Littleton addeth becauſe hee ſpake in the caſe next before of a diſagreement by the infant, here hee ſaith, that if the wife die, the infant being within the age of conſent.

Sect. 107.

¶ Et que tiel enfant poit diſagreer a tiel mariage, quant il vient al age de xiiii. ans, il eſt proue per les paroles del ſtatute de Merton Cap. 6. que iſſint dit.

AND that ſuch infant may diſagree to ſuch marriage, when he comes to the age of 14. yeares, it is proued by the words of the ſtatute of Merton cap. 6. which ſaith thus:

De dominis qui maritauerint illos quos habent in cuſtodia ſua, villanis, vel alijs, ſicut burgenſibus vbi diſparagentur, ſi talis hæres fuerit infra 14. *annos, & talis ætatis quod matrimonium conſentire non poſsit, tunc ſi parentes illi conquerantur, dominus amittat cuſtodiam illam vſque ad ætatem hæredis, & omne commodum quod inde receptum fuerit conuertatur ad commodum hæredis infra ætatem exiſtent', ſecundum diſpoſitionem parentum propter dedecus ei impoſitum. Si autem fuerit* 14. ans & vltra, *quod conſentire poſsit, & tali matrimonio conſenſerit, nulla ſequatur pœna.*

¶ *Et iſſint eſt proue p meſme le eſtatute, que nul diſparagement eſt mes lou celuy que eſt en ward eſt marie deins lage de xiiii. ans.*

And ſo it is proued by the ſame ſtatute, that there is no diſparagement but where hee which is in Ward is maried within the age of 14. yeares.

¶ *Eſtatut de Merton.* So called becauſe the Parliament was holden at Merton.

¶ *Et que tiel enfant poit diſagreer, &c. il eſt proue, &c.* Note the time of diſagreement is ſet downe by act of Parliament, and ſo obſerued by Littleton, who ſeekes no other proofe therein then by the Law of England.

Merton. ca. 6.

¶ *Vbi diſparagentur.* Diſparagement, diſparagatio commeth of the verbe diſparage, and that of diſpar, and ago.

Now it is neceſſary to bee vnderſtood what diſparagements there be for the which the heire may refuſe.

And of ſuch diſparagements there be foure kindes. The firſt propter vitium animi, as an Ideot, non compos mentis, a Lunatique, &c. The ſecond propter vitium ſanguinis, as firſt a Villeine, 2. Burgenſis. 3. The ſonne or daughter of a perſon attainted of treaſon or felony, albeit pardoned, for the blood is corrupted. 4. A Baſtard. 5. An Alien or the childe of an Alien. Burgenſis is a man of trade, as an Haberdaſher, a Draper

Bracton lib. 2 fol. 91. Britton fol. 169. Fleta lib. 1. cap. 12. Mirror ca. 2. §. 17. Ret. Parl. 18. E. 1 fo. 9. The daughter of Neud maried to the ſonne of Thor of Wyland after his attainder.

Draper or the like, (and this agreeth with the Ciuill Law, Patricij cum plebis matrimonia ne contrahant.) whereof Glanuill speaketh thus. Si vero fuerit filius burgensis ætatem habere tunc intelligitur, quando discrete sciuerit denarios numerare, & pannos vlnare & alia paterna negotia similiter exercere.

The third propter vitium corporis, as first de membris, hauing but one hand, one foot, one eye, &c. Secondly, deformitie, as to loke a squint, a cripple, halt, lame, decrepit, crooked, &c. Thirdly, Priuation, as blind, deafe, dumbe, &c. Fourthly, Disease horrible, as Leprosie, Palsy, Dropsey, or such like diseases. Fiftly, great and continuall infirmitie, as a Consumption and such like. Sixtly, Impotencie to haue children in respect either of age past children, or so tender yeares as there is too great disparitie, or for naturall disabilitie or impediment or such like. Seuenthly, Deflowred of her Virginitie.

The fourth kind of disparagement was propter iacturam priuilegij, &c. as to marie the heire to a Widow, whereby he should by reason of the Bigamie haue lost the benefit of his Clergie, whereby he might saue his life, but now the exception of Bigamie in that case is ouſted by the (d) Statute. And Littleton saith that there bee many other disparagements which are not specified in the said Statute, for those two mentioned are put but for examples. In a word it must be competens maritagium absque disparagatione.

(d) *Vide Sect.109. F.N.B.149.*

¶ *Si talis heres fuerit infra* 14. *annos, & talis ætatis quod matrimonio consentire non possit, &c.* **Note albeit the Ward where hee is disparaged** may disagree at his age of fourteene yeares, yet the Law doth so abhorre the odious dealing of the Gardein, to whom the custodie of the heire is committed, and his horrible profanation of honorable mariage, the only ligament of mens Inheritances as it inflicteth a great punishment vpon the Lord in this case, albeit the mariage bee not perfect, but auoidable by disagreement.

¶ *Tunc si parentes illi conquerantur.* Littleton **in the next Section** expounded these words in this manner, viz. Si parentes conquerantur, .i. Si parentes inter eos lamententur, quæ est tant a dire, que si les Cosens de ciel infant ont cause de faire lamentation ou complaint pur le hont fait leur Cosen issint disparage, quel est in manner vn hont a eux. Parens est nomen generale ad omne genus cognationis. See more of this in the next Section.

¶ *Dominus amittat custodiam illam vsque ad ætatem hæredis & omne commodum quod inde receptum fuerit conuertatur ad commodum hæredis, &c.* Here followeth the penaltie.

First, amittat custodiam, that is, the whole benefit of the wardship. But in this case if the Gardein hath granted the Wardship of the Land to another bona fide, and after, the heire is disparaged, the Grantee shall not forfeit his interest, for the Statute is (Dominus amittat custodiam.)

Secondly, Et omne commodum quod inde receptum fuerit conuertatur ad commodum hæredis secundum dispositionem parentum. These words are expounded by Littleton which needeth no further explanation: Now where readers vpon this Statute, haue put a case, that if the Tenant hath issue a daughter, his Wife enseint with a sonne and dieth, the Lord doth disparage the daughter before the age of twelue yeares, the sonne is borne, the daughter disagrees, the sonne dieth, the daughter within the age of fourteene, she shall be in ward againe. This case is not warranted by this Statute, for this Statute extends not to the heires female.

Vide the second part of the Institutes. Merton cap.5.6. 35.H.6.53.

If the Tenant make a Lease to A. for life, the remainder to B. in fee, the Tenant for life surrenders vpon condition, B. dieth his heire within age, the Lord disparages the heire, Tenant for life entreth for the condition broken and dieth, the heire shall be out of ward, for that he claymeth as heire to one man. But if after the disparagement, lands discend from another ancestor to the Ward so disparaged, he shall be in ward for those Lands.

If two Joyntenants be of a Ward, and the one disparageth the heire, both shall lose the Wardship, for the words be & omne commodum, &c.

¶ *Si autem fuerit* 14. *annorum & vltra, &c. nulla sequatur pœna.* By which it appeareth (as Littleton obserueth) that there is no disparagement but where the Ward is maried within the age of fourteene.

Britton. fol.169.acc..

Section 108.

¶ *Estatute de magna Charta.* Though it be in forme of a

9.H.3.

¶ Nota que il soloit estre question, coment ceux

NOte, it hath beene a question how these words shall bee

pa-

parolx ſerront entendes, Si parentes conquerantur,&c.*Et il ſemble à aſcuns q̄ conſideront leſtatute de Magna Charta que voit, Quod hæred' maritentur abſque diſparagatione, &c. Sur quel cel Statute de Merton ſur tiel point eſt foundue, Que nul action poit eſtre prис ſur cel Statute, entant que il ne fuit vnques view ne oye, q̄ aſcun actiõ fuit porт ſur cel Statute de Merton p cel diſparagement enuers le gardeine pur ceſt matter auandit,&c. Et ſi aſcun action puiſſoit eſtre prиſe ſur tiel matter, il ſerra entendue aſcun foits eſtre miſe en vre. *Et nota que ceux parolx, ſerront entendes, Si parentes conquerantur, id eſt ſi parentes inter eos lamententur, que eſt taunt adire, que ſi les couſins de tiel enfant ont cauſe de faire lamentation ou complaint enter eux pur le hont fait a lour Couſin iſſint diſparage, quel eſt en maner vn hont a eux, donques puit le prо-

vnderſtood. (*Si parentes conquerãtur.*) * And it ſeemeth to ſome who conſidering the ſtatute of *Magna carta*, which willeth, *Quod hæredes maritentur abſque diſparagatione,&c.* Vpon which, this ſtatute of *Merton* vpon this point is founded, That no action can be brought vpon this ſtatute, inſomuch as it was neuer ſeene or heard that any action was brought vpon the ſtatute of *Merton* for this diſparagement againſt the gardian for the matter aforeſaid, &c. And if any action might haue beene brought for this matter, it ſhall bee intended that at ſome time it would haue beene put in vre. * And note that theſe words ſhall bee vnderſtood thus, *Si parentes conquerantur, id eſt ſi parentes inter eos lamententur*, which is as much to ſay, as if the couſins of ſuch infant haue cauſe to make lamentation or complaint amongſt themſelues for the ſhame done to their couſin ſo diſparaged, which in manner is a ſhame to them, then may the next

Charter, yet being granted by aſſent and authoritie of Parliament Littleton here ſaith it is a ſtatute. *Vid.lib.8.the Printers caſe.*

This Parliamentary Charter hath diuers appellations in Law. Here it is called Magna Carta, not for the length or largeneſſe of it (for it is but ſhort in reſpect of the Charters granted of priuate things to priuate perſons now adayes being (Elephantinæ cartæ) but it is called the great Charter in reſpect of the great weightineſſe & weighty greatneſſe of the matter contained in it in few words, being the fountaine of all the fundamentall Lawes of the Realme, and therefore it may truely be ſaid of it, that it is magnum in parvo. It is in our bookes called Carta libertatum et comunis libertas Angliæ or libertates Angliæ. Carta de libertatibus, magna carta,&c. And well may the Lawes of England be called libertates, quia liberos faciunt. Magna fuit quondam magnæ reverentia Cartæ. *Bracton.414.& 291. Fleta lib.2.cap.48. & lib.3.cap.3. Mirror,cap.2.§.18. Britton.fol.177.b.*

This ſtatute of Magna Carta, is but a Confirmation or reſtitution of the Common Law, as in the ſtatute called Confirmatio cartarum, Anno 25.E.1. it appeareth by the opinion of all the Juſtices; and in 5.H.3.tit. Mord.53. Magna Carta is there vouched, for there it appeareth that King Iohn had granted the like Charter of renouation of the ancient Lawes. *25.E.1. 5.H.3.Mord.53. Math.Paris,246.276.248.*

This ſtatute of Magna carta hath beene confirmed aboue 30.times, and commanded to be put in execution. By the ſtatute of 25.E.1.ca.2. iudgements giuen againſt any points of the Charters of Magna Carta or Carta de foreſta are adiudged voide. And by the ſtatute of 42.E.3.ca.3. if any ſtatute be made againſt either of theſe Charters it ſhall be voide. *25.E.1.ca.2. 42.E.3.ca.3.*

¶ *Sur leſtatute de magna carta leſtatute de Merton eſt foundue ſur tiel*

tiel point, viz. Quod haredes maritentur absque disparagatione.

¶ *Foundue,* So as Magna Carta is the foundation of other Acts of Parliament. This Act extendeth as well to females as to males.

¶ *Nul action poet este prise sur cel statute, intant que il ne vnques fuit view ou oye, &c. Et si ascun action puissoit este prise sur cest matter il serra intend a ascun foits estre mise in vre.*

Hereby it appeareth how safe it is to be guided by iudiciall presidents the rule being good, Periculosum existimo quod bonorum virorum non comprobatur exemplo. And as vsage is a good interpreter of Lawes, so non vsage where there is no example is a great intendment, that the Law will not beare it; for saith Littleton, If any action might haue beene grounded vpon such matter, it shall be intended that sometime it should haue beene put in vre. Not that an Act of Parliament by non vser can be antiquated or lose his force, but that it may be expounded or declared how the Act is to be vnderstood.

Vid. Petitionem eram domino regi in Parliamento, fo.3.18.E.1.

39.H.6.39.per Ashton. 6.Eliz.Dier,229. 23.Eliz. Dier. Nullum breue derere de iudicio in 5.part.quia nullum breue reperitur. 3.E.3.50.11.H.4.7.& 38.

¶ *Si parentes conquerantur.* Of this sufficient hath beene said before.

Vid. Statute de Merlebridge, ca.17. In custodia parentum.

¶ *Si les Cousins.* Here Littleton expoundeth parents to be his cousins, vnder which name of cousins Littleton includeth vncles and other cousins, who when the father is dead are in loco parentum.

¶ *Ont cause a faire lamentation, &c.* Note if they haue cause to make lamentation, it sufficeth though they neuer complaine.

¶ *Pur le hont fait a lour cousin.* For when their cousin is disparaged in his marriage, it is not only a shame and infamy to the heire, but in him to all his blood and kindred.

¶ *Donques poet le procheine cousin a que le enheritance ne poet discender enter & ouster le gardein in chiualrie.*

This is worthy the obseruation for the words of the statute are generall Secundum dispositionem parentum, and the construction thereof shall be according to the reason of the Common Law, for the next cousin to whom the inheritance cannot discend shall enter and oust the gardian, and shall be in place of a gardian, as it is in case of a gardian in socage.

¶ *Et sil ne voille, vn auter cousin del enfant poet ceo faire.* Still pursuing the reason of the Common Law in case of gardian in Socage.

¶ *Et les issues & proffits prender al vse del enfant, &c.* This is so euident as it needeth no explication.

¶ *Ou auterment lenfant deins age poet enter luy mesme & ouste le gardein.* If none of the cousins aforesaid will enter, then the heire himselfe may enter. In all which the reason of the Common Law is pursued. But what if the heire be disparaged and the next of kin doth enter, and when the heire commeth to 14 he agreeth to the marriage: yet shall not this giue any aduantage to the Lord, for that he had lost the wardship before.

thein cousine a que lenheritage ne puit discender, enter & ouster le gardein en chiualry. Et sil ne voile, vn auter cousin del enfant poit ceo faire, & les issues & pfits prender al vse del enfant, & de ceo render accopt al enfant, quant il vient a son plein age: ou auterm̃t lenfant deins age poit enter luy mesme, & ouster le gardein, &c. Sed quære de hoc.

Cousin to whom the inheritance cannot discend, enter and ouste the gardein in Chiualrie. And if he will not, another cousin of the infant may doe this, and take the issues & proffits to the vse of the infant and of this to render an accoũt to the infant whẽ hee comes to his full age: or otherwise the infant within age may enter himselfe and ouste the gardein, &c. *Sed quære de hoc.*

Sect. 109.

¶ Of this sufficient hath beene said before.

¶Item mults auters diuers disparagemẽts y sont, que ne sont specifies en mesme lestatute. Come si lheire que est en gard est mary a vn que nad forsq; vn pee, ou forsq; vn maine, ou que est deforme, decrepite, ou ayant horrible disease, ou graund & continual infirmity: Et (si soit heire male) si soit marry a feme que est passe lage denfanter. Et mults auters causes de disparagements sont Sed de illis quære car il est bon matter dapprender.

ALso there be many and diuers other disparagements, which are not specified in the same statute. As if the heire which is in Ward be married to one which hath but one foot, or but one hand, or which is deformed, decrepit, or hauing some horrible disease or great and continuall infirmity. And (if he be an heire male) if hee be married to a woman past the age of childebearing. And there be other causes of disparagement, but inquire of them, for it is a good matter to vnderstand.

Sect. 110.

¶Et des heires males que sont deins lage de 21. ans apres le mort lour ancester nient marries, en tiel cas le sũr auera le mariage de tiel heire, & auera temps & space de tender a luy conuenable mariage sans disparagement deins ũ le temps de 21. ans. Et est ascauoir, que lheire en tiel case poit eslier sil voit eẽ marry ou non, mes si le Sũr que est appel gardein en chiualry a tiel heire tender couẽable mariage deins lage de 21. ans sans disparagement, & lheire ceo refuse, & ne soy marie deyns le dit age,

AND of heires males which bee within the age of 21. yeares after the decease of their Ancestor and not married, In this case the Lord shall haue the mariage of such heire, and hee shall haue time and space to tender to him couenable mariage without disparagement within the said time of 21. yeares. And it is to bee vnderstood, that the heire in this case may chuse whither hee will be married or no, but if the Lord which is called gardian in chualry tenders to such heire couenable mariage within the age of 21. yeares without dispa-

¶ *De tender a luy conuenable mariage, &c.* But it is in the election of the Lord whether for the single value the Lord will tender a mariage or no, for he shall haue the single value without any tender. *Lib.6 fo.70. Lo. Darcies case. Vid. Britton, fol. 169.*

And of this there needeth no other explication. The value of the mariage of such an heire is according to the valuation by lawfull triall or as much as another had before offered to giue for the same without fraude and couyn. *Merton, cap. 6. 18.E.3.18.*

¶ *Le heire en tiel case poet eslier sil voet este marie, ou non, &c.* And so on the other side though there be a tender made of a couenable mariage without disparagement, yet the heire may refuse, for in euery mariage there

there muſt bee a free conſent.

¶ *Si tiel heire.* That is, if ſuch an heire to whom a tender hath been made by the Lord, and by whom a refuſall haue beene made, if ſuch an heire afterwards marieth another within age, he ſhall forfeit double the value, but if hee before any tender marieth himſelfe within age, hee ſhall pay but the ſingle value of the mariage.

Neither the ſingle value nor the double value ſhall bee recouered againſt the heire, but after his full age, but for both theſe the Lord hath a double remedie: viz. an Action as is aforeſaid, or the Lord may retaine the land after full age for his ſatisfaction of both, with this difference that in the caſe of the ſingle value the taking of the profits ſhall not be accounted parcell of the value but as a gage or pledge till the heire doe ſatiſfie him of the ſingle value, but in caſe of the double value, the perception of the profits ſhall be taken in ſatisfaction of the double value, for the Statute of Merton which giueth the forfeiture ſaith, Dominus teneat terram, &c. per tantum tempus quod inde percipere poſſit duplicem valorem maritagij, which words (quod inde, &c.) proueth that the taking of the profits ſhall goe in ſatisfaction: but in caſe of the ſingle value, vntill the heire doth ſatisfie the Lord of the ſame.

donques le gardeine aũra l'value del mariage del tiel heire male, mes ſi tiel heire luy mꝰ marie deins lage de 21. ans encounter la volunt le gardein en chiualrie donqꝫ le gardein aũra le double value del maꝝ per force de leſtatꝰ Merton **auantdit come en mꝰ leſtat eſt compriſe pluis a pleine.**

ragement, & the heire refuſeth this, and doth not marrie himſelfe within the ſaid age, then the Gardein ſhall haue the value of the mariage of ſuch heire male, but if ſuch heire marieth himſelf within the age of 21. yeares againſt the will of the Gardein in Chiualrie, then the Gardein ſhall haue the double value of the Marriage by force of the Statute of *Merton* aforeſaid, as in the ſame Statute is more fully at large compriſed.

Stat. de Merton. cap. 6. 2. E. 2. acc. ſur leſtat. 43. 3. E. 2. ibid. 27. 26. E. 3. ibid. 14. 18. E. 3. 18. Temps E. 1. acc. ſur l'eſtat. 43. E. 3. 21. 27. H. 8. 4. Statut. de Merton. cap. 7. 35. H. 6. tit. gard. 71. Lib. 6. fol. 71. Lord Darcies caſe.

No forfeiture of mariage is giuen by the ſaid Statute of Merton, of an heire female, as appeareth by the ſaid Act, neither at the Common Law could the Lord haue holden the land of the heire female after fourteene yeares for the value.

Section 111.

Lib. 4. fol. 88. in Lutterels caſe. Lib. 6. fol. 20. a. Gregories caſe. 29. E. 2. gard. 195.

¶ *PEr Caſtle gard. Wardum caſtri, ſeu caſtle gardum, ſeu caſtri-gardum.* He that holdeth by Caſtle-gard, holdeth by Knights Seruice, but not by Eſcuage, for Eſcuage is due when the King maketh a Voyage Royall out of this Realme (as hath been ſaid) and the Tenant maketh default, but Caſtle gard is to be done within the Realme, & without any Voyage royall.

Alſo a certaine tearme is appointed for the Seruice of the Tenant that holdeth by Eſcuage, but no certaine terme by Law for him that holdeth by Caſtle gard. Vide in the Title of Grand Seriantie Sect. Hereof come

¶ **Item diuers tenants teignont de lour Seignior p ſeruice de chiualer, & vncore ils ne teignont per Eſcuage, ne paieront eſcuage, come ceux que teignont de lour Seigniorꝫ per caſtle garde, ceſtaſcauoire, a garder vn tower del caſtle lour Seignior, ou vn huis ou vn auter lieu del caſtle per reſonable garniſhment, quant lour Seigni-**

ALſo diuers Tenãts hold of their Lords by Knights ſeruice, and yet they hold not by Eſcuage, neither ſhall they pay Eſcuage. As they which hold of their Lords by Caſtleward, that is to ſay, to ward a tower of the Caſtle of their Lord, or a doore or ſome other place of the Caſtle vpon reaſonable warning, when their Lords heare that the enemies wil come,

oꝛs oyont que enemies voylent vener ou ſont venus en Engleterre. Et en pluſoꝛs auters caſes home poit tener per ſeruice de chiualer, & vncoꝛe il ne tient per eſcuage, ne payera eſcuage, ſicome ſerra dit en le tenure per Graund Serieanty. Mes en touts caſes ou home tient p ſeruice de chiualer, tiel ſeruice trait al ſeignioꝛ garð & mariage.

or are come in England. And in many other Caſes a man may hold by Knights Seruice, and yet hee holdeth not by Eſcuage nor ſhall pay Eſcuage, as ſhall bee ſaid in the tenure by Grand Serianty. But in all Caſes where a man holds by Knights Seruice, this Seruice draweth to the Lord ward and mariage.

Vide Mag. Cart. cap. 19. 20. Fl. 1. cap. 7. Bract. lib. 5. fol. 363. Fleta lib. 2. cap. 43.

Caſtellani, oꝛ Conſtabularij caſtri, foꝛ Keepers oꝛ Conſtables of a Caſtle.

¶ *A garder vn tower del Caſtle, &c.* A Tower, oꝛ a Doꝛe, oꝛ a Bridge, oꝛ a Sconce, oꝛ ſome other certaine part of the Caſtle, foꝛ the tenure muſt be certaine. And this may be done by the Tenant himſelfe oꝛ his Deputie.

Magna Cart. cap. 20.

¶ *Del Seignior.* foꝛ it cannot bee of a Caſtle of anoꝛher.

Loꝛd and Tenant by Caſtle gard, the Loꝛd granteth ouer his ſeignioꝛy to another, (a) the Caſtle gard is gone becauſe the Grantee hath not the Caſtle. (b) Foꝛ the ſame reaſon it is, that if one holdeth of mee as of my Manoꝛ of D. by fealtie and ſuite of Court, if I graut ouer the ſeruices of this Tenant, the ſuite is gone becauſe the Grantee hath not the Manoꝛ. (c) But if the Caſtle be wholy ruinated, Si Caſtrum ſit penitus dirutum, yet the tenure remayneth by Knights Seruice, and it goeth in benefit of the Tenant, as to the garding of the Caſtle vntill it be reedified. But Ward and Mariage belongeth to the Loꝛd in the meane time. Foꝛ Littleton in the end of this Section putteth it foꝛ a generall rule in all caſes where a man holdeth by Knights Seruice, it draweth Ward and Mariage.

(a) Temp. E. 2. tit. Aſſ. 399. 31. E. 1. tit. Aſſ. 441.

(b) 17. E. 3. 65. 72. 4. E. 3. 42.

(c) Lib. 4. fo. 88. Lutterel. caſe. 3. H. 8. Bendlees. Capels caſe. 4. E. 3. 55.

If the Tenant make default in garding of the Caſtle, the Loꝛd may diſtraine foꝛ it, and recouer ſatisfaction in damages.

¶ *Per reaſonable garniſhment.* This warning muſt bee giuen by the Loꝛd oꝛ ſome other foꝛ him, and the Tenant need not to ſtirre vntill he haue ſuch warning.

¶ *Enemies.* Which is to be vnderſtood of any manner of enemies whatſoeuer. And though Littleton ſpeakes of enemies, yet it ſeemeth that to keepe a Caſtle in time of Inſurrection and Rebellion (albeit in pꝛopꝛietie of ſpæch Rebels are no enemies) is a tenure by Knights Seruice. Vide Hill. 8. E. 1. Midd. Rott. 86.

¶ *Voilent vener.* Foꝛ pꝛeparation is to be made vpon warning before the enemie be come indeed into England. This appeareth to be in time of hoſtilitie and warre, oꝛ foꝛ pꝛeparation therefoꝛe. But a tenure to keepe a Caſtle in time of peace only is no Knights Seruice.

If the Tenant by Caſtle gard doe ſerue the King in his warre, hee ſhall bee diſcharged againſt the Loꝛd according to the quantitie of the time that he was in the Kings hoſt.

Fleta ſpeaketh of an old woꝛd called Wardwite and (ſaith he) ſignificat quietanciam miſericordiæ in caſu quo non inuencrit quis hominem ad Wardam faciendam in Caſtro.

Fleta. lib. 1. cap. 42.

Sect. 112.

¶ ET ſi vn tenant que tient de ſon ſeignioꝛ per ſeruice de entier fee de chiualer moꝛuſt, ſon heire donqꝛ eſteãt de plein age, ſ. de 21. ans,

AND if a Tenant which holdeth of his Lord by the ſeruice of a whole Knights fee dieth, his heire then being of full age, ſ. of 21. yeares, then

¶ *Releife, releuium.* This woꝛd is deriued from the oꝛiginall before.

Vide Sect. 103.

Nota, Releife (a) is no ſeruice but an impꝛouement of the ſeruice, oꝛ an incident to the ſeruice, foꝛ the which the Loꝛd may diſtreine but cannot haue an Action of Debt, but

(a) Temp. E. 1. relefe. 13. 41. E. 3. 22. 4. E. 2. auowrie. 210. 7. H. 6. 13. 22. H. 8. Rot. 528. 34. E. 1. auowrie. 278.

but his Executors or Administrators may haue an Action of Debt, and cannot distraine.

(b) *Stat.de 1.E.2.de militibus. Vide lib.9.fol.124. Anth.Lowes case.*

And it (b) is to be vnderstood that fœdum militis, a Knights Fee, consisteth of twentie pound land, and hee payeth for his relieſe for a whole Knights fee, the fourth part of his fee viz. fiue pound, and so according to the rate.

donque le Seignior auera C. s. pur reliefe, & del heire celuy que tient per le moitie dun fee de chiualer L. s. & de celuy que tient per l' quart part d fee dun chiualer 25. s. & sic que pluis, pluis, & que meins, meins.

the Lord shall haue C. s. for a relieſe, and of the heire of him which holds by the moitie of a Knights fee 50. s. and of him which holds by the fourth part of a Knights fee 25. s. and so he which holds more, more, and which leſſe, leſſe.

Baronia, a Baronie, or a Barons Fee consisteth of thirteene Knights fees, and the third part of a Knights fee which amounteth to foure hundred Markes per annum, and the Baron for an entire Baronie payeth for his relieſe an hundred Markes, which is the fourth part of the value of his Baronie.

Comitatus, an Earledome, or an Earles fee consisteth of a Baronie, and the third part of a Baronie, which includeth twentie Knights fees amounting to foure hundred pound land per annum, and he payeth for his relieſe for an entire Earldome the fourth part of his reuenue, and that is a hundred pound. All which appeareth by the Statute of Magna Charta, cap.2. made in the ninth yeare of Henrie the third, at which time there was neither Duke, Marqueſſe nor Viſcount in England as before is said. But there be Precedents in the Exchequer that a Dukedome consisting of two Earledomes, viz. eight hundred pound land by the yeare payeth two hundred pound, and a Marqueſſe consisting of two Baronies, viz. eight hundred Markes land per annum, and of an Earldome and a halfe payeth two hundred Markes for his relieſe. What the Viſcount should pay in certaine I haue not heard. Before the making of the Statute of Magna Charta the King had rationabile releuium of Noblemen, and it was not reduced to any certaintie, yet ought it to haue beene reasonable and not exceſſiue.

Glanuil.lib.9.cap 4.6. Bracton.lib.2.fol.83. Britton.fol.178. Ockam.42.F.N.B.83.256. Fleta lib.3.cap.17. Magna Charta cap.2.

I haue seene the Record of a Charter made in 20.H.6. to Henry Beauchampe, Earle of Warwicke, whereby he was created King of the Ile of Wight, to him and the heires males of his bodie, his relieſe was incertaine, and not limited by the Statute of Magna Charta.

It is to be obserued that the words of the Statute of Magna Charta, be Hæres Comitis de Comitatu integro & hæres Baronis de Baronia integra, &c. Now what an entire Earledome, and an entire Baronie is hath beene declared before.

Vide Bracton fol.84. 14. H.4. in recordo longo. 10.H.7.19. 20.E.3.Aſſ.122.tit.auowrie 126. 18.Aſſ.pl.vltimo. 22.E.3.8.

It is also to be obserued that at and before the Statute of Magna Charta, all Earledomes and Baronies were deriued from the Crowne, and were holden by the King in Capite, and and the King would not suffer them to be deuided, or seuered. And such entire Earledomes, and entire Baronies are within the Statute, but at this day Earles and Barons are without such Earledomes and Baronies of the Kings gift in chiefe. For at the Creation of an Earle he hath sometimes an Annuitie granted vnto him, & sometime nothing, so as such Earles and Barons so created are cleerely out of the Statute of Magna Charta, and are to pay such relieſes as other men that hold of the King in Capite. For as the heire of a Knight shall not pay relieſe vnleſſe he hath a Knights fee, &c. so neither the Earle nor Baron shall pay any relieſe by this Statute, vnleſſe he hath an Earledome, &c. or Barony, &c.

16.E.3.Eſchange 2. 46.E.3.forfeiture 18.

¶ *Son heire de pleine age .s. de 21. ans.* **And yet in some case the** heire shall pay relieſe when he was within age at the time of the death of his Anceſtor. As if a man holdeth lands of the King by Knights Seruice in Capite, and of a common person other lands by Knights Seruice, and dieth his heire being within age, the King hath all in Ward by his Prerogatiue vntill the full age of the heire. In this case the heire shall pay relieſe to the other Lord, for that the King had the Wardship of bodie and lands. And the Lord vpon euery Diſcent ought to haue either Wardship or Relieſe.

24.E.3.24. 26.H.8. 32.H.8.cap.2.in fine.

1.E.3.6. Pl.Com.229. 33.E.3.tit.gard.Statham.

But if there be Lord and Tenant by Knights Seruice, and the Tenant dieth, his heire being within age, the Lord wayueth his Wardship as he may, and taketh himselfe to his Seigniorie, in this case the Lord shall not haue relieſe at his full age because hee might haue had the Wardship of the bodie and land. Lord and Tenant of two Manors by diuers tenures by Knights Seruice, the Tenant is diſſeiſed of the one, and the Diſſeiſor dieth ſeiſed, and the Tenant dieth ſeiſed of the other his heire within age, the Lord ſeiſed the bodie and lands of that Manor and after the heire at his full age recouereth the other Manor against the heire of the Diſſeiſor, he shall pay relieſe for that Manor, and so one Lord of the heire of one Tenant shall haue both Wardship during his minoritie and relieſe at his full age.

Son

¶ *Son heire.* (k) And yet the ſucceſſor of a Biſhop or Abbot may pay reliefe by preſcription or grant.

If the tenant infeoffeth his heire apparant by colluſion, and dieth, (l) his heire of full age it is a queſtion in our bookes, whether he ſhall haue reliefe either by the Common Law, or by the ſtatute of Marlebridge.ca.6. But now the ſtatute (m) of 13.Eliz.ca.5. hath cleered that queſtion, and that the Lord ſhall haue reliefe where the conueyance is made to any perſon by colluſion, &c.

(k) 3.E.3.13.76. 8.R.2.reliefe, 14. 3.H.4.2. 2 E.3. Auowrie, 124.
(l) 39.E.3.tit. Reliefe 24.E.3.24.E.3.Reliefe 11. Bracton lib.2.85.
(m) 13.Eliz.ca 5.

Section 113.

This is euident, and needeth no explanation.

¶ Item home poit teñ ſon fre de ſon Sñr per le ſeruice de deux fees de chiualer, & donque lheire eſteant de pleine age al temps de mort ſon auncestre paiera a ſon Sñr x.l. pur reliefe.

Alſo a man may hold his land of his Lord by the ſeruice of two Knights fees, & then the heire being of full age at the time of the death of his Anceſter ſhall pay to his Lord x.pound for reliefe.

Sect. 114.

¶ Nota ſi ſoit aiel, pier, & fits, & ſa mere mort viuant le pier de le fits & puis laiel que tient ſa terre p ſeruice de chiualer muſt ſeiſie, & ſa terre diſcendiſt al fits la mere, come heire al aiel q̃ eſt deins age: en ceſt cas la Sñr auera le garde de la terre, mes nemy le garde del corps del heire, pur ceo que nul ſerra en garð de ſon corps a aſcun Sñr viuant ſon pier pur ceo que le pier durãt ſon vie auera le mariage de ſon heire apparant, & nemy le Sñr. Autrement eſt ou le pier eſt mort viuant la mere, lou le terre tenus en chi-

NOte, if Grandfather, father and ſonne, and the mother dieth liuing the father of the ſonne, and after the grandfather which holds his land by Knights ſeruice dieth ſeiſed, and his land diſcend to the ſonne of the mother as heire to the grandfather who is within age: In this caſe, the Lord ſhall haue the Wardſhip of the land, but not of the body of the heire, becauſe none ſhall be in ward of his body to any Lord, liuing his father, for the father during his life ſhall haue the mariage of his heire apparant, & not the Lord. Otherwiſe it is where the father dieth liuing the mother,

¶ *Item.* Yet the father ſhall haue the mariage of his Daughter if ſhe bee his heire apparant, and Littletons reaſon extendeth to the Daughter, for that (ſaith he) the father ſhall haue the Wardſhip of his heire apparant, within which words the Daughter is included, ſo long as ſhe continueth heire apparant.

Fl.lib.1.ca.5. 16.E.3.diſſeiſin 6. 31.E.1.gard 154. 8.E.2.Treſp.235. F.N.B.243. Ambroſe a Gorges caſe. lib.6.fo.22.

¶ *Le ſeignior auera le garde del terre.* Note that albeit in this caſe the Law doth giue the cuſtody of the body of the father, and barreth the Lord thereof, yet the Lord ſhall haue the Wardſhip of the Land by force of the tenure at the firſt creation thereof. And ſo it is if the father marieth his heire within age and dieth, yet the Lord ſhall haue the Wardſhip of the land.

¶ *Viuant ſon pier.* This doth not extend to any collaterall heire, but only to the ſonne or daughter being heire apparant, for albeit a man ſhall haue an action of treſpaſſe, Quare conſanguineum & hæredem cæpit, and albeit the words be Cujus maritagium ad ipſum pertinet, becauſe the well beſtowing of his

9 E 2.18.E.3.25.29.Aſſ.35. 29.E.3.37. 31.E.3.bar.237

31.E.3.Gard 32.30.E.3.17. 31.H.6.55.12.H.4.16. F.N.B.143.31.E.3.Br.357 9.E.4.53.

his heire apparant in marriage is a great eſtabliſhment of his houſe, yet that is to be vnderſtood as againſt a wrong doer but not againſt a gardian in Chiualrie, and the mother ſhall haue the like writ for taking away of her ſonne and heire apparent: and yet the mother ſhall not barre the Lord by Knights ſeruice, of his wardſhip of the bodie, as Littleton heere ſaith, Qui tamen ex filia tua naſcitur in poteſtate tua non eſt, ſed patris eius.

uairy diſcendiſt al fits de part ſon pier, &c.

where the land holden in chiualry diſcends to the ſon on the part of the father, &c.

V.Flet.l.1.c.6.Sect.W.2.e.35

¶ *A ſa un ſeignior.* **Put the caſe there is Lord,** & Feme **Tenant** by Knights ſeruice of a Carue of land, the Feme maketh a feoffement in fee vpon condition, and taketh the Lord to husband, and haue iſſue a ſonne, the wife dieth, the iſſue entreth for the condition broken, the Lord entreth into the land as Gardeine by Knights ſeruice, and maketh his Executors, and dieth: in this caſe the Executors ſhall haue the wardſhip of the land during the minoritie of the heire, but not the wardſhip of the bodie, for albeit the Lord ſeemeth to haue a double intereſt in the wardſhip of the bodie, one as Lord, and another as father, yet as Father, and not as Lord in iudgement of Law, he ſhall haue the wardſhip of the bodie of his ſon and heire apparent, in reſpect of nature, which was before any wardſhip in reſpect of Seigniories by Knights ſeruice began, and that wardſhip by reaſon of nature cannot be waiued, and claime made in reſpect of the Seigniorie. And the Executors of the father ſhall not haue ſuch a wardſhip which the Teſtator had as father, neither can ſuch a wardſhip be forfeited by outlawrie, becauſe it is due to the father in reſpect of priuitie of nature.

33.H.6.55.Li.7.fo.13. en Calvins caſe. V.Flet.li.1.ca.12.§.cum Patr.de feods, &c.

¶ *De ſon heire apparent.* **And therefore if the father be attainted** of felonie, &c. then cannot the ſonne or daughter be an heire apparent, becauſe the bloud is corrupted betweene them, and conſequently in the life of the father, his ſonne in that caſe ſhall be in ward.

A woman ſeiſed of lands in fee holden by Knights ſeruice, taketh husband an Alien, and hath iſſue, and the wife dieth, the iſſue ſhall be in ward, and the father ſhall not haue the cuſtodie of him, for that in the eye of the Law he is not his heire apparent, as Littleton heere ſpeaketh.

Sect. 115.

This Section is an addition to Littleton, and therefore I paſſe it ouer, and the rather, for that the ſaid Statute of 4. H.7. is become of no force, for that by the Statute of 27.H.8. cap.10. all vſes are tranſferred into poſſeſſion.

¶ *NOta, ſi home ſoit ſeiſie de Terre que eſt tenus per ſeruice de Chiualer, & fait feoffment en fee a ſon vſe, et mozuſt ſeiſie del vſe, ſon heir deins age, et nul volunt per luy declare, le Seignior auera Briefe de droit de gard de corps. et del Terre ſicome Tenant vſt deuie ſeiſie del demeſne. Et ſi le heire ſoyt de pleine age al temps del morant ſon anceſtor, vn tiel caſe il payera relefe ſicome il fuiſſoit ſeiſie del demeſne. Et teſt per leſtatut de* anno 4.H.7.cap.17.

NOte, if a man be ſeiſed of land which is holden by Knights ſeruice, and maketh a feoffement in fee to his own vſe, and dieth ſeiſed of the vſe, his heire within age, and no will declared by him, the Lord ſhall haue a Writ of Right of the wardſhip of the bodie and land, as if the tenant had died ſeiſed of the demeſne. And if the heire bee of full age at the time of the deceaſe of his Anceſtor, in this caſe he ſhal pay relief, as if he had bin ſeiſed of the demeſne. And this is by the ſtatute of 4.*H.7.cap.*17.

Sect. 116.

NOta, il y ad Gardein en droit en Chiualrie, et Gardein en fayt en Chiualrie. Gardein en droit en Chiualrie eſt, lou le Seigniour per cauſe de ſon Seigniorie, eſt ſeiſie de gard de Terres & del heyre, vt ſupra. **Gardein en fayt en Chiualrie eſt, lou en tiel caſe le Seigniour apres ſon ſeiſin graunt per fait ou ſauns fayt le Gard des Terres, ou del heire ou dambideux a vn auter. Per force de quel graunt le Grauntee eſt en poſſeſſion, donque eſt le Grauntee appel Gardeine en Fait.**

NOte, there is Gardeine in right in Chiualrie, and Gardeine in Deede in Chiualrie. Gardeine in Right in Chiualrie is, where the Lord by reaſon of his Seigniorie is ſeiſed of the Wardſhip of the Lands, and of the heire, *vt ſupra*. Gardeine in Deede in Chiualrie is, where in ſuch caſe the Lord after his Seiſin grants by Deed, or without Deede, the Wardſhip of the Lands, or of the Heire, or of both, to another, by force of which grant the Grauntee is in poſſeſſion, then is the Grauntee called Gardeine in Fait, or Gardeine in Deede.

¶ **HEre** Littleton diuideth Gardeine in Chiualrie, into Gardein in Right, and Gardeine in Fait. And this is euident, and needeth no explanation.

¶ *Per fait ou ſauns fait.* **Heree** Littleton affirmeth, That the wardſhip of the bodie may bee graunted ouer without Deed, and herein note a diuerſitie betweene an originall Chattell of a thing that properly lieth in grant, and a Chattell deriued out of a Freehold of any thing that lieth in grant. As for example, if a man maketh a Leaſe for yeares of a Milleine, this cannot be done without deed, neither can the Leſſee aſſigne it ouer without Deed, becauſe it is deriued out of a Freehold that lieth in grant: but the wardſhip of the bodie is an originall Chattell, during the minoritie, deriued out of no Freehold, and therefore as the Law createth it without deed, ſo it may be aſſigned ouer without Deed.

12.E.3.tit.Grant 59.7.E.3. 63. 26.E.3.63.28 E.3.96 14.E.3. Tit.ſur Leſt.17. 25.E.3.40.31.E.3.Vouch.5 46.E.3.25.20.E.4.16. 12.H.4.19.5.H 7.17.36. 22.El.Dyer 371.35.H.8. Brit.Grant 85.

A Corporation aggregate of many cannot make a Leaſe for yeares without Deed, in reſpect of the quality of the Incorporation, but that Leſſee may aſſigne it ouer without Deed.

36.H.8.tit.Grant B.115. 22.H.6.34.19.H.6.33.

If an Aduowſon be holden by Knights ſeruice, and the Tenant dieth, his heire being within age, the Lord cannot grant the wardſhip of the Aduowſon without Deed, becauſe it is deriued out of an Inheritance that lieth in grant, and paſſeth not by Liuerie: for, Ius præſentandi eſt incorporale, and ſo (albeit there be diuerſitie of opinion in our books) is the Law taken at this day.

24.E.3.69.70.5.E.3.58. 43.E.3.15.5.H 7.36. 14.H.7.16.15.H.8.8. Brack.366.368.146.43 E.3. 1.6. 5.H.7.37.11.H.6.4. 6.H.7.3.18.H.8. 16.Eliz.Dyer 333.

CHAP. 5. *Sect.* 117.

Socage.

Mirror ca.1.§.3.

TEnure *in Socage.* Agriculture or Tillage is of great account, in Law, as very profitable for the Common wealth, wherein the goodnesse of the habit is best knowne by the priuation, for by laying of Lands, vsed in tilth, to pasture; sith maine inconueniences doe daily encrease. First, Idlenesse, which is the ground and beginning of all mischiefes. 2. Depopulation, and decay of townes; for where in some townes 200. persons were occupied, and liued by their lawfull labours, by conuerting of tillage into pasture, there haue beene maintained but two or three heardmen: And where men haue beene accounted sheepe of Gods pasture, now become sheepemen of these pastures. 3. Husbandry, which is one of the greatest commodities of the Realme, is decayed. 4. Churches are destroyed, and the seruice of God neglected by diminution of Church liuings, (as by decay of tythes, &c.) And 5. Iniury and wrong done to Patrons and Gods ministers. 6. The defence of the Land against forraine enemies enfeebled and impayred, the bodyes of Husbandmen being more strong and able, and patient of cold, heate, and hunger, then of any other.

4.Hen.ca.19.
Lib.4.Terringhams case fo.39.& 4 H.7.ca.12.

TEnure en socage est, lou le tenant tient de son seignior son tenement p certeine seruice p touts maners de seruices, issint que les seruices ne sont pas seruices de chyualer: Sicõe lou home tient son fre de son seignior p fealtie & p certeine rent p touts maners de seruices, ou lou home tient p homage & fealtie & cert rent pur touts maners de seruices ou lou il tiet p homage & fealty p touts maners de seruices, car homage p soy ne fait pas seruice de chr.

TEnure in Socage, is where the Tenant holdeth of his Lord the tenancie by certaine seruice for all manner of seruices, so that the seruice be not Knights seruice: As where a man holdeth his land of his Lord by Fealty and certaine rent for all manner of seruices: or else where a man holdeth his land by homage, fealty, and certaine rent, for all manner of seruices, for Homage by it selfe maketh not Knights seruice.

The two consequents that follow of these inconueniences, are first the displeasure of Almighty God, and secondly the subuersion of the Politie and good Gouernment of the Realme, and all this appeareth in our bookes. And the Common Law (a) giueth errable land (which anciently is called Hyde & gaine) the preheminencie and precedencie before meadowes, pastures, woods, mines, and all other grounds whatsoeuer: and * aueria carucæ the beasts of the plow haue in some cases more priuiledge than other cattle haue. And amongst the Romans Agriculture or tillage was of high estimation, insomuch as the Senators themselues would put their hand to the plow, and it is said, That neuer prospered tillage better, then when the Senators themselues plowed (such force hath the example of superiors) whereof three famous Romanes in their seuerall kindes spake.

(a) *20.E.3.Admeasurement.8 14.Ass.21.24.E.3.25.*
* *Mirror.*
Bracton fo.217.Flota.lib.2. ca.41.Regist.orig.97. Ockam.38.39.4.E.3.1.a. 18.E.2.tit.action sur lestat.45.Temps E.1. Auowry 230. 29.E.3.16.17. Cic.lib.1.offic.

Omnium rerum ex quibus aliquid exquiritur nihil agricultura melius, Nihil vberius, nihil dulcius, nihil libero homine dignius.

Virgil.l.b.1.Georg.

O fortunatos nimium, sua si bona norunt
Agricolas, quibus ipsa procul discordibus armis
Fundit humo facilem victum justissima tellus.

Seneca in Epist.

Nullum laborem recusant manus quæ ab aratro ad arma transferuntur, &c. fortior autem miles ex conspagoso venit, sed ille vnctus, & nitidus in primo puluere deficit. But now let vs peruse our Authors words.

Socagium

¶ *Socagium.* Littleton **in this chapter** Section 119. **fetcheth this** word from the originall. Socagium idem est quod seruitium socæ, & soca idem est quod caruca. s. vn soke ou vn carue.

And Bracton agreeth herewith. Dicitur socagium (saith he) à socco & inde tenentes dicuntur Socmanni (b) eo quod deputati sunt tantummodo ad culturam. **And** Beneth **signifieth the seruice of plough and cart. It is to be obserued that in the booke of** (c) Domesday, **Land holden by Knights seruice was called** Tainland, **and land holden by Socage was called** Reueland, **which appeareth in that there it is said,** Hæc terra fuit terra regis Edwardi Taineland sed postea conuersa est in Reueland. **And in that booke they that held in Socage were called by seuerall names, as** Sochemanni **or** Sokemanni, **which still continueth, sometime** * Coleberti. i. qui tenent in liberum socagium per redditum, **and sometime they are called** Radchenestres. i. liberi homines, qui tamen arbant, herciabant, falcabant, & metebant, &c. **And here it appeareth how necessary it is, that words be fetched from their originalls, and our Author best** verus Etimologus **both in this and in many other places in his** (d) **three bookes. And it is to be obserued once for all, that the legall termination of** (agium) **in composition signifieth seruice or dutie; as** homagium **the seruice of the man,** Escuagium, seruitium scuti, (e) Socagium seruitium socæ, hidagium **the dutie to be paid for a hide or plough-land, and so of** cornagium, coragium, carnagium, cariagium, burgagium, villenagium, guidagium, (**which one describeth thus**) quod datur alicui vt tuto conducatur per loca alterius, **and the like.**

¶ *Isint que les seruices* (f) *ne sont pas seruices de Chivaler.* **And in** the next Section he saith, and euery tenure, that is not a Tenure in Chiualry is a tenure in Socage, Ex donationibus autem feoda militaria, vel magnam Seriantiam non continentibus oritur nobis quoddam nomen generale quod est sokagium. Here Littleton speaketh of Tenures of common persons, for grand Seriantie is not Knights seruice, and yet it is not a tenure in Socage, as shall be said hereafter. Also here he meaneth temporall seruices, and not Frankalmoigne as by the examples he put is manifest, and as in his proper place shall appeare more at large. Also here Littleton speaketh of Socage largely taken, and so called ab effectu, that is, all tenures that haue the like effects and incidents belonging to them, as Socage hath, are termed tenures in Socage, albeit originally seruice of the plow was not reserued: as if originally a Rose, a paire of guilt Spurres, a Rent, and such like were reserued, or that the Tenants in Condemnatos vltrices manus mittant vt alios suspendio, alios membrorum detruncatione, &c. puniant, these are said to be tenures in Socage ab effectu, for that there shall be like Gardein in Socage, like Reliefe, and such other effects and incidents as a tenure in Socage hath, and ars so tearmed to distinguish the same from Knights seruice May, the worst Tenure that I haue read of, is of this kinde, as to hold lands to be Vltor sceleratorũ condemnatorum, vt alios suspendio, alios membrorum detruncatione vel alijs modis juxta quantitatem perpetrati sceleris puniat, (that is) to be a Hangman or Executioner. It seemeth in ancient times such officers were not Voluntaries, nor for lucre to be hired, vnlesse they were bound thereunto by Tenure. And so note that some Tenures in Socage are named à causa, and some and the greater part ab effectu.

¶ *Car homage de soy ne fait seruice de chiualer.* **But it is a presumption** that where homage is due, that the land is holden by Knights seruice, as hath beene said.

Bracton lib.2. fo.77.
(b) *Glanuil. lib 7.ca.9. & 11. & lib.9.ca 4.*
Fleta lib.1.ca.8. & lib.3. ca 14.& 16.
Britton fo.154.
(c) *Domesday.*
Hersfordsc.
Vid.dauant, Sect.1.
Sudm.
Wendesord.
Wescesterse.
* *Mich.10.E.3. coram rege vt Plis in Thesaur.*
(d) *For etimologies vid. Sect.95.154.164.204. 234.267.268.&c.*
(e) *Fleta lib.3.ca.14. Bracton.lib 2.ca.16. Britton fo.164.*
(f) *Mirror, ca.2 §.18.*

Fleta, vbi supra.

Ockam, cap. que per solam consuitudinem, &c.

Ockam fo.31.a. & b.

Sect. 118.

¶ Item hõe poit ten̄ de son sñr pur fealty ẽm, et tiel tenure est tenure en socage. Car chescun tenure que nest pas tenure in chiualry, est tenure en socage.

ALso a man may hold of his Lord by fealty only, and such tenure is tenure in socage: for euery tenure which is not tenure in chiualrie is a tenure in Socage.

Of this sufficiently hath beene said before.

Sect. 119.

¶ Et il est dit, que la cause pur que tiel tenure est dit & ad le nosme de tenure en socage,

AND it is said that the reason why such tenure is called, and hath the name of tenure in Socage,

¶ *Empide memory*

Time of memorie is when no man alius hath had any proofe

proofe to the contrarie, nor haue any Conuſance to the contrarie, as ſhall bee hereafter ſaid in his proper place. And of neceſſitie this change hereafter ſpoken of muſt be before time of memorie, for within time of memorie, the ſeruices of the Plough cannot be changed into money by conſent of the Tenant, and the deſire of the Lords ... into an annuall Rent, neither by releaſe or confirmation or other conueyance as long as the Seigniorie remaine as ſhall bee ſaid in his due place.

Cap. burgage. Sect. 170.

Mirror. cap. 2 §. 18. Vide 19. E. 2. auowrie. 224. 3. E. 2. accon. ſur leſt. 24. 20 E. 3. 24. 20. & 3. auowrie 124. 39. E. 3. 17. 39. Aſſ. p. 3. 20. Aſſ. 1.

Cap. confirmation. Sect. 539.

¶ *Deuoient uener oue lour Sokes.* The Plough is named propter excellentiã, but the Sicle and the Sythe for the reaping in Haruest and ſuch like are alſo included. For as Carucata terræ, a plough land, may containe Houſes, Milles, Paſture, Medow, and Wood &c. as perteining to the Plough, ſo vnder the ſeruice of the Plough all ſeruices of Tillage or Husbandry are included.

4. E. 3. 161. 6. E. 3. 283.

¶ *Vncore le noſme de Socage demurt.* Although the cauſe wherupõ the name of Socage firſt grew bee taken away, yet the name remaine (as it hath beene) and is vſed

eſt ceo; Quia ſocagium idem eſt quod ſeruitium ſocæ, & ſoca idem eſt quod caruca, .s. **vn ſoke ou vn carue. Et en ancient temps deuant le limitation de temps de memorie grand part de les tenants que tyendront ð lour Seignioꝛs per ſocage, deuoient uener oue lour ſokes, cheſcun de les dits tenants pur certein iours per an pur arer & ſemer les demeſnes le Seignioꝛ, & pur ceo que tielꝛ ouerages fueront fait pur le viuer & ſuſtenance de lour Seignioꝛs, ils fueront quits enuers lour Seignioꝛs ð touts maners de ſeruices, &c. Et pur ceo que tielꝛ ſeruices fueront faits oue lour ſokes tiel tenure fuit appel tenure en ſocage. Et puis apꝛes tiels ſeruices fueront changes en denyers, per conſent des Tenants & per deſire des Seignioꝛs, s.en vn annual rent, &c. Mes vncoꝛe le noſme de Socage demurt, & en diuers lyeux les tenants vncoꝛe font tiels ſeruices oue lour ſokes a lour Seignioꝛs, iſſint que touts maners ð tenures q̃ ne ſont pas tenures p ſeruice de chiualer, ſont appels tenũs ẽ ſocage.**

is this, becauſe *Socagium, idem eſt, quod ſeruitium Socæ*, and *Soca, idem eſt quod caruca, &c.* A Soke or a Plough. In ancient time before the limitation of time of memorie, a great part of the tenants which held of their Lords by Socage, ought to come with their Ploughes, euery of the ſaid Tenants for certaine dayes in the yeare to plow and ſow the Demeſne of the Lord. And for that ſuch Workes were done for the liuelihood and ſuſtenance of their Lord, they were quit againſt their Lord of all manner of ſeruices, &c. And becauſe that ſuch ſeruices were done with their Ploughes, this tenure was called Tenure in Socage. And afterward theſe ſeruices were changed into money by the conſent of the Tenants, and by the deſire of the Lord, *viz.* into an annuall rent, &c. But yet the name of Socage remayneth, and in diuers places the Tenants yet doe ſuch ſeruices with their Ploughes to their Lords, ſo that all manner of Tenures which are not Tenures by Knights Seruice, are called tenures in Socage.

ſo diſtinguiſh this tenure from a tenure by Knights Seruice. Nomina ſi neſcis perit cognitio rerum

rerum: Et nomina si perdas certè distinctio rerum perditur. Therefore the names of things (as Littleton here teacheth) are for auoyding of confusion diligently to be obserued.

Section 120.

¶ ITem si home tient de son Seignior per escuage certaine, s. ẽ tiel forme quant lescuage curge & est assesse per Parliament a greinder summe ou meinder summe, que le tenant paiera a son Seignior forsque demy marke pur escuage, & nient pluis ne meins, a quel graund summe, ou a quel petite summe q̃ lescuage courge &c. tiel tenure est tenure en Socage, & nemy seruice de chiualrie. Mes lou le summe que le tenãt paiera pur lescuage est non certain, s. lou il poit estre q̃ l'vne q̃ le tenant paiera pur lescuage a son Seignior poit estre a vn foits le greinder & a auter foits le meinder, solonque ceo que est assesse &c. donques tiel tenure est tenure per seruice de chiualer.

ALso if a man holdeth of his Lord by escuage certaine .s. in this manner, when the escuage runneth, and is assessed by Parliament to a greater or lesser summe, that the Tenant shall pay to his Lord but halfe a Marke for Escuage, and no more nor lesse, to how great a sum, or to how little the escuage runneth, &c. Such tenure is tenure in Socage, and not Knights Seruice, but where the summe which the tenant shall pay for Escuage is vncertaine, .s. where it may bee that the summe that the tenant shall pay for escuage to his Lord may be at one time more, and at another time lesse according as it is assessed, &c. such tenure is tenure by Knights Seruice.

¶ *Escuage certeine.*

Is not in rei veritate seruitium Scuti, which is to bee done by the body of man, but it is seruitium Crumenæ, of money which is to be drawne out of the Purse, and that is in effect a Tenure in Socage, wherein it is to be obserued that the seruice of payment of money is the more base and lesse profitable, for the Commonwealth in this case, and hereof somewhat hath beene said before in the Chapter of Escuage, Sect. 98. 99.

If a man hold by Homage, Fealtie, and Escuage, s. by an halfe penny when escuage runs at fortie shillings, this is a tenure in Socage and no Knights Seruice for two causes. *15.E.2.tit.auowrie 215. 31.E.1.Ass.441. 26.Ass.66. 5.E.3.6.*

First, It is Socage tenure because of the certaintie for to the tenure in socage, certa seruitia doe euer belong, so *5.E.4.128. Vide Rot. Parl. 4.E.3.nu 19. Clauenings case excellently resolued in Parliament. Hill.3.E.2.coram Rege. Rot.34.Agnes. Frowiks case.*

as the Husbandman may the rather liue in quiet.

Secondly, Escuage is to bee paid at euery time when it is assessed, and here it is not to bee paid but when it amounteth to fortie shillings.

Sect. 121.

¶ ITem si home tient sa tek pur paier certaine rent a son seignior pur Castle-garde, tiel tenure est tenure ẽ socage:

ALso if a man holdeth his Land to pay a certaine rent to his Lord for Castle-gard, this tenure is tenure in socage, but where

¶ HEerein the difference standeth thus, If a rent be paid for Castle-gard it is cleere a socage tenure, as it is *Vide Sect. 88. 89.*

Vide lib.4.fol.88.in Lutterels case. 19.R.2.gard.195.26.Ass.66 F.N.B.83.256. Lib.6.fol. 20. Gregories case.

is agreed in Lutterels Case according to Littletons opinion, but if a summe in grosse or other thing be voluntarily paid or giuen by

¶ Mes lour tenant doit p luy ñ, ou p vn auter faire Castle-garde, tiel tenure est tenure per seruice de chiualer.

the tenant ought by himselfe or by another to doe Castle-gard, such tenure est tenure by Knights Seruice.

the Tenant, and voluntarily receiued by the Lord in lieu of Castle-gard, yet the tenure by Knights Seruice remayneth. Vide Sect.88.89.

Section 122.

¶ IT is called Rent Seruice, because it is accompanied with some corporal seruice as Fealtie at the least, in respect whereof the Lord may distraine for it of common right.

¶ Item en touts cases lour tenant tient del Seignior a paier a luy aleun certeine rent, cel rent est appelle rent seruice.

ALso in all cases where the tenant holdeth of his Lord to pay vnto him any certaine rent, this rent is called Rent Seruice.

See more of this matter in the Chapter of Rents.

Sect. 123.

¶ EN tiels tenures ẽ Socage. If a man bee seised of a Rent charge, Rent secke, common of pasture, and such like Inheritances, which doe not lie in tenure, and dieth his heire within age of 14. yeares. In this case the heire may chose his Gardein, but if he bee of such tender yeares as hee can make no choice then (if the father h th made no disposition of the custodie of the childe) it were most fit that the next of kinne to whom the Land cannot discend should haue the custodie of him. And whosoeuer taketh the rent, the heire shall charge him in an account. But if he hold any Land in Socage, In that Case the

Vide le statute de 4. & 5. Ph. & Marie cap.8.

¶ Item en tielx tenures en socage si l' ad issue & deuie son issue esteãt deins lage d 14. ãs, donques l' prochine amy del heir a q̃ iheritage ne poit discẽdr auer la gard d la terr & del heir iesq̃ al age del heir d 14. ans, & tiel Gardein est appelle gardein en socage. Car si la terre descẽdist al heire de pt le pier donques la mere, ou auter procheine cosen de pt le mere auera la garde. Et si terre discendist al heire de part la mere, donques le pier ou le prochein amy de part de pier auera le garde de tielx terrs ou tenemẽts. Et quant heire vient al age de 14. ans compleat, il poit enter & oustre le Gardein en Socage, &

ALso in such tenures in Socage if the Tenant haue issue and die, his issue being within the age of 14. yeares, then the next friend of that heire to whom the inheritance cannot discend shall haue the Wardship of the Land and of the Heire vntill the age of 14. yeares, and such Gardeine is called Gardeine in Socage. For if the land discend to the heire of the part of the father, then the mother, or other next Cousin of the part of the mother shall haue the Wardship. And if land discend to the heire of part of the mother, then the father or next friend of the part of the father shall haue the Wardship of such Lands or Tenements.

pc=

occupier la terre luy meſm̃ ſil voit. Et tiel Gardeine en ſocage ne prendra alcuns iſſues ou profits de tielx terres ou tenements a ſon vſe demeſne, mes tantſolement al vſe & profit del heire, et del ceo il rendra accompt al heire quant pleaſt al heire apres ceo que lheire accompliſh lage de xiiii. ans. Mes tiel Gardein ſur ſon accompt auera allowance de touts ſes reaſonable coſts et expences en touts choſes &c. Et ſi tiel gardein maria lheire deins xiiii. ans, il accomptera al heire, ou a ſes executors de value del mariage, coment que il ne prift riens pur le value del mariage, pur ceo que il ſerra rette ſa folly demeſne, que il luy voiloit marier ſans prender la value del mariage, ſinon que il luy maria a tiel mariage que eſt tant en value come le mariage del heire, &c.

And when the heire cõmeth to the age of 14. years complete he may enter and ouſt the Gardian in ſocage, and occupie the land himſelfe if hee will. And ſuch gardian in ſocage ſhal not take any iſſues or profits of ſuch lands or tenemẽts to his own vſe, but only to the vſe & proffit of the heire, and of this he ſhal render an account to the heire when it pleaſeth the heire after hee accompliſheth the age of 14. yeares. But ſuch gardein vpon his account ſhal haue allowance of all his reaſonable coſts and expences in all things, &c. And if ſuch gardein marry the heire within age of 14. yeares hee ſhall account to the heire or his Executors of the value of the mariage, although that hee tooke nothing for the value of the mariage, for it ſhall bee accounted his owne folly, that he would marry him without taking the value of the marriage, vnles that he marrieth him to ſuch a mariage that is as much worth in value as the mariage of the heire.

Gardian in ſocage ſhall take into his cuſtody as well Rent charges, &c. as the land holden in Socage becauſe hee hath the cuſtody of the heire.

¶ *Si le tenant adiſſue & deuie.* The ſame Law it is if the Tenant hath no iſſue, but a brother or coſin within age of 14 yeares at the time of his death. (a) Alſo this doth extend aſwell to iſſue female as to iſſue male. (a) 12. E. 2. Account, 132.

¶ *Deins lage de 14. ans.* Of this ſufficient hath beene ſpoken in the next preceding chapter.

¶ *Donques le procheine Amy del heire a que le enheritance ne poet diſcender.* The next friend of the heire, &c. Here Amy or friend is taken for the next of blood, ſo as the effect of it is, that the next of blood to whom the inheritance cannot diſcend, whereby affinitie without blood is excluded. Glanvil, lib. 7. cap. 11. Bracton, 163. Fleta, lib. 1 cap. 9. Stat. de Hibernia, tit. Partition.

¶ *Le prochein.* The next.

(b) If there be two or three brethren, and the youngeſt holdeth land in Socage and hath iſſue and dieth his iſſue within age of 14. yeares both the Uncles are in equall degree, and yet the eldeſt ſhall be Gardein, becauſe in equall degree the Law preferreth him. (c) And yet if lands holden in Socage be giuen to a man and the heires of his body, and he dieth, his heire within age, the next coſin of the part of the father albeit he be worthier ſhall not bee preferred before the next couſin of the part of the mother, but ſuch of them as firſt ſeaſeth the heire ſhall haue his cuſtody: But if lands bee giuen in Frankmariage, and the (b) Vid. 30. Aſſ. 47. (c) Plowd. Carells caſe. 47. H. 3. Gard 146.

Doners haue iſſue and die their iſſue within age of 14. yeares, the next of kinne of the part of the mother ſhall haue the cuſtody of the body, and not the next of kinne of part of the father albeit he firſt ſeaſed him, becauſe the mother was the cauſe of the gift. If a man bee ſeiſed of lands holden in Socage of the part of his father, and of other lands holden in Socage of the part of his mother, and dieth his iſſue being within the age of 14. yeares. In this caſe ſuch of the

the next of kin of either ſide as firſt happeth the bodie ſhal haue him, but the next of blood of the part of the father ſhall enter into the lands of the part of the mother, and the next of kinne of the part of the mother, ſhall enter into the lands of the part of the father.

(d) F.N.B.139.h. Regiſtr.
(e) 7.E.3.46.16.E.3...c.51 21 E.3.8.31.E.3.Enfans 9. 17.E.2.Accounts 121. 26.E.3.63.10.H.6.14. F.N.B.118.
(f) Bract li.2. fo.88.
(h) Flet.li.1.ca.10.

(d) If A. be Gardein in Socage of the bodie and lands of B. within the age of foureteene yeares, A. ſhall be Gardein in Socage per cauſe de Gard. But an Infant within age, that (e) is not in the cuſtodie of another, cannot be Gardein in Socage, becauſe no writ of accounnt lieth againſt an Infant. And herewith agreeth Bract.(f) and yeldeth this reaſon, Alium regere non poteſt, qui ſeipſum regere non nouit. And Fleta ſaith, (h) That minor minorem cuſtodire non debet, alios enim præſumitur male regere qui ſeipſum regere neſcit: And by like reaſon an Idiot, a man non compos mentis, a Lunaticke, a man ſæcus & mutus, or ſurdus & mutus, or a Leaper remoued by a writ de Leproſo amouendo, cannot be a Gardein in Socage, but in a caſe of Gard per cauſe de Gard, there lieth an Action of Account againſt A. in the caſe aboueſaid.

(i) Lib.Rab.cap.70.
(k) Glanv.li.7.ca.11.
(l) Pl.Com Carelesſe.

¶ *A que le heritage ne poet deſcender.* (i) Nullus hæredipetæ ſuo propinquo vel extraneo periculoſa ſane cuſtodia committatur. Note (k) this word (Poet) may or can. (l) And therefore this doth not onely exclude an immediate diſcent, but all poſſibilitie of diſcent. As if a man hath iſſue two ſons by ſeueral Venters, & hauing lands holden in Socage of the nature of Burgh Engliſh, dieth, the yonger brother within age of 14. yeres, (m) the elder brother of the halfe bloud ſhall not haue the cuſtodie of the land, becauſe by poſſibilitie the elder may inherit the land, for if the yongeſt die without iſſue, & the land diſcend to an Uncle, the elder brother of the halfe bloud may be heire vnto him: herewith do agree our antient Authors: (n) Hæres ſokmanni ſub cuſtodia capitalium Dñorum non erit, ſed ſub cuſtodia conſanguineorum ſuorũ propinquiorũ, hoc eſt, eorũ qui coniuncti ſunt iure ſanguinis, & non iure ſucceſſionis, ex parte quorum non diſcendit hæreditas, & regulariter verum eſt, quod nunquam remanebit aliquis in cuſtodia alicuius, de quo haberi poſſit ſuſpitio, quod velit ius clamare in ipſa hæreditate, & vnde ſi plures ſint filiæ & hæredes & tenere debeant in ſocagio, nulla debet eſſe in cuſtodia alterius.

(m) Litt.li.1.ſo.2,3.

(n) Bract.li.2.fol.87. Brit.fo.163.b. Fle.li.1.c.10. 28.E.1.Stat.1.Forteſc.c.40.

(o) Forteſc.vb.ſupr.Statut.de Homagio capiendo, tempr E.1.

(o) And this is contrarie to the Ciuile Law; for, Leges Ciuiles impuberum tutelas proximis de eorum ſanguine committunt, agnati fuerint, ſiue cognati, vnicuique, videlicet, ſecundum gradum & ordinem qui in hæreditate pupilli ſucceſſurus eſt. But this the Law of England ſaith, Eſt quaſi agnum lupo committere ad deuorandum.

¶ *Donques la mere.* **Note, albeit Land cannot diſcend to the** mother from her ſonne, (as hath beene ſaid) becauſe Inheritance cannot aſcend, yet here it appeareth by Littleton, That ſhe is next of bloud, for none (as hath beene ſaid) can be Gardeine in Socage, but the next of bloud, and the like is to be ſaid of the Father, as hereafter next appeareth.

¶ *Donques le Pier.* **By this it appeareth, That the Father in** caſe of a tenure in Socage ſhall be gardein in Socage, & ſhal not haue the cuſtodie of his eldeſt ſonne, in reſpect of his paternall naturall cuſtodie, (as he ſhall haue in caſe of a Tenure by Knights ſeruice, as before it appeareth) but as Gardeine in Socage: and the reaſon of the diuerſitie is, for that in the caſe of a tenure in Socage, the father muſt by Law be accountable to the Sonne both for his mariage, as alſo for the profits of his Lands, which he ſhould not be if he had the cuſtodie of his eldeſt ſonne in this caſe as his father, in reſpect of nature, and the act a Law neuer doth any man wrong.

But no Lord or other perſon in reſpect of any tenure by Knights Seruice or otherwiſe ſhal haue the cuſtodie of any child that is heire apparant to his father, but the father only during his life, as hath beene ſaid before.

It is to be obſerued, that in the Lawes of England, there are three manner of Gardeinſhips, viz. by the Common Law, by the Statute Law, and Cuſtome. By the Common Law there are foure manner of Gardians, viz. Gardein in Chiualrie, whom Littleton hath deſcribed before Section 103. &c. Gardein by nature, as the Father of the eldeſt ſonne of whom Littleton hath ſpoken Section 114. Gardein in Socage treated of by Littleton in this Section, and Gardein per cauſe de nurture, all frequent in (a) our Bookes. By the Statute, that is, in 4 & 5. Phil. & Mariæ, of women children, and that is in two manners, either of the father or mother without aſſignation, or of any other to whom the father ſhall appoint the cuſtodie, either by his laſt will, or by any Act in his life time, whereof you ſhall reade at large (b) in Ratcliffes Caſe in my Reports.

(a) 8.E.3.43. 8.E.4.5.
(b) Lib.3 fol.37. Ratcliffe caſe.
(c) 32.E.3.gard.31. 3.R.2.gard.166.

(c) Laſtly, by Cuſtome, as of Orphans by the cuſtome of the Citie of London, and of other Cities and Boroughes.

¶ *Tantſolement al vſe & profit del heire.* **And therefore Gardein in** Socage ſhall not forfeit his intereſt by outlawrie or attainder of felonie or Treaſon becauſe he hath nothing to his owne vſe, but to the vſe of the heire.

His

Alſo if the mother be Gardian in Socage, and taketh huſband, and dieth, the huſband ſhall not haue this cuſtody by Suruiuour, becauſe the wife had it en auterdroit in the right of the heire. *Pl.Com.*

A Gardian in Socage ſhall not (d) preſent to a benefice in the right of the heire becauſe hee cannot be accomptable therefore, for that he can make no benefit thereof, for the Law doth abhorre ſimony or any corrupt Contract for benefices, and therefore in that caſe the heire ſhall preſent himſelfe, and Britton ſpeaking of theſe Gardians ſaid well, Les queux gardeins ſont pluis ſerjants que gardeins, (that is) which gardians are rather ſeruants then Gardians. (d) *8.E.2.preſentment 19. 7.E.39. 27 E.3.89. 29.E.3.5. 5 N B 33. 31.E.3.Eſtoppel,349. Britton 163.164. Fleta lib.1.cap.10.*

¶ *Il rendra account, &c. apres que lheire ad accompliſhe lage de* 14 *ans.* This point hath beene much controuerted in our bookes, and the cauſes of the doubts haue beene, firſt vpon the words of the ſtatute of (e) Merlebridge, ca.17. 2. Vpon the originall writ of Account againſt the Gardein in Socage. The words of the ſtatute be Cum ad legitimam ætatem peruenerit ſibi reſpondeat, &c. and legitima ætas, (f) lawfull age, is xxi. yeares. 2. Alſo the writ of Accompt reciteth the ſaid ſtatute, Quare cum de communi conſilio regni noſtri prouiſum ſit quod cuſtodes terrarum & tenementorũ quæ tenentur in Socagio hæredibus terrarum & tenementorum illorum cum ad plenam ætatem pervenerint reddant rationabilem compotum. (g) Whereupon it is gathered that no action of account did lye againſt the Gardein in Socage at the Common Law, vntill the heire be of his lawfull age of 21. yeares. But as to the firſt (legittima ætas) as the ſtatute (h) ſpeaketh) or plena ætas (as the writ doth render it) are to be vnderſtood ſecundum ſubjectam materiam, that is of the heire of Socage land whoſe lawfull and full age as to the cuſtody or Gardeinſhip is 14. And as to the recitall of the ſtatute, (i) it is euident that an action of Account did lye againſt Gardein in Socage at the Common Law. And that the ſtatute was made in affirmance or declaration of the Common Law for the ſtatute ſpeaketh only De cuſtodia parentum that is of a Gardein in right, but yet an action of Account lyeth againſt him that occupieth the land as Gardein, albeit he be not of the blood (as hereafter ſhall be ſaid.) And vpon conſideration had of the ſaid ſtatute and of all the bookes, it was adiudged in the Court of Cõmon Pleas, Paſch.16.Eliz,rot.436. accoꝛding to the opinion of Littleton, that the heire after the age of 14. yeares ſhall haue an action of Account againſt the Gardein in Socage, when he will at his pleaſure, and ſo is an ancient queſtion well reſolued. (e) *It is called the ſtatute of Merlebridge becauſe the Parliament in 52.H.3 was holden there.* (f) *16.E.3.waſt 100. 18 E.3.55.77. 29 E.3.5. 9 d.32.E.3.Gard.31. F.N.B.118. 6.E.3.38.* (g) *16.E.2. Account 129. 17.E.2.ibid.121.* (h) *2 E.2. Accounts 14.E.3 Ibid. 3.Mar.137. Keylwey 131.* (i) *18.E.2.Auowry 220.*

Britton was of opinion that the ſtatute of Marlebridge which gaue the Capias in Account, extended to Gardein in Socage, for he wrote before the ſtatute of W.1.ca.11. But later bookes haue ouer-ruled this point, that no Capias lyeth againſt Gardein in Socage, for the ſtatute extendeth to Bailifes only; Neither doth the ſtatute of W.2. extend to gardein in Socage, for that ſpeaketh only De ſeruientibus, balivis, camerarijs, & receptoribus. *Paſch.16.Eliz.Rot.436. in communi banco. Mirror,ca.2.§.17. Britton.fo.163.b. Fleta lib.2.ca.64. 18.E.2.Auowrie 220. 17.E.3.59.Merlbr.ca.23. W.2.ca.11.*

¶ *Mes tiel gardein ſur ſon account auera allowance de touts ſes reaſonable coſts & expences en touts choſes.* **And this is due to all accountants** by the Common Law, and ſo it is declared by the ſaid ſtatute of Merlebridge, Saluis ipſis cuſtodibus rationabilibus miſis ſuis. *The ſtatute of Merlbr. intended by Littl.ss ca.17.*

¶ *Allowance.* **What other allowances ſhall the gardein haue?** If the Gardein receiue the Rents and profits of the lands, and be robbed of the ſame, whither ſhall he be diſcharged thereof vpon his Account? and it ſeemeth, that if he be robbed without his default of negligence hee ſhalbe diſcharged thereof. As if a Bailife of a Mannor or a Receiuer, or a Factor of a Merchant or the like accountant be robbed, hee ſhall be diſcharged thereof vpon his account and ſeeing the Gardein ſhall be charged as Bailife after the heires age of 14. and be diſcharged vpon his account, if he be robbed, Pari ratione if hee bee robbed before the age of 14. But otherwiſe it is of a Carrier, for he hath his hire, and thereby implicitely vndertaketh the ſafe deliuery of the goods deliuered to him, and therefore he ſhall anſwer the value of them if he be robbed of them. Note the diuerſity and ſo it was reſolued * in the Kings bench. *41.E.3.3. 22.Aſſ.41. 22.E.3.Accounts 111. 29.Aſſ 28. 3.H.7 4.b. 6.H.7.12. 10.H.7 25. 10.H.6 21. 2.E.4.15. Dell.& Stud.ca.38.fo.130.*

So it is if goods be deliuered to a man to be ſafely kept, and after thoſe goods are ſtolne from him, this ſhall not excuſe him, becauſe by the acceptance he vndertooke to keepe them ſafely, and therefore he muſt keepe them at his peril. * *Hill.38.Eliz. inter Woodliefe & Curties.*

So it is if goods be deliuered to be one to be kept, for, to be kept, and to be ſafely kept, is all one in Law, But if the goods be deliuered to him to be kept, as hee would keepe his owne, there if they be ſtolne from him without his default or negligence, he ſhalbe diſcharged. So if goods be deliuered to one as a gage or pledge, and they be ſtolne, he ſhall be diſcharged, becauſe he hath a property in them, and therefore he ought to keepe them no otherwiſe then his owne; but if he that gaged them, tendred the money before the ſtealing, and the other refuſed to deliuer them, then for this default in him he ſhall be charged. *29.Aſſ.p.28.*

If A. leaue a cheſt locked with B. to be kept, and taketh away the key with him, and acquainteth *8.E.2.tit.Detinue 59.*

quainteth not B what is in the Cheſt, and the Cheſt together with the goods of B. are ſtolne away, B. ſhall not be charged therewith, becauſe A. did not truſt B. with them as this caſe is. And that which hath beene ſaid before of ſtealing, is to be vnderſtood alſo of other like accidents as ſhipwracke by ſea, fire by lightning, and other like inevitable accidents. And all theſe caſes were reſolued and adiudged in the Kings bench.* And by theſe diuerſities are all the bookes concerning this point reconciled.

* Paſch.43.Eliz. inter Southcote & Bennet in detinue.

Note, Reader it is neceſſary for any that receiueth goods to be kept, to receiue them in this ſpeciall manner, viz. to be kept as his owne, or to keepe them at the perill of the owner. But now is Littleton to be further heard.

¶ *Et ſi tiel gardein maria le heire deins* 14.*ans*,*&c.* For if hee marry the heire after 14. hee is out of his cuſtody, and no account ſhall be made therefore.

¶ *Il accountera a luy.* Hee ſhall account for the mariage of the heire, viz for ſo much as any man bona fide had offered for the mariage or would giue in mariage vnto him.

¶ *Ou a ſes Executors.* Note that an infant of the age of 14. may make his will (as ſome hereupon haue collected) but the meaning of Littleton is, that if after his mariage he accompliſh his age of 18. yeares at what time he may make his Teſtament, and conſtitute executors for his goods and chattells. and the words are ſo to be vnderſtood as may ſtand with Law and reaſon. Note, Executors could not haue an action of Account at the Common Law in reſpect of the priuitie of the account, but the ſtatute of W.2.ca.23. hath giuen the action of account to executors the ſtatute of 25.E.3.ca.5. to Executors of Executors, and the ſtatute of 31.E.3.ca.11. to Adminiſtrators.

7.E.3.62.
19.E.3.Account 56.
38.E.3.7.
31.E.3.tit. Account, 57.

¶ *Que il voile luy marier ſans prender le value.* So as the Gardein ſhall not account only for that which hee ſhall receiue in this caſe, but for which hee might receiue.

3.E.3.10.
45.E.3.Account.40.
2.R.2.Ibid.45.
6.R.2.Account 47.

¶ *Si non que il luy marier a tiel mariage que eſt tant en value*,*&c.* This needeth no explanation.

If the heire in Socage be rauiſhed out of the cuſtody of the Gardein and the rauiſher marrieth the heire, the Gardein ſhall haue a Writ of rauiſhment of Ward, and recouer the value of the mariage, &c. and ſhall account to the heire for the ſame.

Hill.3.E.2. Coram Rege, Rot.34.Agnes Frowicke caſe F.N.B.139.I.& 140.
26.E.3.65.2.E.3.19.20.

And the Gardein in Socage is bounden by Law, that the heire bee well brought vp, and that his euidences be ſafely kept.

The Grandmother of the ſonne and heire of Iohn Berneuill who held the Mannor of Totington in the County of Midd. in Socage recouered the heire in a Rauiſhment of ward againſt Simon Cheu in which had married the ſtepmother of the heire, and by rule of the Court the plaintife Pro nutritura hæredis, & pro cuſtodia euidentiarum invenit plegios.

Trin.1.H.5 Coram Rege Rot.1.Midd.

Section 124.

¶ *ET ſi aſcun auter home que neſt pas procheine amy*, *&c.* If a ſtranger entreth into the lands of the infant within age of 14. and taketh the profits of the ſame, the infant may charge him as Gardein in Socage. And this doth well agree with the Writ of account againſt a Gardein in ſocage, for the words be, Idem B. prefato A. rationabilem compotum ſuum de exitibus

19.E.2.Aowry, 321.
39.E.3.16.
41.E.3.Account 35.
49.E.3.10. 18.E.3.77.
28.Aſſ.p.11. Pl.Com.543.
6.E.3.38.F.N.B.118.

¶ Et ſi aſcun auter home q̃ neſt procheyn amy, occupie les terres ou tenemẽts del heire come gardeine en Socage, il ſerra compell̃ de render accompt al heire, auxi bien ſicõe il fuiſſoyt procheyn amy: car il neſt pas plee pur luy en briefe Daccompt adire, que il neſt procheine amie, &c. mes il reſpondra t̃ quel

And if any other man, who is not the next friend, occupies the lands or tenements of the heire as Gardein in Socage, he ſhall be compelled to yeeld an account to the heire as well as if hee had beene next friend, for it is no plea for him in the Writ of Account to ſay that he is not the next friend, &c. but hee ſhall anſwer

il ad occupie les terres ou tenements come gardeine en ſocage ou nemy. Sed Quære, ſi apres ceo que le heire ad accompliſh lage de 14. ans, & Gardeine en ſocage continualment occupia la terre tanque heire vient a plein age S. 21. ans, ſi le heyre a ſon plein age auera action Daccompt enuers le gardeine de temps que il occupia apres les dits 14. ans, come enuers Gardeine en Socage, ou enuers luy come ſon baylife.

whether hee hath occupied the lands or tenements as Gardein in Socage or no. But *quære*, if after the heire hath accompliſhed the age of 14. yeares, and the Gardein in Socage, continually occupieth the land vntill the heire comes to full age, s. of 21. yeares, if the heire at his full age ſhall haue an action of Account againſt the gardein, from the time that he occupied after the ſaid 14. yeares, as gardein in Socage, or againſt him as his Bailife.

provenientibus de terris & tenementis ſuis in N. quæ tenentur in ſocagio & quorum cuſtodiam idem B. habuit dum pred: A. infra ætatem fuit vt dicitur And true it is that in iudgement of Law he had the cuſtody of the lands: and hee is called Tutor alienus, and the right Gardein in Socage tutor proprius, and it is no plea for him to denie that he is Procheine amy, but he muſt anſwer to the taking of the profits as Littleton here ſaith. 13.E.3.Account 77. 22.E.3.11. 41.E.3.Account.35. 10.H.7.7. 4.H.7.6.b. 7.H.7.9.a.

¶ *Sed quære, &c.* This Quære came not out of Littletons quiuer for it is euident that after 6.E.3.38. 32.E.3.Account 60. 7.E.4. F.N.B.118.

the age of 14 yeares he ſhall be charged as Bailife at any time when the heire will, either before his age of 21. yeares or after.

Sect. 125.

¶ Item ſi gardein en chiualrie face ſes executors & deuy, le heire eſteant deins age, &c. les executors aueront le garde durant le nonage, &c. Mes ſi Gardein en Socage face ſes executors, & deuy, le heire eſteant deins lage d 14. ans, ſes executors naueront pas le garde, mes vn auter procheine amy, a que le heritage ne poyt my diſcend, auera la garde, &c. Et la cauſe de diuerſitie eſt, p ceo que Gardeine en

ALſo if Gardein in Chiualrie makes his executors and die, the heire being within age, &c. the Executours ſhall haue the Wardſhip during the nonage, &c. but if the Gardeine in Socage make his Executours & die, the heire being within the age of 14. yeares, his Executors ſhall not haue the Wardſhip, but another the next friend, to whom the Inheritance cannot diſcend, ſhall haue the Wardſhip, &c. And the reaſon of this diuerſitie is be-

¶ A *Son proper vſe.* A Tenant holdeth Land of a Biſhop by Knights Service which Signiorie the Biſhop hath in the right of his Biſhopricke, the Tenant dieth his heire within age, the Biſhop either before or after ſeiſure dieth, neither the King nor the Succeſſor of the Biſhop ſhall haue the Wardſhip, but his Executors. For albeit the Biſhop hath the Signorie in auter droit, yet the Wardſhip being but a Chattell hee hath in his owne right, and a Chattell cannot go in the ſucceſſion of a ſole Corporation, vnleſſe it bee in the caſe of the King. 7.R.2.bre.634. 40.E.3.14. 2.H.4.19. 10.Eliz.Dier.277. 7.H.4.41. 44.E.3.42.

And yet if a Biſhop haue an Aduowſon, and the Church become void, and the Biſhop die, neither the Succeſſor nor the Executors ſhall preſent, but the King becauſe it is but a Choſe in action. And ſo it is in caſe where the King hath wardſhip, but that 24.E.3.26. 44.E.3. F.N.B.33. *See more of this in the chapter of Warranty. Sect.*

that is a prerogatiue that belongeth to the King, to prouide for the Church being void, for where the Tenure by Knights Seruice is of a common person, the Executours of the Tenant shall present where the auoydance fell in the life of the Tenant.

chiualrie ad le garde a ſon proper vſe, & Gardein en Socage nad le garde a ſon vſe, mes al vſe del heire. Et en cas lou le Gardeine en Socage deuy deuant aſcun accompt fait per luy al heire, de ceo le heire eſt ſans remedie, pur ceo que nul briefe daccompt giſt enuers les Executors ſi non pur le Roy ſolement.

cauſe the Gardeine in Chiualrie hath the Wardſhip to his owne vſe, and the gardein in Socage hath not the Wardſhip to his owne vſe, but to the vſe of the heire. And in this caſe where the Gardein in Socage dieth before any account made by him to the heire, of this the heire is without remedy for that no writ of accounte lieth againſt the Executours, but for the King only.

31.E.3.assumpt.57. 19.E.3.ibid.156. 48.E.3.2. 2.H.4.13. F.N.B.117. 19.H.6.5. 4.E.4.25. 43.E.3.21. Lib.11.fol.89.

¶ *Le heire eſt ſauns remedie, &c.* For albeit in an Action of account againſt a Gardeine in Socage, &c. the Defendant cannot wage his Law, yet in reſpect of the priuitie of the matters of account, and the diſcharge reſting in the knowledge of the parties thereunto, an action of account neither lieth againſt the Executors of the accountant, nor at the Common Law for the Executors of him to whom the account is to be made as is aforeſaid but that is holpen by Statute, (*) It hath beene attempted in Parliament to giue an action of account againſt the Executors of a Gardeine in Socage, but neuer could be effected.

* Rot. parl. 50.E.3.nu.123.

(a) Pl.Com.321. Kytowey 131. Lib.11.fol.89.

¶ *Si non pur le roy ſolement.* (a) The reaſon of this is becauſe the Kings treaſure is the ſinewes of warre, and the honour and ſafetie of the King in time of peace, firmamentum belli, & ornamentum pacis, and therefore the death of the partie ſhall not barre the King of his treaſure due vnto him vpon the account, becauſe it is intended that the King was buſied about the publike for the good of the Common-wealth, and had not leiſure to call his accountant to make his account, and nullum tempus occurrit Regi. Littleton ſpeaketh of the Kings Prerogatiue but twice in all his Bookes, viz. here and Sect.178. and in both places as part of the Lawes of England. Prærogatiua is (b) deriued of præ.i.ante, and rogare, that is to aſke or demand before hand, whereof commeth prærogatiua, and is denominated of the moſt excellent part, becauſe though an Act hath paſſed both the Houſes of the Lords and Commons in Parliament, yet before it be a Law, the Royall aſſent muſt be aſked or demanded and obtained, and this is the proper ſence of the word. But legally (*) it extends to all Powers, Preheminences and Priuiledges, which the Law giueth to the Crowne, whereof Littleton here ſpeaketh of one. Bracton lib.1. in one place calleth it libertatem, in another Priuilegium Regis. (c) Britton (d) (following W.1.) Droit le Roy. (e) Regiſtr. ius Regium, and ius Regium Coronæ, &c.

Vide Sect.178. Stanf. prær. 32. (b) Forteſcue.fol.45. Rot.Parliam.1.H.4.nu.188. Pl.Com.236. Stanf.pl.cor.162.b. Stanf.prær.1.a.b.& 10.b. (*) Stanf.prær.5.10.

(c) Weſtm.1.cap.50. (d) Britton.fol.27. (e) Regiſt.fol.61.&c.

Sect. 126.

43.E.3.barre 294. 9.E.4.36. Bract.lib.2 fol.35. Glanuil.lib.9.cap.4.

¶ *Erteine rent.* A Tenant holdeth of his Lord certaine Lands in Socage to pay yearely a paire of guilt Spurs or fiue ſhillings in money at the Feaſt of Eaſter. In this caſe the rent is incertaine, and the tenant may pay which of them he will at the ſaid Feaſt, and likewiſe the tenant may pay which of them he will for reliefe, but if hee pay it not when he ought, then may the

¶ Item le ſeignior de que la terre eſt tenus en Socage apres le mort ſon tenant auera reliefe en tiel forme. Si le tenant tient per fealtie & certain rent, a paier annualment &c. ſi les termes de paiment

ALſo the Lord of whom the Land is holden in Socage after the deceaſe of his Tenant ſhall haue reliefe in this manner. if the Tenant holdeth by fealtie, and certaine Rent to pay yearely, &c. if the tearmes of

ſon

sont a payer per deux termes del an, ou per quater termes dl an, le Seignior auera del heire son tenant tant come le rent amount que il paya p an. Sicome le tenāt tient de son seignior per fealtie & x.s. de rent, payable a certaine termes del an, donques lheire paiet al Seignior x.s. pur reliefe, ouster les x.s. que il paiera pur le rent.

payment bee to pay at two tearmes of the yeare, or at foure termes in the yeare the Lord shall haue of the heire his Tenant, as much as the Rent amounts vnto which he payeth yearly. as if the Tenant holds of his Lord by fealtie, and ten shillings Rent payable at certaine termes of the yeare, then the heire shall pay to the Lord ten shillings, for reliefe, beside the ten shillings which he payeth for the Rent.

Lord distreine for which of them he will. But if the tenure be to attend on his Lord at the Feast of Christmasse, or to pay ten shillings, there the reliefe must bee ten shillings, because the other cannot be doubled, & sic de similibus.

¶ *A paier annuelment.* If the tenant holdeth of his Lord by fealty and to pay euery two or three yeare tenne shillings, albeit this be no Annuall Rent, yet shall hee pay ten shillings for reliefe, & sic de similibus.

But it is to be noted, that beside reliefe whereof Littleton here speaketh, there belongeth to a tenure in socage of common right, aide for the making of his eldest Sonne a Knight at the age of fifteene yeares, & to marie his daughter at the age of seuen yeares.

Vide Sect.103.F.N.B 82. West.1.cap.35. 25.E.3.stat.5.cap.11.

En mesme le manner est, si home soit seisie de certeine terre que est tenus en Socage, & fait feoffement en fee a son vse & morust seisie del vse (son heire del age de 14. ans, ou pluis) & nul volunt per luy declare, le Seignior auera reliefe del heire, sicome auant est dit; Et cest per le statute de Anno 19. Henrici 7. cap.15.

In the same manner it is, if a man be seised of certain land which is holden in Socage, and maketh a feoffment in fee to his owne vse, and dieth seised of the vse (his heire of the age of 14. yeares or more) and no will by him declared, the Lord shall haue reliefe of the heire as afore is said. And this by the Statute of 19. Henrie 7. cap.15.

This is an addition to Littleton, wherefore I omit it the rather for that the Statute of 19. H.7. is for the cause aboue mentioned become of none effect.

Section 127.

¶ ET en tiel cas apres la mort le Tenant, tiel reliefe est due al Seignior maintenant, de quel age que le heire soit, pur ceo que tiel Seignior ne poit auer le garde de corps ne de terre

AND in this Case, after the death of the tenant, such reliefe is due to the Lord presently, of what age soeuer the heire bee, because such Lord cannot haue the wardship of the bodie, nor of the land of the heire.

¶ M*Aintenant*, and as Littleton saith, he ought not to attend the payment of his reliefe according to the dayes of payment, but he ought to haue his reliefe presently, and for the same he may incontinently distraine after the death of the Tenant.

And therefore in the case aforesaid, where the Tenant holdeth by the Rent of fiue shillings, or a paire of gilt Spurres,

16.H.7.4.18.E.3.26.p.18. Bracton.lib.2. fol.85. debit heres vna vice redditum suum vnius anni duplicatum. Britton.fol.178.acc. Fleta lib.1.cap.8.

Spurres, if the heire bee not prſently (that is as preſently as conuenientlie may, all due circumſtances conſidered) after the death of his Anceſtor readie vpon the land to pay reliefe, the Lord may diſtraine for which of them hee will, and if the tenant tendred either of them according to the Law, and none for the Lord was readie there to receiue it, yet the Lord may diſtreine for that which was tendred at his pleaſure.

le heire. Et le Seignior en tiel caſe ne doit attendre a le payment de ſon reliefe, ſolonques les termes & iours de paiment de rent mes il doit auer ſon relief maintenant, & pur ceo il poit incontinẽt diſtraine apres le mort ſon tenant, pur reliefe.

And the Lord in ſuch caſe ought not to attend for the payment of his reliefe, according to the termes and dayes of payment of the rent, but hee is to haue his reliefe preſently, and therefore he may forthwith diſtreine after the death of his Tenant for reliefe.

45.E.3.19.35.H.6.52. 20.Eliz. Dier 361. Stanford. p. cr. 13.b. F.N.B.256.259.

¶ *De quel age que le heire ſoit.* And yet it appeareth in our Bookes that in this caſe the King in Caſe of a tenure in Socage in chiefe ſhall not haue primer ſeiſin vnleſſe the heire be of the age of fourteene yeares at the death of his Anceſtor, for if he be vnder that age he is in the gard and cuſtodie of his prochein amy.

But otherwiſe it is in caſe of a common perſon, as here it appeareth. And where in ſome impreſſions theſe words be added (iſſint que il paſſa lage de 14. ans) thoſe words are added and are againſt Law, and no part of Littletons worke.

Section 128.

¶ *VN lib. de pepper ou cumyn.* Here it is to bee obſerued that the Lord may reſtraine Pepper or any other things that be exotica, forreigne, of the growth of outlandiſh Countries, or beyond Sea, as well as of the growth of England, where, by Nauigation the life of euery Iland is imployed. And where Littleton here putteth his caſe in the diſiunctiue, if the tenant doth hold by fealtie and one pound of Pepper or a pound of Cummin, hee ſhall pay for reliefe a pound of Pepper, or a pound of Cummine ouer and beſides the rent. But if the tenant holdeth of his Lord by doing of certaine worke dayes in harueſt, or to attend at Chriſtmaſſe or ſuch like hee ſhall not double the ſame, for of Corporall ſeruice or labour or worke of the tenant, no reliefe is due, but where the tenant holdeth by ſuch yearely rents or profits, which may be paid or deliuered, whereof Littleton hath put his examples, and by them is manifeſtly proued that corporall ſeruice, worke, or labour ſhall not be doubled in this Caſe.

¶ EN Meſme le Maner eſt lou le tenant tient de ſon Seignior per fealtie, & vn li. de Peper, on Cummin, & le tenant morust, le ſeignior auera pur relief vn lib. de Cummin, ou vn lib. de Peper, ouſter le cõmon rent. En meſme le maner eſt lou tenant tient a payer per an certaine number de Capons, ou de gallines, ou vn paire de gaunts, ou certaine buſhels de frument, & hmodi.

IN the ſame manner it is, where the Tenant holdeth of his Lord by fealtie, and a pound of Peper or Cummin, and the Tenant dieth, the Lord ſhall haue for reliefe a pound of Cummin, or a pound of Pepper beſides the cõmon rent. In the ſame manner it is where the Tenant holdeth to pay yearely a number of Capons or Hennes, or a paire of Gloues, or certaine buſhels of Corne or ſuch like.

¶ *Ou certaine buſhels de frument.* Here it appeareth that the reliefe of buſhels of Corne is to be paid preſently though the tenant die in Winter before Corne be ripe.

Note

Note, here are examples put of fiue natures: 1. Aromatorum exoticorum, of ſpices or drugs of outlandiſh growth. 2. Granorum, of Corne of Engliſh growth. 3. Auium villaticarum, of Powltry, as Capons, Hens, &c. 4. Artificiorum, of handicrafts as a paire of Gloues generally either of Outlandiſh or Engliſh. 5. Aut ſimiliũ, or ſuch like (that is) like of Outlandiſh growth or of Engliſh growth, or of Poultrie, or of Artifices Outlandiſh or Engliſh, and like herein that they may be paid or deliuered to the Lord euery yeare or euery ſecond or third yeare, &c.

Sect. 129.

¶ MEs en aſcun caſe le ſeignior doit demurrer a diſtreiner pur ſon reliefe ieſque a certaine temps. Sicome le teñ tient de ſon ſeignior pur vn Roſe, ou p vn buſhel de Roſes, a paier al feaſt de Natiuitie de Saint John Baptiſt, ſi tiel tenant deuie en puer, donque le ſr̃ ne poit diſtr̃ p ſon reliefe tãque al tẽps q̃ les Roſes p le courſe del an poiẽt aũ iour creſſer, &c. & ſic de ſimilibus.

BVt in ſome caſe the Lord ought to ſtay to diſtreine for his reliefe vntill a certaine time. As if the tenant holds of his Lord by a Roſe, or by a buſhell of Roſes to pay at the feaſt of St. *Iohn* the *Baptiſt* if ſuch tenant dieth in Winter, then the Lord cannot diſtreine for his reliefe vntill the time that Roſes by the courſe of the yeare may haue their growth, &c. and ſo of the like.

¶ *Per le courſe del an.* Lex ſpectat naturæ ordinem, the Law reſpecteth the order and courſe of nature, Lex non cogit ad impoſſibilia. The Law compells no man to impoſſible things. The argument ab impoſſibili is forcible in Law, Impoſſibile eſt quod naturæ rei repugnat. And here is to be obſerued that Littleton puts a diuerſity betweene Corne and Roſes, for Corne will laſt, and therefore the tenant muſt deliuer the Corne preſently before the time of growth (as before is ſaid) and ſo of Saffron and the like, but Roſes or other flowers that are fructus fugaces, cannot be kept, and therefore are not to be deliuered till the time of growing, neither is the tenant driuen by Law artificially to preſerue Roſes, for the Law in theſe caſes reſpecteth nature, and the courſe of the yeare as Littleton here ſaith, Et ars naturam imitatur, & ſic de ſimilibus.

Sect. 130.

¶ ITem ſi aſcun voile demand, pur q̃ home poit tener de ſon ſeignior p fealty tantſolemẽt p touts maners des ſeruices, entant que quant le tenãt ferra fealtie, il iurera a ſon Seignior q̃ il ferra a ſon Sr̃ touts maners des ſeruices dues, & quant il ad

ALſo if any will aske, why a man may hold of his Lord by Fealty only for all manner of ſeruices, inſomuch as when the tenant ſhall doe his fealty, he ſhall ſweare to his Lord, that hee will doe to his Lord all manner of ſeruices due, and when hee hath done fealty in

¶ *Quant le tenant ferra fealty, il iurera a ſon Seignior, &c.* Here it appeareth that the doing of the Fealtie is both a performance of his ſeruice, and of his oath alſo when it is done for that no other ſeruice is due. And that one oath of fealty is taken of all that hold, and is not to be changed for any nouelrie or nicety of inuention, for Iudges anciently and continually haue ſuppreſſed innouations and would in no caſe change the ancient Common Law.

31. E. 3. tit. Gage deliuerance, 5.
38. E. 3. 1. 40. Aſſ. p. 12.
4. E. 3. ca. 5.
18. E. 3. ca. 4. & 6.
4. H. 4. ca. 2. 2. H. 4. fo. 18.

¶ *Il*

¶ *Il conient que il doit faire a ſon Seignieur aſcun ſeruice.* For there can be no Tenure without ſome Seruice, becauſe the Seruice maketh the Tenure.

See of this in the Chapter of Fee ſimple Sect.4.

¶ *Son eſcheat de la terre.* Eſchaeta is deriued of this word Eſchier quod eſt accidere: For an eſcheat is a caſuall profit quod accidit Domino ex euentu & ex inſperato, which happeneth to the Lord by chance, and vnlooked for. And of this word Eſchaeta, cõmeth Eſchator,, an Eſcheator, ſo called, becauſe his office is to inquire of all caſuall profits, and them to ſeiſe into the Kings hands, that the ſame may be anſwered to the King.

See more of this in the Chapter of Warrantie, Sect.

Lands may eſcheat to the Lord two manner of wayes: one by Attainder, the other without attainder. By Attainder in three ſorts: Firſt, Quia ſuſpenſus eſt per collum. Secondly, Quia abiurauit Regnum. Thirdly, Quia vtlegatus eſt, without attainder, as if the tenãnt dies without heire.

¶ *Ou per caſe auter forfeiture.* As if the Land bee aliened in Mortmaine, or when Littlet wrote, if the Tenaunts had erected Croſſes vpon their houſes or tenements, in preiudice of the Lords, that the Tenaunts might claime the priuiledge of the hoſpitlers to defend themſelues againſt their Lords, they had forfeited their Tenances. But ſince Littleton wrote, the Hoſpitlers are diſſolued, and conſquently that forfeiture is gone.

W.2.ca.33. Flet.li.2.ca.43. & li.5.ca.34 32.H.8.ca.24.

¶ *Ou profit.* As Reliefe, Aid pur file marrier, aid pur faire fitz chiualer, and the like.

fait fealtie en tiel caſe nul auter Seruice eſt due. A ceo il poyt eſtre dit, Que lou vn Tenant tient ſa Terre de ſon Seignior, il couient que il doit fait a ſon Seignior aſcun Seruice, car ſi le Tenaunt ne ſes heires deuoyent faire nul manner de Seruice al Seignior ne a ſes heires, donque per long temps continue il ſerroit hors de memorie & de remembrance, le quel la terr̃ fuit tenus per le ſeignior, ou de ſes heires, ou nemy, & donques pluis toſt & pluis redilment voilont hões dire que la terre neſt pas tenus del Seignior ou de ſes heires, q̃ auterment: Et ſur ceo le Seignior perdra ſon Eſcheat de la terre, ou per caſe auter forfeiture ou profit que il poet auer de le terre. Iſſint il eſt reaſon que le Seignior & ſes heires ont aſcun Seruice fayt a eux, pur prouer & teſtifier que la terre eſt tenus de eux.

this caſe no other Seruice is due. To this it may bee ſayd, That where a Tenant holds his land of his Lord, it behooueth that hee ought to doe ſome ſeruice to his Lord: For if the Tenant nor his heires ought to doe no manner of Seruice to his Lord nor his heires, then by long continuance of time it would grow out of memorie, whether the Land were holden of the Lord, or of his Heires, or not, and then will men more often and more readily ſay, That the Land is not holden of the Lord, nor of his Heires, than otherwiſe: And hereupon the Lord ſhall loſe his Eſcheat of the Land, or perchance ſome other forfeiture or profit which he might haue of the Land. So it is reaſon that the Lord and his heyres haue ſome Seruice done vnto them, to prooue and teſtifie, That the Land is holden of them.

Sect. 131.

¶ ET pur ceo q̄ fealtie eſt incident a touts manners de tenures, forſpris le Tenure en Frankalmoigne, (ſi cõe ſera dit en le tenur̃ d̃ Frankealmoigne) & pur ceo que le Seignior ne voiloit al cõmencement del Tenure auer aſcun auter ſeruice forſque Fealtie, il eſt reaſon que home poet tener de ſon Seignior per fealtie tantſolement, & quaunt il ad fait ſon fealtie, il ad fait touts ſes ſeruices.

AND for that fealtie is incident to all manner of Tenures, but to the Tenure in Frankealmoigne, (as ſhall be ſaid in the Tenure of Frankalmoign) and for that the Lord would not at the beginning of the Tenure haue any other ſeruice but Fealtie, it is reaſon that a Man may hold of his Lord by Fealtie onely, and when hee hath done his Fealtie, he hath done all his Seruices.

¶ *Fealtie eſt incident.*

Of Incidents there bee two ſorts, viz. ſeperable, and inſeperable.

Seperable, as Rents incident to reuerſions, &c. which may be ſeuered, inſeperable, as fealtie to a reuerſion or tenure which cannot be ſeuered: for as all lands and Tenements within England are holden of ſome Lord or other, and either mediately or immediately of the King, ſo to euerie tenure at the leaſt, fealtie is an inſeperable incident, ſo long as the Tenure remaines, and all other Seruices, except Fealtie, are ſeuerable. But where the tenure is by Fealtie only, there is no reliefe due for the cauſe aboueſaid.

Section 132.

¶ ITem ſi vn home leſſe a vn auter pur terme d̃ vie certaine terres ou tenemẽts ſauns parler de aſcun rent rend̃ a le Leſſor, vncore il ferra fealtie a le Leſſor, pur ceo que il tient de luy. Auxy ſi vn leaſe ſoit fait a vn hõe pur terme de ans il eſt dit que le Leſſee ferra Fealtie a le Leſſor, pur ceo que il tient de luy. Et ceo eſt proue bien per les parols del briefe de Waſt, quaunt le Leſſour ad cauſe de porter Briefe de Waſt enuers luy, le quel Briefe dira, que le Leſſee tient les Tenements de le Leſſor pur terme de ans,

ALſo if a man letteth to another lands or tenemẽts for terme of life, without naming any rent to bee reſerued to the Leſſor, yet he ſhall doe fealtie to the Leſſor, becauſe he holdeth of him. Alſo if a Leaſe bee made to a man for terme of yeares, it is ſaid that the Leſſee ſhall doe fealtie to the Leſſor, becauſe he holdeth of him. And this is wel prooued by the words of the writ of Waſt, when the Leſſor hath cauſe to bring a writ of Waſt againſt him, which Writ ſhall ſay, That the Leſſee holds his Tenements of the Leſſour for terme of yeares. So the

¶ *Si vn hõe leſſe pur terme de vie ſauns parler de rent, &c. il ferra fealtie, &c.* And the reaſon is, Becauſe there is a Tenure, & fealtie (as hath beene ſaid) is incident to al manner of tenures, & it is to bee noted, that the law for the ſurctie of

v. Sect. 214.

of the Lord, that his Tenant ſhall be faithfull and loyall to him doth create ſuch a ſeruice, as the Tenant ſhall be bound thereunto by oath.

4o.E.3.34. 9.H.6.41. 10.H.6.13 9.E.4.1. 21.E.4.29. 5.H.5.12. 5.H.7.11.

¶ *Auxi ſi leaſe ſoit fait pur ans, &c. le leſſee ferra fealty.* For there alſo is a tenure betweene them. And Littletons opinion in this caſe is holden for good Law at this day.

Vid.Sect.84.

¶ *Et ceo eſt proue bien per les parols del breife. &c.* Nota, the Originall Writs (are as it were) the foundations and grounds of the Law, and as it appeares here by Littleton are of great authoritie for the proofe of the Law in particular caſes.

¶ *Pur ceo que il nad ſuer eſtate.* Therefore Tenant at will ſhall not doe Fealty (as hath beene ſaid before) becauſe the matter of an oath muſt be certaine: the reſt of this Section needs no explication.

iſſint le briefe proua vn tenure enter eux. Mes celuy q̄ eſt tenāt a volunt ſolonq̄ le courſe del common ley, ne ferra fealty, p̄ ceo que il nad aſcun ſuer eſtat. Mes auterment eſt de tenant a volunt ſolonq̄ l' cuſtome del mannor, p̄ ceo que il eſt oblige pur faire fealty a ſon Sr̄ pur deux cauſes: Lun eſt p̄ cauſe del cuſtome: & lauter eſt, pur ceo q̄ il prift ſon eſtate en tiel forme pur faire a ſon Sr̄ fealty.

Writ proues a tenure betweene them. But he which is Tenant at will according to the courſe of the Common Law ſhall not doe Fealtie, becauſe hee hath not any ſure eſtate: but otherwiſe it is of Tenant at will according to the cuſtome of the Mannor, for that he is bound to doe fealtie to his Lord for two cauſes, the one is, by reaſon of the cuſtome, and the other is for that he taketh his eſtate in ſuch forme to doe his Lord fealty.

Bract lib.2.ca.5.& lib.4.ca.2. Britton fo.163 165. Mirror ca.2. §.18. Glanvil.lib.7.ca.1.& lib.12.ca 3.& 25. Fleta, lib.3.ca.5.

¶ *VN Abbe, Prior, ou auter hõe de religion ou de ſaint eſgliſe.* It is to be obſerued, that of Eccleſiaſticall perſons ſome bee regular; and ſome bee ſecular. They bee called regular becauſe they liue vnder certaine rules, and haue vowed three things: true obedience, perpetuall chaſtity and wilfull pouerty. And when a man is profeſſed in any of the orders of Religion, he is ſaid to bee home de religion, a man of religion or religious. Of this ſort be all Abbots, Priors and others of any of the ſaid order regular. Secular are perſons Eccleſiaſticall, but becauſe they liue not vnder certain rules of ſome of the ſaid orders, nor are Voluntaries,

31.H.7.39. 29.E.3.14.

40.E.3.29. 8.H.6 23. 7.E.4.12. 12.H.8.8.

¶ **TEnant en frankalmoigne, eſt lou vn Abbe ou Prior ou vn auter hõe de religion, ou d' ſaint Egliſe, tiēt de ſon ſr̄ en frankalmoigne, q̄ eſt adiť en Latin** in liberam eleæmoſinam. **Et tiel tenure commenc̄ a de primes en auncient temps en tiel forme; Quant vn home en auncient temps fuit ſeiſie d' certain terres ou tenements en ſon demeſne come de fee,**

TEnāt in Frāk-almoigne, is where an Abbot or Prior, or another man of Religion, or of holy Church, holdeth of his Lord in Franke almoigne: that is to ſay in Latin *in liberam Eleemoſynam*, that is, in free almes. And ſuch tenure began firſt in old time when a man in old time was ſeiſed of the lands or tenements in his demeſne as of Fee, and of the ſame land infeoffed

& de meſmes les terres ou tenemẽts enfeoffa vn Abbe & ſon Couent, ou vn Pꝛyoꝛ, &c. a auer & tener a eux & lour ſucceſſoꝛs a touts iours en pure & perpetual almoigñ, ou en frankalmõ ou p tiels parols; A teñ de le grantoꝛ, ou de le feoffoꝛ, & de ſes hẽs en frankalmoigñ: en tiels caſes les tenements ſont tenus en frankalmoigne.

an Abbot and his couent, or Prior and his Couent, to haue and to hold to them and their ſucceſſors in pure and perpetuall almes, or in Frank almoigne, or by ſuch words, to hold of the grauntor, or of the leſſor and his heires in Free almes: In ſuch caſe the tenements were holden in Frankalmoigne.

they are for diſtinction ſake called ſecular, as Biſhops, Deanes and Chapters, Archdeacons, Pꝛebends, Parſons, Vicars, and ſuch like. All which Littleton here includeth vnder theſe generall words, De ſaint Egliſe, of holy Church and none of theſe are in Law ſaid to be homes de religion oꝛ religious.

Where Littleton ſaith (infeoffa vn Abbe & ſon couent) his meaning is that the Abbot only is infeoffed, for he is only a parſon capable and the Couent are dead perſons in Law, and haue power of aſſent only, and that they thereunto aſſent. But ſince Littleton wꝛote, all Abbyes, Pꝛiories, Monaſteries, and other religious houſes of Monkes, Canons, Friers, and Nunnes, &c. haue bin diſſolued, & their poſſeſſions giuen to the Crowne.

See the ſtatutes of 27.H.8. not printed but in the abridgement 31.H.8.cap.13.& 32.H.8.ca.24.&c. Vid.Sect.530.

The Eccleſiaſticall ſtate of England, as it ſtandeth at this day (which is neceſſarie for our ſtudent to know) is deuided into two Pꝛouinces, oꝛ Archbiſhoprickes, (viz.) of Canterbury, and of Yoꝛke. The Archbiſhop of Canterbury is ſtiled, Metropolitanus & primas totius Angliæ; And the Archbiſhop of Yoꝛke Primas Angliæ. Each Archbiſhop hath within his Pꝛouince ſuffragan Biſhops of ſeuerall Dioceſſe. The Archbiſhop of Canterbury hath vnder him within his Pꝛouince, of ancient foundations, viz. Rocheſter his pꝛincipall Chaplaine. London his Deane, Wincheſter his Chancelloꝛ; Norwich, Lincolne, Ely, Chicheſter, Saliſbury, Exeter, Bathe and Wells, Woꝛceſter, Couentry and Lichfield, Hereford, Landaffe, St. Dauid, Bangoꝛ, and St. Aſſaphe, & foure founded by King H.8. erected out of the ruines of diſſolued Monaſteries (that is to ſay) Glouceſter, Briſtowe, Peterborow, and Oxford. The Archbiſhop of Yoꝛke hath vnder him foure, (viz.) the Biſhop of the County palatine of Cheſter newly erected by King H.8. and annexed by him to the Archbiſhoppricke of Yoꝛke, of the County palatine of Durham, Carlile, and the Iſle of Man annexed to the Pꝛouince of Yoꝛke by H.8. but a greater number this Archbiſhop anciently had, which time hath taken from him. The extent of euery Dioceſſe you may elſewhere reade, the which foꝛ bꝛeuitie I here omit. All the ſaid Archbiſhoppꝛickes, and Biſhoppꝛicks of England were founded by the Kings of England to hold by Barony as hereafter ſhall be ſaid.* And euery Archbiſhop and Biſhop hath his Deane and Chapter, whereof moꝛe ſhall be ſaid hereafter. The Archbiſhop of Canterbury hath the pꝛecedencie; next to him the Archbiſhop of Yoꝛke, next to him the Biſhop of London, and next to him the Biſhop of Wincheſter, and then all other Biſhops of both Pꝛouinces after their ancientneſſe.

*Math. Parker de vitis Archiepiſcoporum. Linwood. Camden Britannia. Vid. Rot. Parliam. anno 36.H.8. 1.E.6 5.E.6.&c. Weſtminſter alſo was newly erected a Biſhopricke by H.8. but by Queene Mary it was reſtored to be an Abby, and by Queene Eliz. created a Deanry Collegiate. Cheſter had beene anciently a Biſhops ſea and long ſince tranſlated to Couentry. 33.H.8.ca.31. Camden vbi ſupra. 26.H.8. firſt fruites and tenths. Vid Sect.137. * Lib.3.fo.73. Deane and Chapt. of Norwiches caſe. Vid.Sect.134.201. 31.H.8.ca.10.*

Euery Dioceſſe is deuided into Archdeaconries, whereof there be 60. and the Archdeacon is called oculus Epiſcopi, and euery Archdeaconry is parted into Deanries, and Deanries againe into Pariſhes, Townes and Hamlets. And thus much foꝛ the better vnderſtanding of our Authoꝛ, and howe the ſtate Eccleſiaſticall ſtandeth at this day, ſhall ſuffice.

Vid. more hereof, Sect.180. 528.648.&c.

¶ *Frnkalmoigne, que eſt a dire en Latyne, in liberam Eleemoſinam.* In Engliſh in free Almes. There is an officer in the Kings houſe called Eleemoſinarius vulgarly called the Kings Almner (whoſe office and durie is excellently deſcribed in ancient Authoꝛs) viz. Fragmenta diligenter colligere & eſt diligenter diſtribuere ſingulis diebus egenis, ægꝛotos, & lepꝛoſos, incarceratos, paupereſque viduas, & alios egenos vagoſque in patria commorantes charitatiue viſitare; item equos relictos, robas, pecuniã, & alia ad Eleemoſinã largita recipere, & fideliter diſtribuere, debet etiam regem ſuper Eleemoſinæ largitione crebris ſummonitionibus ſtimulare, pꝛæcipue diebus ſanctoꝛũ, & rogare ne robas ſuas, quæ magni ſunt pretij, hiſtrionibus, blanditoribus, accuſatoribus, ſeu meniſtrallis, ſed ad Eleemoſinæ ſuæ incrementũ jubeat largiri.

Fleta lib.2.ca.23.

All Eccleſiaſticall perſons may hold in Frankalmoigne be they Secular oꝛ Regular, & no lay perſon can hold in Frankalmoigne. This adiective (liber) doth diſtinguiſh many things in Law from others, as here libera Eleemoſina are wꝛds appꝛopꝛiated to this caſe, and doth diſtinguiſh it from a tenure by diuine ſeruice, liberum tenementum, from a tenure in villenage, oꝛ by Copihold oꝛ baſe tenure, liberum fœdum franke fee, from a tenure in ancient Demeane, liberum

Vid. Sect. 1. Bracton lib.4.ca.37.38. Britt. ca.32.

Britton.cap.66.
Bracton.lib.4.F.N.B.150.
Bract lib.4.fol.288.247.
292. Britton.fol.245.
Fleta.lib.5.cap.21.
Fortescue cap.26.24.E.3.34.
43.E.3.conſir.11.
27.Aſſ 59. Stanf.175.
Vide Sect.199.
Fleta.lib.1.cap.47.

berum mariagium, from other eſtates taile, libera firma, franke ferme, when an eſtate is changed from Knights Seruice to Socage, liberum ſocagium, from a tenure by ſeruice in Chiualrie. Francus bancus to diſtinguiſh it from other Dowers, for that it commeth freely without any act of the husbands, or aſſignement of the heire. Libera lex, to diſtinguiſh men, who enioy it, and whose best and freest birthright it is, from them, that by their offence haue loſt it, as men attainted in an attaint, in a conſpiracie vpon an Indictment, or in a Pæmunire, &c. And ſo of libera capella, francus plegius, frankpledge, libera chaſea, free Chaſe, liber burgus, liber aper, liber taurus, and the like. But in a matter (ſome will ſay) of curioſitie, this ſhall ſuffice, and yet ſeeing, it tends to the better vnderſtanding (others ſay) it is tolerable.

Glanvil.lib.7.cap.1.fol.44.
45.acc.

Britton.cap.66.fol.164.
Bract.lib.2.cap.5.&10.
N.N.B.211.

By the ancient Common Law of England, a man could not alien ſuch lands as he had by diſcent without the conſent of his heire, yet he might giue a part to God in free Almoigne, or with his daughter in free mariage, or to his ſeruant in remuneratione ſeruitij. Our old Bookes deſcribed Frankalmoigne thus, when Lands or Tenements were beſtowed vpon God, (that is) giuen to ſuch people as are conſecrated to the ſeruice of God. In our ancient Bookes theſe gifts of deuotion were called Churcheſſet, or Churchſæd, quaſi ſemen Eccleſiæ, but in a more particular ſence, it is deſcribed thus. Certam menſuram bladi tritici ſignificat, quam quilibet olim ſanctæ Eccleſiæ die ſancti Martini tempore tam Britonum quam Anglorum contribuerunt: plures tamen Magnates poſt Romanorum aduentum illam contributionem ſecundum veterem legem Moiſi nomine primitiarum dabant prout in breui Regis Knuti ad ſummum Pontificem tranſmiſſum continetur, in quo illam contributionem Churchſed appellant quaſi ſemen Eccleſiæ.

Fleta lib.1.cap.42.

¶ *Et tiel tenure.* For albeit neither fealtie nor any other temporall ſeruice is due, yet it is a tenure.

7.E.4.12.33. H.6.6.7.
39.H.6.29.

¶ (a) *En ancient temps.* That is to ſay before the ſtatutes of Mortmayne, viz. Magna Charta, cap.36. & 7.E.1. de religioſis, &c. and before the Statute of Quia emptores terrarum, as ſhall be hereafter in his proper place ſaid in this Chapter.

(a) *Mortmaine.*
Britton. fol. 32.& 90.
Bracton.lib. 2.cap.5.
Fleta.lib.3.cap.5.

¶ *Enfeoffa vn Abbe & ſon Couent, &c.* Albeit the Couent bee dead perſons in Law, and the Abbot only capable (as before is ſaid) yet if the feoffement be made to an Abbot and Couent, the feoffement is good, and the ſtate reſteth only in the Abbot. And note a man may infeoffe an Abbot, a Biſhop, a Parſon, &c. or any other ſole bodie politique by deed or without deed in free Almes, and ſo may a gift in frankmariage be made without deed alſo: but if Lands be giuen to a Deane and Chapter, or any other Corporation aggregate of many, there the gift muſt be by deed.

11.H.7.12.

39.H.6.30.b.

¶ *A auer & tener a eux & a lour ſucceſſors.* For in caſe of an Abbot or Prior and Couent regularly a Fee Simple doth not paſſe without theſe words (Succeſſors) for the diuerſitie ſtandeth thus betweene a Corporation aggregate of many capable perſons, and a ſole Corporation. As if Lands be giuen to a Deane and Chapter, they haue a fee ſimple without theſe words (ſucceſſors) for that the bodie neuer dies, but if Lands be giuen to a Biſhop, Parſon, or any other ſole Corporation, who after their deceaſes haue a ſucceſſion, there without theſe words (Succeſſors) nothing paſſeth vnto them but for life. But of Corporations aggregate of many there is a diuerſitie when the head and bodie both are capable, as in the caſe of Deane and Chapter, and when one as hath beene ſaid is only capeable, as in caſe of Abbot or Prior and couent, but yet out of the generall rules the caſe of Frankalmoigne is excepted as hereafter ſhall be ſaid. Alſo Lands muſt bee giuen to a Corporation aggregate of many by Deed, but to a ſole Corporation it may be granted without Deed

Vide Litt. in the Chapter of Fee ſimple. Sect.1.2.

39.H.6.30.

Bracton lib.2.cap 10. Poteſt donatio fieri in liberam Eleemoſinam Eccleſijs Cathedralibus, Conuentualibus, Parochialibus & viris religioſis.

¶ *En pure & perpetuall almoigne.* Here it appeareth that a tenure in Frankalmoigne may be created without this word (libera) for pura implyeth as much.

35.H.6.56.7.E.4.11.
Vide Bracton.lib.2.cap.10.

¶ *Ou en Frankalmoigne.* But one of theſe words either pura or libera, muſt be vſed or elſe it is no tenure in Frankalmoigne.

35.H.6.56.7.E.4.11.
Bract.vbi ſupra.44.E.3.24.

¶ *Ou per ceux parolx a tener de le grantor ou feffor & ſes heires en Frankalmoigne.* Here it appeareth that by theſe words a fee ſimple paſſeth without theſe words (Succeſſors) albeit it be in caſe of a ſole Corporation. For as in caſe of a gift in Frankmariage, an Eſtate taile paſſeth to the Doners without words of heires of their two bodies, as hath beene ſaid in the Chapter of Fee taile, ſo in caſe of a gift in Frankalmoigne (which may be reſembled to a diuine mariage) a Fee ſimple paſſeth, as hath beene ſaid, though it be in caſe of a ſole Corporation without this word (Succeſſors.) And beſides grants in Frankalmoigne are ancient Grants as hath beene ſaid, and therefore ſhall bee alloweed as the Law was taken when ſuch Grants were made.

20.H.6.fol.36.

38.E.3.4.a. 14.H.6.12.
10.H.7.13. 16.H.7.9.
18.E.3.cenuſans.39.
33.H.6.22. 17.E.3.51.
6.E.3.54.&c.
Tr 5.E.3 Rot.4.in Scaccario.
The Trim of Diuiſables caſe.

Sect. 134.

¶ En Meſme le Manner eſt, lou terres ou tenements fueront grant en ancient temps a vn Deane & Chapter, & a lour ſucceſſors, ou a vn Parſon dun Eſglis, & a ſes ſucceſſors, ou a alcun auter home de ſaint Eſglis, & a ſes Succeſſors en frankalm̃ ſi il auoit capacitie dappr̃d̃ tiels grãts ou feoffements &c.

IN the ſame manner it is where Lands or tenements were granted in ancient time to a Deane and Chapter & to their Succeſſours, or to a Parſon of a Church & his ſucceſſors, or to any other man of holy Church, and to his ſucceſſours in Frankalmoigne, if hee had capacitie to take ſuch graunts or feoffements, &c.

¶ *En Meſme le Manner, &c.* Here Littleton hauing put an example of bodies incorporate aggregate of many whereof the head is only capable now putteth examples, both of bodies incorporate, aggregate of many (all being capable and of ſole Corporations of Secular perſons.

¶ *Deane. Decanus* is deriued of the Greek word δεκα that ſignifieth Ten, for that hee is an Eccleſiaſticall Secular Gouernour, and was anciently ouer ten Prebends or Canons at the leaſt in a Cathedrall Church, and is head of his Chapter.

¶ *Chapter. Capitulum eſt Clericorum congregatio ſub vno Decano in Eccleſia Cathedrali.* And Chapters be twofold, viz. the Ancient, and the later. And the later be alſo of two ſorts, firſt, thoſe which were tranſlated or founded by King Henry the Eight, in place of Abbots and Couents, or Priors and Couents, which were Chapters whiles they ſtood, and theſe are new Chapters to old Biſhoprickes. Secondly, where the Biſhoprick was newly founded by Henry the Eight (as Cheſter, Briſtow, &c.) there the Chapters are alſo new. There is a great diuerſitie betweene the commings in of the ancient Deane, and of the new. For the ancient come in in much like ſort as Biſhops doe: for they are choſen by the Chapter by a conge de eſlier as Biſhops be, and the King giuing his Royall aſſent, they are confirmed by the Biſhop. But they which are either newly tranſlated or founded, are Donatiue, and by the Kings Letters Patents are inſtalled, which are matters neceſſary to be knowne.

¶ *Sil auoit capacitie a prender.* For Eccleſiaſticall perſons haue not capacitie to take in ſucceſſion, vnleſſe they be bodies Politique, as Biſhops, Archdeacons, Deanes, Parſons, Vicars, &c. or lawfully incorporate by the Kings Letters Patents or preſcription, as Deanes and Chapters, Colledges, &c. But a Colledge of religious perſons, Chauntrie Prieſts, and ſuch like, that are not lawfully incorporated, but only conſiſt in vulgar reputation haue no capacitie to take ſucceſſion, therefore Littleton added materially (ſic ad capacitie à prender.)

Sect. 135.

¶ Et tiels q̃ teignont en frankalmoigne ſont oblige de dzout deuant dieu de fair oziſons, prairers, meſſ. & autres diuine ſeruices pur les almes de lour grantor ou feoff. & pur les almes de lour heires

AND they which hold in Frankalmoigne, are bound of right before God, to make Oriſons, Prayers, Maſſes, and other diuine Seruices for the ſoules of their Grantor or Feoffor, and for the ſoules of their heires

¶ In this Section there appeareth a diuiſion of Tenures, that is to ſay, ſome be ſpirituall, and ſome be temporall. And of ſpirituall ſome be incertaine, as tenures in Frankalmoigne, and ſome be certaine, as tenure by diuine Seruice. Againe diuine ſeruice certaine is two fold, either ſpirituall as Prayers to God, or temporall, as diſtribution of almes to poore people.

¶ Ob-

¶ *Oblige de droit.* That is they are compellable by the Eccleſiaſticall Law to doe it, and therefore it is ſaid that they are bound of right, for want of remedy, and want of right is all one, and the Common Law (as here it appeareth) taketh knowledge of the Eccleſiaſticall Law in that behalfe.

¶ *De faire Oriſons, Prayers, Meſſes, & auters Diuine Seruices.*

Since Littleton wrote, the Lyturgie or Booke of Common Praier and of Celebrating Diuine Seruice is altered; this alteration notwithſtanding, yet the tenure in Frankalmoigne remaineth, and ſuch Prayers and diuine Seruice ſhall be ſaid and celebrated as now is authoriſed, yea, though the tenure be in particular, as Littleton (a) hereafter ſaith, viz. A Chaunter vn meſſe, &c. ou a Chaunter vn placebo & dirige, yet if the tenant ſaith the Prayers now authoriſed it ſufficeth. And as Littleton (b) hath ſaid before in the caſe of Socage the changing of one kind of temporall ſeruices into other temporall ſeruices, altereth neither the name nor the effect of the tenure: ſo the changing of ſpirituall ſeruices into other ſpirituall ſeruices, altereth neither the name nor effect of the tenure. And albeit the tenure in Frankalmoigne is now reduced to a certaintie contained in the Booke of Common Prayer, yet ſeeing the originall tenure was in Frankalmoigne, and the change is by generall conſent by authoritie of Parliament, (c) whereunto euery man is partie, the tenure remaynes as it was before.

(a) *Vide Sect.137.*

(b) *Vide Sect.119.*

(c) *2.E.6.cap.1.5.& 6.E.6. cap.1. 1.Eliz cap.2.*

¶ *Ne ferront aſcun fealtie.* Herein Tenant in Frankalmoigne differeth from a Tenant in Frankmariage, for tenant in Frankmariage ſhall doe fealtie, as hath beene ſaid in the Chapter of Fœtaple, but tenant in Frankalmoigne, ſhall not doe any, or any other thing, but deuota animarum ſuffragia.

¶ *Tiel diuine ſeruice eſt melieur per eux.* And it is alſo ſaid in our Bookes (d) Que Frankalmoigne eſt le pluis haute ſeruice, and this was confeſſed by the Heathen Poet.

(d) *33.H.6.6. 13.E.1.tit. cauſe.de vouchet.118.*

———fuit hæc ſapientia quondam
Publica priuatis ſecernere, ſacra profanis.

And certaine it is, that Nunquam res humanæ proſperè ſuccedunt vbi negliguntur diuinæ.

Section 136.

¶ *Le Seignior ne Poet eux diſtreiner pur ceſt non feaſant, &c.*

¶ *Diſtreine.* The

queux ſont moꝛtes, & pur le pꝛoſperitie & bon vie & bon ſalute de lour heires q̃ ſont en vie. Et pur ceo ils ne ferront a nul tẽps aſcun fealtie a lour Seignioꝛ, pur ceo q̃ tiel diuine ſeruice eſt meliour pur eux deuant dieu que aſcun feaſans de fealtie, & auxi pur ceo que ceux paroꝛx (Frankalm̃) exclude le Seignioꝛ dauer aſcun terrein ou tempoꝛall ſeruice, mes dauer tantſolement diuine & ſpirituall ſeruice deſire fait pur luy, &c.

¶ Si tiels que teignont lour tenements en Frankalmoigne ne voilõt ou failont ô faire tiel

And if they which hold their Tenemẽts in frankalmoigne will not or faile to do ſuch diuine ſeruice (as

Di-

diuine ſeruice (cõe eſt dit) le ſñr ne poit eux diſtrainer ꝑ cel non ſeſant, &c. pur ceo que neſt mis en certaine quelx ſeruices ils doient faĩ, mes l'ſñr de ceo poit complaine a lour ordinarie ou viſitour, luy preyant que il voiloit mitter puniſhment & correction ỏ ceo, & auxy de prouider q̃ tiel negligence ne ſoit pluis auãt fait, &c. Et lordinary ou viſit̃ de droit ceo doit faire, &c.

is ſaid) the Lord may not diſtrain them for not doing this, &c. becauſe it is not put in certeyntie what ſeruices they ought to do: but the Lord may complaine of this to their Ordinary or viſitour praying him that he will lay ſome puniſhment and correction for this, & alſo prouide that ſuch negligẽce be no more done &c. And the ordinary or Viſitor of right ought to doe this, &c.

word Diſtreſſe is a French word, in Latyn it is called diſtrictio ſive anguſtia; becauſe the cattell diſtreyned are put into a ſtreight, which we call a pownd.

¶ *Pur ceo que neſt miſe in certaine queux ſeruices ils doient faire.* It is a Maxime in Law that no diſtreſſe can bee taken for any ſeruices that are not put into certaintie (e) nor can bee reduced to any certaintie for Id certum eſt quod certum reddi poteſt; for (f) oportet quod certa res deducatur in iudiciũ; & vpon the auowrie, Damages cannot be recouered for that, which neither hath certaintie nor can be reduced to any certainty, and yet in ſome caſes there may bee a certainty in vncertainty, as a man may hold of his Lord to

(e) 35.H.6.37. Br. tit. office 4. 8.E.3.3.66. 20.E.3. Auowrie 131. (f) Bracton fol. 230. & 328.

7.E.3.38.

ſheere all the ſheepe depaſturing within the Lords Mannor, and this is certaine enough, albeit the Lord hath ſometime a greater number, and ſometime a leſſer number there, and yet this incertaintie being referred to the Mannor which is certaine, the Lord may diſtraine for this vncertaintie. Et ſic de ſimilibus.

¶ *Poet complayner.* (That is) to complaine in courſe of Juſtice, according to the Eccleſiaſticall Law.

¶ *A lour ordinarie.* Ordinarius, and ſo he is called (g) in the Eccleſiaſticall Law, Quia habet ordinariam juriſdictionem in jure proprio, & non per deputationem; the name we haue anciently taken from the Canoniſts, and doe apply it only to a Biſhop or any other that hath ordinary juriſdiction in cauſes Eccleſiaſticall; In this caſe of Littleton it is to be obſerued that the Law doth appoint euery thing to be done by thoſe, vnto whoſe office it properly appertaineth, and forasmuch as it belongeth to the office of the Ordinarie in this caſe to ſee diuine ſeruice ſaid, and to compell them to doe it by Eccleſiaſticall cenſures, therefore complaint is to be made vnto him. Here and in the next Section it appeareth, that for deciding of Controuerſies, and for diſtribution of Juſtice within this Realme, there bee two diſtinct juriſdictions, the one Eccleſiaſticall limitted to certaine ſpirituall and particular caſes (of the one whereof our Author here ſpeaketh) and the Court wherein theſe cauſes are handled is called Forum eccleſiaſticum. The other juriſdiction is ſecular and generall, for that it is guided by the common and generall Law of the Realme, Quæ pertinet ad coronam & dignitatem regis, & ad regnum in cauſis & placitis rerum temporalium in foro ſeculari. So as in this caſe put by our Author, the Lord hath remedy for his diuine ſeruice (albeit they iſſue out of temporall lands) in foro eccleſiaſtico, by the Eccleſiaſticall Law, otherwiſe the Lord ſhould be without remedy. Yet the Common Law, to the intent that Eccleſiaſticall perſons might the better diſcharge their dutie in celebration of diuine ſeruice, and not to bee intangled with tempozall buſineſſe, hath prouided, that if any of them be choſen to any tempozall office hee may haue his Writ De clerico infra ſacros ordines conſtituto non eligendo in officium, &c and thereof bee diſcharged.

(g) Mirror.ca.5.§. Bracton lib.5.fo.405.&c. Fleta lib.2.ca.50.&.55. & lib 6.ca.38. Britton, fo.69.70. W 2.ca.19. 17.E.2.bre.832. Regiſt.141 Lindwood tit. de Conſtitut. cap exter. Bracton.lib.5.ca.2. fo.400, & 401. and the other Authors aboueſaid.

Regiſt.orig.187.

¶ *On Viſitor.* That is, where the King or any of his Progenitors is Founder of the houſe, there the Ordinary regularly ſhall not viſit them, but the Chancelour of England is appointed by Law to be Viſitor of them, or where a ſpeciall Viſitor is appointed vpon the foundation, the complaint muſt be made to the Viſitor.

27.E.3.84.85. Regiſt.40. F.N.B.42.10. Eliz. Dier. 273. 16.E.3.bre.660. 21.E.3.60. 6.H.7.13. 8.Aſſ.29. Brooke tit. Premunire 21.

¶ *De droit doit ceo faire.* De droit, of right, (that is to ſay) he ought to doe it by the Eccleſiaſticall Law in the right of his office.

And here is implied a Maxime of the Common Law, that where the right, as our Author here ſpeaketh is ſpirituall, and the remedy therefore only by the Eccleſiaſticall Law, the conuſans thereof doth appertaine to the Eccleſiaſticall Court. *Sect.137.*

Sect. 137.

2.E.3.27,28.

¶ *PEr certaine Diuine Seruice destre fait, sicome a chaunter vn messe, &c. ou de distribater en Almoign, &c.* **Here be the two** parts aboue mentioned, of diuine Seruice, and for this Diuine seruice certaine, the Lord hath his remedie, as here it appears by our Author in foro seculari: for here it appeareth, that if the Lord distreyne for not doing of diuine Seruice, which is certain, hee shall vpon his Auowrie recouer dammages at the Common Law, that is, in the Kings Temporall Court, for the not doing of it. And if issue be taken vpon the performance of the Diuine Seruice, it shall be tried by a Jurie of twelue men, because albeit the Seruice be Spirituall, yet the dammages are temporall, and so is the Seigniorie also.

38.H.6.26,27.

And here is implied another Maxim of the Law, that where the Common or Statute Law giueth remedie, in foro seculari, (whether the matter be Temporall or Spirituall) the Conusans of that cause belongeth to the Kings Temporall Courts only, vnlesse the iurisdiction of the Ecclesiasticall Court be saued or allowed by the same statute, to proceed according to the Ecclesiasticall Lawes.

2.E.6.ca.13.*vnsus finem.* 13.E.3.ca.5. 11.H.7.ca.8. 1.El.ca.2.13.El.ca.1. 23.El.ca.1.1.Ia.c.11.& 12.

¶ *Ou de distributer en almoigne al cent pours homes.* **Here note that** the Almes & Relefe of poore people being a worke of charitie, is accounted in Law diuine Seruice, for what herein is done to the Poore for Gods sake, is done to God himselfe.

¶ *Poet distrein, &c.* Here (&c.) includeth many

CMEs si vn Abbe ou Prior tient de son Seignior per certain diuine Seruice en certaine dest̄ fait, sicome a chaunter vn messe chescun vendi die en le Semaine pur les Almes, vt supra, **ou chescun an a tiel iour a chaunter** placebo & dirige, **&c. ou de trouer vn chapleine de chanter messe, &c. ou de distributer en Almoig̃ al cent pours homes cent deniers a tiel iour, en tiel case, si tiel Diuine Seruice ne soit fayt le Seignior poet distreyner, &c. pur ceo que le Diuine Seruice est mise en certaine per lour Tenure, que le Abbee ou Prior deuoit fair̄. Et en tiel case le Seignior auera Fealtie, &c. come il semble. Et tiel Tenure nē passe dit Tenure en Frankalmoigne, eins est dit Tenure per Diuine Seruice, car en Tenure en Frankalmoigne nul mention est fait dascun manner de Seruice, car nul poet tener en Frankealmoigne**

BVt if an Abbot or Prior holds of his Lord by a certaine diuine Seruice, in certaine to be done, as to sing a Masse euerie Fryday in the weeke, for the Soules, *vt supra*, or euerie yeare at such a day to sing a *Placebo & Dirige*, &c. or to find a Chaplaine to sing a Masse, &c. or to distribute in almes to an hundred poore men an hundred pence at such a day. In this case if such Diuine Seruice bee not done, the Lord may distreyne, &c. because the Diuine Seruice is put in certaine by their Tenure, which the Abbot or Prior ought to doe. And in this case the Lord shal haue Fealtie, &c. as it seemeth. And such Tenure shall not bee said to bee Tenure in Frankealmoigne, but is called Tenure by Diuine Seruice: For in Tenure in Frankealmoigne, no mention is made of any manner of Seruice: For none can hold in Frankealmoigne, if there be expressed any manner

moigne, ſi ſoit expreſſe aſcun manñ ó ctain ſeruice que il doit faire, &c.

of certaine Seruice that he ought to doe, &c.

excellent things, as when, where, and what may bee diſtreined, of al which there is a taſt giuen in their proper places.

¶ *En tiel caſe le Seignior auera fealtie, &c. come ſemble.* **For as it hath** bœne ſaid, Fealtie is incident to euerie Tenure ſauing the Tenure in Frankalmoigne, and where the Lord may diſtreyne, there is Fealtie due. And Britton calleth this Tenure (by Diuine Seruice) Aumone, and not libera Eleemoſina. And ſaith he, Tenure en aumone eſt terre ou tenement que eſt done a aumone, dount aſcun ſeruice eſt retenue al feoffor. *Brit. fo. 164.*

¶ *&c.* **And here** (&c.) **implieth, Diſtreſſe, Eſcheat, and the like.**

¶ *Et tiel Tenure neſt paſſe dit Tenure en Frankalmoigne, eins eſt dit tenure per Diuine ſeruice, &c.* **And therefore our old Booke diuided Spirituall** Seruice into Free almes, (which was free from any limitation of certaintie) and almes, becauſe the Tenants were bound to certaine diuine Seruices. *33.H.6. Brit.ca.66.*

¶ *Silſoit expreſſe aſcun manner de certaine ſeruice.* **This holdeth** where the certaintie is reſerued vpon the originall Grant. If lands were giuen to hold In libera Eleemoſina reddendo, a rent, it ſeemeth the reſeruation of the rent to be void,* becauſe it is repugnant and contrarie to the former grant in libera Eleemoſina. *13.E.1. Count de Vsuch. 118. *13.H.4.tit. Meſne 74. 30.E.3.30. 19.E.2. Auowrie 224. 32.E.1. Taile 31. 26.Aſſ.66. 4.H.6.17. Trin.4.E.3.F.N.B.231 f. 15.E.3. Corody 4. 11.Aſſ.22.50. Aſſ.Pl.6.*

Vide Triñ 4.E.3. and F.N.B.231.f. That an Abbot or Prior that hold in Frankalmoigne, ſhall not be charged with a Corodie. Alſo lands holden in Frankalmoign cannot (l) be antient Demeſne, in reſpect of charges incident thereunto. *(l) 32.E.1. ant. Dem. 39. 8.E.3.5.*

¶ *Que il doit faire, &c.* **Here by** (&c.) **is vnderſtood Temporall** or Spirituall Seruice, alſo which he ought to doe corporally, or render or pay.

There were within this Realme of England one hundred and eightœne Monaſteries, founded by the Kings of England, whereof ſuch Abbots and Priors as were founded to hold of the King per Baroniam, and were called to the Parliament by Writ, were Lords of Parliament, and had places and voices there: And of them there were twentie ſeuen Abbots, and two Priors, as by the Rolles of Parliament appeare. But ſince our Author wrote, all theſe (as hath bœne ſaid) are diſſolued. King * Stephen did found the Abbey of Feuerſham in Kent, Et dedit Abbati & Monachis, & ſucceſſoribus ſuis Manerium de Feuerſham Com Kanc', ſimul cum Hundredo, &c. tenendum per Baroniam, &c. who albeit he held by a Baronie, yet becauſe he was neuer (that I (m) find) called by Writ, he neuer ſate in Parliament. *For example, Rot. Parl. 5.H.8. & 21.H.8, &c. (m) Cãc. Paſ. 30.E.1. cer. rege this foundation ſo pleaded.*

All the Archbiſhops and Biſhops of England haue bin founded by the Kings of England and doe hold of the King by Baronie (as before hath bœne ſaid) and haue bœne all called by Writ to the Court of Parliament, and are Lords of Parliament: As (amongſt many) taking one notable Record, (o) Mandatum eſt omnibus Epiſcopis qui conuenturi ſunt apud Glouceſtriam, die Sabbathi in Craſtiñ Sanctæ Katherinæ, firmiter inhibendo quod ſicut Baronias ſuas quas de Rege tenent, diligunt, nullo modo præſumant conſilium tenere de aliquibus quæ ad Coronam Regis pertinent, vel quæ perſonam Regis, vel ſtatum ſuum, vel ſtatum concilij ſui contingunt, ſcituri pro certo, quòd ſi fecerint, Rex inde ſe capiet ad Baronias ſuas. Teſte Rege apud Hereford, 23. Nouemb. &c. (o) *Ex Rot. Pat. de anno 18.H.3.M.17.*

And the Biſhoprickes in Wales were founded by the Princes of Wales: and the Principalitie of Wales was holden of the King of England, as of his Crowne: and when the Prince of Wales committed Treaſon, Rebellion, &c. the Principalitie was forfeited, and the Patronages of the Biſhops annexed to the Crowne of England, ſo as the King is to haue Penſions for his Chaplaines, and Corodies for his Vadelets of them, as of Biſhops founded by himſelfe. And vide Mich. 10.H.4. Rot. 60. Wallia coram Rege, that the iudgement was giuen accordingly againſt the Biſhop of Saint Dauids, in Wales, Per Iuſticiarios de vtroque Banco & alios de perito concilio Domini Regis. And the Biſhops of Wales are alſo called by Writ to Parliament, and are Lords of Parliament as biſhops of England be. *10.H.4.fo.6.b.*

Section 138.

¶ Item ſi ſoit demandé, ſi teñ en frankmariage ferra fealtie a le doñ ou a

Alſo if it bee demanded, if tenant in frankmariage ſhall doe fealtie to the do-

¶ *Le quel ſerra inconuenient, &c.* **An** argument draweth from an inconuenience is forcible in Law as hath bœne obſerued *V.Sect.87.139.201.265. 440.478.665.722.*

ued before, and shall bee often hereafter. Nihil quod est inconveniens est licitum. And the Law that is the perfection of reason cannot suffer any thing that is inconuenient.

Ascr. 40. Ass. 27.

Litt. sect. 50. b. 42. E. 3. 5. 28. E. 3. 395. 20. H. 6. 28.

It is better saith the Law to suffer a mischiefe (that is particular to one) then an inconuenience that may preiudice many. See more of this after in this chapter.

Note the reason of this diuersitie betweene Frankalmoigne and Frankmarriage standeth vpon a maine Maxime of Law, that there is no land, that is not holden by some seruice spirituall or temporall, and therefore the Donee in Frankmariage shall doe Fealty, for otherwise hee should doe to his Lord no seruice at all, and yet it is Frankmariage, because the Law createth the seruice of Fealty for necessity of reason, and auoyding of an inconuenience. But tenant in Frankalmoigne doth spirituall and diuine seruice which is within the said Maxime and therefore the Law wil not cohort him to doe any temporall seruice. See the next Section.

¶ *Et enconter reason.* And this is another strong argument in Law. Nihil quod est contra rationem est licitum. For reason is the life of the Law, nay the Common Law it selfe is nothing else but reason, which is to be vnderstood of an artificiall perfection of reason gotten by long studie, obseruation and experience and not of euery mans naturall reason, for nemo nascitur artifex. This legall reason est summa ratio. And therefore if all the reason that is dispersed into so many seuerall heads were vnited into one, yet could hee not make

ſes heires deuant le quart degree passe, &c. il semble que cy: Car il nest pas semble quant a cel entēt a tenant en frankalmoigne, pur ceo que tenant en frankalmoigne ferra, p cause de sa tenure, diuine seruice pur son Sñr come deuant est dit, & ceo il est charge a faire p la ley del saint eglise, & pur ceo il est excuse & discharge de fealtie, mes tenant en frankemariage ne ferra pur son tenure tiel seruice, & sil ne ferra fealtie, donqz il ne ferra a son Seignior aſcun māner de seruice, ne spirituall ne tempozal, le quel serroit inconuenient & encontr reason que home ferra Tenant destate denheritance, a vn auter & vncore l sñr auera nul maner de seruice de luy, & issint il semble que il ferra fealtie a son sñr deuant le quart degree passe. Et quāt il ad fait fealty il ad fait touts ſes ſeruices.

nor or his heires before the fourth degree be past, &c. it seemeth that he shall, for he is not like as to this purpose to tenant in frankalmoigne, for tenant in frankalmoigne by reason of his tenure shall doe diuine seruice for his Lord, (as is said before) and this hee is charged to doe by the Law of holy Church, and therefore he is excused and discharged of fealty, but tenant in frankmariage shall not doe for his tenure such seruice, and if he doth not fealty, he shall not doe any manner of seruice to his Lord neither spirituall nor temporall, which would be inconuenient, and against reason, that a man shall be tenant of an estate of inheritance to another, and yet the Lord shall haue no manner of seruice of him. And so it seemes he shall doe fealtie to his Lord before the fourth degree be past. And when hee hath done fealtie, he hath done all his seruices.

such a Law as the Law of England is, because by many succession of ages it hath beene fined and refined by an infinite number of graue and learned men, and by long experience growen to such a perfection for the gouernment of this Realme, as the old rule may be iustly verified of it Neminem oportet esse sapientiorem legibus: No man (out of his owne priuate reason) ought to be wiser than the Law, which is the perfection of reason.

Sect. 139.

CEt ſi vn Abbe tient de ſon Sñr en frankalm. et l'Abbe et le couent ſouth lour common ſeale alien meſmes les tenements a vn ſeculer home en fee ſimple, en ceo cas le ſeculer home ferra fealtie a l'Seignior, pur ceo que il ne poit tener de ſon Sñr en frankalmoigne. Car ſi le ſeignior ne doit auer de luy fealty, donque il auera nul manner d' ſeruice que ſerroit inconuenient, ou il eſt Sñr, a le tenement eſt tenus de luy.

AND if an Abbot holdeth of his Lord in frankalmoign, and the Abbot and Couent vnder their cõmon ſeale alien the ſame tenements to a ſecular man in fee ſimple. In this caſe the ſecular man ſhall doe fealtie to the Lord, becauſe hee cannot hold of his Lord in franke-almoigne, for if the Lord ſhould not haue fealty of him hee ſhould haue no manner of ſeruice which ſhould bee inconuenient where he is Lord, and the tenements be holden of him.

THis caſe is worthy of great obſeruation for hereby it appeareth, that albeit the Alienors held not by fealty nor any other terrene ſeruice but only by ſpirituall ſeruices and thoſe incertaine, yet the alienes ſhall hold by the certaine ſeruice of Fealty (and of this opinion is Littleton in our bookes agreeable with former Authoritie) for the Law createth a new temporall ſeruice out of the Land to be done by the Alienee wherewith the Abbot was not formerly charged for the auoyding of an inconuenience, viz. that the Feoffee ſhould doe no manner of ſeruice, and conſequently the land ſhould bee holden of no man, wherein it is to bee remembred that (as hath been ſaid before) all the lands and tenements in England in the hands of any ſubiect are holden of ſome Lord or other, and that euery tenant muſt doe ſome kinde of ſeruice. And that all Lands and Tenements are holden either mediatly or immediatly of the King, for originally all lands and tenements were deriued from the Crowne. And it is to be obſerued that when the Law createth any new tenure, it is the loweſt, (viz. Tenure in Socage) and with the leaſt ſeruice that can be done, and neereſt to the freedome of the former ſeruice, as in this caſe a Tenure in Socage by Fealty only is created by the Law, which is the loweſt and leaſt ſeruice the Law can create, becauſe Fealty is incident to euery tenure except Tenure in Frankalmoigne, for if it ſhould Create any other ſeruice it muſt create Fealty alſo. And the Law according to equitie and Juſtice giueth this Fealtie to the Lord of whom the land was before holden in Frankalmoigne. And laſtly that the Law ſo abhorreth an inconuenience, as it Createth out of the Land a new ſeruice for auoyding thereof. It appeareth by our bookes that a Seignior in Frankalmoigne may bee granted ouer, and conſequently the Tenant ſhall hold of the Grantee by Fealty only, and therefore Britton ſaid well, that no ſeruice could be demanded of a Tenant in Frankalmoigne tant come les terres remaine en les maynes les feoffees.

31.E.3. *Ceſſauit* 22. 33.H.6.67. 21.E.4.11. *lib.9.fo.*123. *Anth. Lowes caſe.*

*Lib.9.fo.*123. *in Anth. Lowes caſe.*

42. *Aſſ. Pl.c.*

Britton 164.b.

Sect. 140.

CItem ſi home graunta a cel iour a vn Abbe, ou a vn Priour terres ou tenements en frankalmoigne, ceux priour (frãkalmoigne) ſont

ALſo if a man grant at this day to an Abbot or to a Prior, lands or tenements in Frankalmoigne, theſe words (frãkalmoigne, are voide, for it is or-

CO*rdeine per leſtatute.* Here it appeareth by the authoritie of Littleton, that this is a Statute, and yet the King alone ſpeaketh, viz. Dominus Rex in Parliamento ſuo, &c. ad inſtantiam magnatum regni ſui conceſſit prouidit & ſtatuit.

Vide lib. 8. *the Princes caſe.*

But becauſe it is Dominus Rex in Parliamento, &c. conceſſit, it is as much in this caſe being an ancient ſtatute as Dominus Rex authoritate Parliamenti conceſſit. Secondly, It is amongſt other acts of Parliament entred into the Parliament Roll, and therefore ſhall bee intended to bee ordained by the King, by the conſent of the Lords and Commons in that Parliament aſſembled. Thirdly, It is a generall Law whereof the Iudges may take knowledge, and therefore it is to bee determined by them whether it bee a ſtatute or no. Now for the diuers formes of Acts of Parliament, you may reade them in the Princes Caſe vbi ſupra.

¶ *Quia emptores terrarum.* This ſtatute is called ſo, becauſe the ſtatute beginneth with theſe words, Quia emptores terrarum.

¶ *Nul poet aliener, &c. terres in fee ſimple de tener de luy meſme.*

This is fully inferred vpon the Statute, but the letter of the Statute is that Feoffatus teneat terram illam de capitali Domino, &c. So as by the authoritie of Littleton, he that citeth a Statute is not bound to recite the very words thereof ſo long as he miſſeth not of the ſubſtance and neceſſary conſequence thereupon, and yet the ſafer way is to vouch the words of a Law as they be.

13.E.3.tit.releaſe 33. 27.H.8.F.N.B.211.I.

¶ *Granta per licence meſme les tenements, &c.* Here Littleton ſpeaketh of a licence or a diſpenſation within the ſaid Statute of Quia emptores terrarum (and mentioneth no other Statute) which may bee done by the King and all the Lords immediate and mediate, for it is a rule in Law, Alienatio licet prohibeatur, conſenſu tamen omnium, in quos

voides, pur ceo que il eſt ordeine per leſtatute que eſt appelle; Quia emptores terrarum **(que leſtatut fuit fait,** Anno 18. Ed. 1.) **que nul poit alener ne graunter terres ou tenements en fee ſimple, a tener de luy meſme. Iſſint ſi hõe ſeiſie de certaine tenements quẽ il tiẽt de ſon Seignior per ſeruice de chiualer, & a cel iour il &c. granta per licẽce meſmes les tenements a vn Abbe, &c. en Frankalmoigne, l'abbe tiendra immediatment meſmes les tenemẽts per ſeruice de chiualer de meſme le ſeignior de q̃ ſon grauntor tenoit, & ne tiendra my de ſon grant en frankalmoigne, p cauſe de meſme leſtatut, iſſint que nul poit tener en frankalmoigne, ſi non q̃ ſoit per title de preſcription, ou per force de graunt fait a aſcun d ſes predeceſſors, deuant q̃ meſme le ſtatute fuit fait. Mes le roy poit doner terres ou tenements en fee ſimple, a tener en Frankalmoigne, ou per auters ſeruices, car il eſt hors de cas del eſtatute,** dained by the Statute which is called, *Quia emptores terrarũ* which was made *Anno* 18.*E.* 1.) that none may alien nor grant Lands or Tenements in Fee ſimple to hold of himſelfe. So that if a man ſeiſed of certaine tenements which hee holdeth of his Lord by Knights Seruice, & at this day he &c. grãteth by licence the ſame tenements to an Abbot, &c. in Frankalmoigne, the Abbot ſhall hold immediately the Tenements by Knights ſeruice of the ſame Lord of whom his grantor held, and ſhall not hold of his grantor in Frankalmoigne, by reaſon of the ſame Statute. So that none can hold in Frankalmoigne, vnleſſe it bee by title of preſcription, or by force of a grant made to any of his Predeceſſours before the ſame ſtatute was made: but the King may giue Lands or Tenements in Fee ſimple to hold in Frankalmoigne, or by other ſeruices, for he is out of the caſe of that Statute.

quos

quorum fauorem prohibita eſt, poteſt fieri, and quilibet poteſt renunciare iuri pro ſe introducto: and the licence of Lords immediate, and mediate in this caſe ſhall enure to two intents, viz. to a diſpenſation both of the ſtatute of Quia emptores terrarum, and of the Statutes of Mortmaine, as Littleton here implyeth, becauſe their deeds ſhall be taken moſt ſtrongly againſt themſelues. But it is a ſafe and good policie in the Kings licence to haue a non obſtante alſo of the Statutes of Mortmaine, and not only a non obſtante of the Statute of Quia emptores terrarum. But it appeareth by Littleton (which is a ſecret of Law) that there needeth not any non obſtante by the King of the Statutes of Mortmaine, for the King ſhall not be intended to be miſconuſant of the Law, and when he licenceth expreſſely to alien to an Abbot, &c. which is in Mortmaine, he needs not make any non obſtante of the Statutes of Mortmaine, for it is apparant to be granted in Mortmaine, and the King is the head of the Law, and therefore Præſumitur Rex habere omnia iura in ſcrinio pectoris ſui, for the maintenance of his grant to be good according to the Law, for which cauſe of purpoſe Littleton maketh no mention of any licence in Mortmaine. Diſpenſatio eſt mali prohibiti prouida relaxatio vtilitate ſeu neceſſitate penſata.

43. *Aſſ. Pl.19. 9.E.4.b.11. Pl. Com.502.503. Grendons caſe. Vid.lib.10.25.26.31.& 110 Vide S.A.686.*

¶ *Labbe tiendra, &c. per ſeruice de chiualer.* For although by the death of the Abbot there is neither Ward, Mariage, nor reliefe due, yet he holdeth by Knights Seruice, albeit the Lord cannot haue the fruit of it, and if he with the conſent of the Couent alien, the land ouer to a man and his heires, there is the Ward, Mariage, and Reliefe reuiued. But by preſcription (as it hath beene ſaid) the ſucceſſor of an Abbot may pay reliefe. An Abbot or Prior, &c. that holdeth Lands by Knights Seruice, albeit hee ought not in reſpect of his profeſſion to ſerue in warre in proper perſon, yet muſt he find a ſufficient man conuenently arrayed for the warre to ſupply his place. And if he can find none, then muſt he pay Eſcuage, &c. for his profeſſion doth not priuiledge him, but that the Kings ſeruice in his warre muſt be done that belongeth to his tenure.

Little. fol.10.a.

8.R.2 releiſe 14. 3.H.4.2.a.

Vide Littl. fol.20.

Nota (Reader) ſince Littleton wrote a man might either in his life time, or by his laſt will in writing, (m) giue Lands, Tenements, &c. to any ſpirituall bodie Politicke or Corporate, to be holden of himſelfe in Frankalmoigne, or by Diuine Seruice, as by the ſtatute of 1. & 2. Phil. & Mariæ (which indured for twenty yeares) appeareth, which ſtatute ſince that time hath beene fauourably and benignely expounded.

(m) *1.& 2.Ph. & Ma.ca.8 Mich.8 &.9. Eliz. Dier. fol.255.*

¶ *Iſſint que nul poet tener en Frankalmoigne ſi non que ſont per title de preſcription, &c.* It is to be vnderſtood, that a man ſeiſed of lands may at this day giue the ſame to a Biſhop, Parſon, &c. and their ſucceſſors in Frankalmoigne, by the conſent of the King and the Lords mediate and immediate of whom the Land is holden, for the rule is Quilibet poteſt renunciare iuri pro ſe introducto.

12.E.4.4.

27.H.8. 2.E.2.*auowrie* 185.

So if an Eccleſiaſticall Parſon hold lands by fealtie and certaine Rent, the Lord at this day may confirme (n) his eſtate, to hold to him and to his ſucceſſors in Frankalmoigne, for the former Seruices bee extinct, and nothing is reſerued but that he holds of him, and ſo hee did before.

(n) *4.E.3.21. 22.E.3.15. 38 H.6.25. Litt. cap confir. mat.123.*

¶ *Mes le roy poet, &c. car il eſt hors de caſe del ſtatute.*

It is cleere that the King is out of the caſe of the Statute, for the Statute is Quod feoffatus teneat terram illam, &c. de capitali Domino feodi, &c. and this cannot bee intended of the King, who is ſuperior to all and inferiour to none, but where the King is bound by Acts of Parliament, and where not, Vide lib.11. fol.66. Magdalen Colledge Caſe.

Lib.11. fol.66. Magdalen Colledge Caſe.

Section 141.

ET nota q̃ nul poit tener terres ou tenements en frankalmoigne, forſprise del grantor, ou de ſes heires. Et pur ceo il eſt dit, que ſi ſoit Seignior, meſne & tenant, & le tenant eſt vn Abbe que tient

AND note that none may hold lands or tenements in frankalmoigne, but of the Grauntour, or of his heires. And therefore it is ſaid, that if there be Lord, Meſne, and Tenant, and the tenant is an Abbot which

CF*orſprise del grantor ou de ſes heires.*

14.E.3.tit. Meſne 7. 14.H.3.tit. diſclaymer B.33. 15.E.3.confirm.8.

The tenure in Frankalmoigne is an incident to the inheritable bloud of the grantor, and cannot be transferred nor forfeited to any other, no more then a Founderſhip of a houſe of Religion, which is intended to bee in Frankalmoigne, or homage auncestrell, or the writ of Contra formam feoffamenti, or the writ of

27.H.8.b. Temps E.1. garr.90 45.E.3.23. 47.H.3.garr.99. 11.H.4.52 14.H.4.5. 10.H.7.11. 28. Aſſ.33. 18.E.3.18. 22.E.3.18. Cerody broke.5. 22.H.6.50. 4 E.2.auowry 201.202. 19.E.3.ibidem 122. 11.E.3.ibid.100. 30.H.6.7. 33.H.8. Dier 51. F.N.B.16. F.N.B.121.e.

Contra formam collationis, or any other incident to their inheritable bloud. But it is no incident inseperable for the Lord may release to the Tenant in Frankalmoigne, and then the tenure is extinct, and he shall hold of the Lord Paramont by fealtie, as in the case of Littleton, Sect. 139.

15.E.3 *confirm.* 8.

¶ *Ou de ses heires.* Here (or) hath the sence of (and.) for a man cannot at this day grant lands in taile and reserue a Rent to his heires, and exclude the grantor himselfe, for the heire cannot take any thing in the life of the Ancestor, neyther can the heire take any thing by

Vide 15.E.4.

de son mesne en frãkalmoigne, si le mesne deuy sans heire, donque le mesnaltie deuiendra per escheate al dit Seignior Paramont, & Labbe adonque tient de luy immediate per fealtie tantum, & ferra a luy fealtie, pur ceo que il ne puit tener de luy en Frankalmoigne, &c.

holdeth of his Mesne in frankalmoigne, if the Mesne die without heire, the Mesnaltie shall come by Escheat, to the said Lord Paramont, and the Abbot shall then hold immediatly of him by fealtie only, & shall do to him fealtie, because hee cannot hold of him in frankalmoigne, &c.

33.E.3.*tit. Annuities* 52. 3.*Ass. Pl.*8. *&c.*

discent when the Ancestor himselfe is secluded. But if a man had granted Lands at the Common Law to hold of his heires, these words (to hold of his heires) are void, and he shall hold of the grantor as he held ouer, which he should haue done, if hee had made no reseruation at all.

And albeit Littleton sayth that no man can hold lands in Frankalmoigne, but of the grantor or his heires, yet might an Abbot by assent of his Couent, or a Bishop with assent of his Chapter, and such like by licence as is aforesaid, haue giuen lands in Frankalmoigne, to hold of them and their Successors, and as Littleton himselfe agreeth; the King may giue Land in Frankalmoigne. In which case the land shall be holden of him his heires and successors.

¶ *Et pur ceo est dit si soit Seignior, mesne & tenant, & le tenant est vn Abbe, &c.* **By this it appeareth that if the Seignory be transferred** by act in Law to a stranger, and thereby the priuitie is altered, that the tenure in Frankalmoigne is changed to a tenure in Socage by fealtie, aswell as it appeareth before when the Seignory or Tenancy is granted to another, and the Law in this case also createth a new fealty wherewith the Land was not charged before.

¶ *Donques le mesnaltie deuiendra per escheat al dit Seignior Paramont.* This new tenure created by Law shall vpon the Escheat drowne the Seignorie, for alwayes the Seignory nearer to the land drowneth the Seignory, that is more remote of, and yet the Lord in this case to whom the Mesnalty is escheated, shall hold by the same services that hee held before the Escheat.

2.E.4.4*b*.

7.E.4.12.*a*.

Sect. 142.

¶ H*ome de Religion.* **And yet** this case extendeth to all Ecclesiasticall persons that hold in Frankalmoigne, be they secular or regular, for the mesne ought to acquite all of them, for they be bound (a) to make prayers for their founder or his heires, and in consideration of those prayers, the founder, &c. is bound to pay to the chiefe Lord all Rents and seruices issuing out of that Land, as it appeareth by that which followeth.

(a) *Pl. Com.* 306.*b. in Shorrygtons case.* 33.*H.*6.6. 39.*H.*6.29. 14.*E.*3.*mesne* 7.

¶ *De luy acquiter.*

¶ E Tnota q̃ lou tiel hõe de religion tient ses tenements de son Sñr ẽ frankalmoigne son Sñr est tenus p la ley de luy acquiter de chescun mãner d̃ seruice, que ascun Sñr paramount de luy voet auer ou demander de mesmes les tenements, et sil ne

And note that where such man of religion holds his tenements of his Lord in frankalmoigne, his Lord is bound by the law to acquite him of euery manner of seruice which any Lord paramont will haue or demand of him for the same tenements, and if he doth not acquite

luy

luy aquita pas, mes ſuffra luy deſtre diſtraine,&c. donqz il aura enuers ſon ſeignioz un briefe de Meſne, & recouera enuers luy ſes dammages & ſes coſtes de ſon ſuit,&c.

him, but ſuffereth him to bee diſtreyned,&c. hee ſhall haue againſt his Lord a Writ of Meſne, and ſhall recouer againſt him his damages and coſts of ſuit,&c.

Acquiter is compounded of ad, and the old verbe, quietare, and ſignifieth in Law (b) to diſcharge, or keepe in quiet, and to ſee that the tenant be ſafely kept from any entries or other moleſtation for any manner of ſeruice iſſuing out of the land to any Lord that is aboue the Meſne. (c) And hereof commeth (d) acquitall, and quietuseſt, (that is) that hee is diſcharged; and he that is diſcharged of a felony,&c. by iudgement, is ſaid to be acquited of the felony, acquietatus de felonia; and if he be drawne in queſtion againe, he may plead (e) autrefoits aquite. And therefore if ſuch a Tenant, as Littleton here ſpeaketh of, be diſtrained by any Lord paramount, the Meſne (to keepe the Tenant quiet) may put his beaſts in the pownde, in ſtead of the beaſts of the Tenant.

(b) *Fleta lib.2.ca.43. Britton fo.58.59. Vid.hereafter in this Sec. in breife de Meſne.*

(c) *Vid.Sect.142.540.*
(d) *8 E.2,Corone,424. 20.E.2.Ibid.232. Stauf.Pl.Corone,105.*
(e) *4.E.3.35.17.E.3.44. 7.H.4.18.34.H.6.47. 13.E.4.6. F.N.B.136. Lib.9.fo.110.111. in Treſham caſe.*

There be three kinds of Acquitalls. 1. An acquitall by Deede. 2. An acquitall by Preſcription. 3. An aquitall by Tenure: And by Tenure foure manner of wayes. 1. By oweltie of ſeruices, for ſeruice acquites ſeruice. 2 Tenure in Frankalmoigne, whereof Littleton here ſpeaketh. 3. Tenure in Frankmarriage. 4. Tenure by reaſon of Dower.

3.E.3.14.77. 5 E.3.11. 4.H.6.28. 39.E.3.19. 11.H.4.52. 12.H.4.9. 14.H.4.17.F.N.B. 136.b.b. 39.H.6.30. 33 H.6.7. F.N.B.135.m. 4.E.4.35. 12.H.4.9. 28.E.3 95 17.E.3.39.

¶ *De cheſcun manner de ſeruice.* (f) **And yet not of ſeruices only** as Homage, Fealty, Rent workes and other ſeruices, but alſo of improvement of ſeruices, as if he be diſtreyned for reliefe, * Aide pur file marier, aide pur faire fitz chivaler, &c. Alſo for Suite ſeruice to a hundred, (g) but for ſuite reall in reſpect of reſiance within any Hundred, Leete or Turne the Meſne ſhall make no acquitall, for that is in reſpect of his perſon and reſiancie.

(f) *39.H.6.31.a. 9.E.4 27. F.N.B.136.m. 17.E.2.Meſne. 5.E.3.49.*
* *Bracton lib.2 fol.84.*
(g) *4.E.3.42.*

¶ *Breife de meſne.* Breue de medio, **A writ of meſne, ſo called by** reaſon of the words of the Writ of Meſne, which are, Vndeidem A. qui medius eſt inter C. & præfatum B. A, which is meſne betweene C. that is the Lord paramont, and B. that is the tenant paramaſle And note that there be 6. Writs in Law that may be maintained quia timet, before any moleſtation, diſtreſſe, or impleading; as a man may haue his Writ of Meſne (whereof Littleton here ſpeakes) before he be diſtreyned. 2. A Warrantia cartæ before he bee impleaded. 3. A Monſtrauerunt before any diſtreſſe or veration. 4. An Audita quærela before any Execution ſued. 5. A Curia claudenda before any default of incloſure. 6. A Ne iniuſtè vexes before any Diſtreſſe or moleſtation, and theſe be called Breuia anticipantia, Writs of preuention.

For this Writ ſee the Regiſter fol. and F.N.B.fol.135. Mirror ca.2 §.13. Bracton lib.2 fol.84. Britton fol.58. Fleta lib.2. ca.43. Weſtm.2.cap.9.

¶ *Et recovera vers luy ſes damages.* **It is to be knowne that there** be two ſeuerall iudgements in a Writ of Meſne, one at the Common Law, another by the ſtatute of W.2 ca.9 At the Common Law he ſhall haue iudgement to recouer his acquitall and if he be diſtreyned or dammified his damages and coſts; And the proceſſe at the Common Law was Summons, Attachment and Diſtreſſe infinite in the ſame Countie where the Writ is brought. * The iudgement by the ſaid ſtatute of W.1. is a forciudger of the Meſnaltie, and that in two ſeuerall caſes, one vpon Proceſſe giuen by the ſaid ſtatute, viz. Summons, Attachement and Grand diſtreſſe, and if he commeth not, and the Writ be returned he ſhall be forſiuged: the other caſe is where the Tenant recouereth his acquitall in a Writ of Meſne, if hee be not acquited afterwards, he ſhall haue a Writ of Diſtringas Ad acquietandum againſt the ſame Meſne, and if he commeth not, he ſhall be forciudged by his default of the meſnaltie, and ſo if he commeth, and it be found againſt him by Verdict he ſhall be forciudged: but Forciudger in that caſe is not giuen againſt his heire for that the ſtatute ſpeaketh only of the meſne and not of his heires. And the iudgement in caſe of forciudgement is, quod T, (le Meſne) Amittat ſervitia de A. (le tenant) de tenementis prædictis, & quod omiſſo prædicto T. prefat' R. (le ſeignior paramount) modo ſit attendens & reſpondens pereadem ſervitia per quæ T. tenuit. The ſaid ſtatute in caſe of forciudgement doth not binde a Feme couert, and yet if ſuch a iudgement be giuen againſt a Baron and feme it is not voyde but erronious, and to be reuerſed in a Writ of error, and ſo a forciudgement againſt a Tenant in taile ſhall binde the iſſue in taile in an Auowrie vntill he reuerſeth it by error. If two ioyntenants bring a Writ of Meſne, and the one is ſummoned, and ſeuered, the other cannot forciudge the Meſne, for he ought to be attendant to the Lord paramount, as the meſne was, and that cannot he be alone. And ſo it is if there be two ioyntenants Meſnes, and in a Writ of Meſne brought againſt them, one maketh default, and the other appeares, there can be no forciudger.

W.2.ca.9. Vid.lib.8.fol.134. Mary Shepleys caſe.
* *Bracton,lib.2.fol.84. Fleta lib.2.cap.43.*

46.E.3.31. 18.E.2. tit Meſne. F.N.B.136. 2.H.4.7. 17.E.3.Contra formã Collat.1. F.N.B.121.

E.3.41.tit.Meſne 18. 9.E.2.ibid.67. 14.E.2.ibid.70. Lib.9.fol.73.b. Dect.Huſſeys caſe.

If

If the Tenant be diſſeiſed, and the Diſſeiſor in a Writ of Meſne forjudge the meane, this ſhall not bind the Diſſeiſee. And ſo if the Meſne be diſſeiſed, and a forjudgement is had againſt the Diſſeiſor, this doth not bind the Diſſeiſee, for the words of the ſaid Statute are, Quando tenens ſine præiudicio alterius quam medio attornate ſe poteſt capitali Domino.

But if the daughter, the ſonne being in venter ſa mere, be forjudged, it ſhall bind the ſon that is borne afterwards, becauſe he had no right at the time of the forjudgement. And ſo if the tenant enter in Religion, and his heire forjudgeth the Meſne, and then the Auncestor is deraigned, he ſhall be bound cauſa qua ſupra. If there be Lord, Prior, Meſne and Tenaunt, the Meſne cannot be forjudged, becauſe he alone can doe nothing to the preiudice to the diſherition of his Church: And the like Law is of a Biſhop, Parſon, and the like.

19.E.3.Iudgm.117.

W.2.ca.9.

No forjudgment can be but when there is but one meane betweene the Lord diſtreyning, and the Tenant, becauſe the Tenant vpon the forjudgement cannot bee attendant to the Lord diſtreyning, in reſpect there is a meane betweene them, and ſo the ſaid Statute prouideth for in expreſſe termes.

Nota, the Plaintife in the Writ of Meſne may chuſe either Proceſſe at the Common Law, or vpon the ſaid ſtatute of W.2. Fore-Judgement is called Forisjudicatio, and hee that is forjudged, Forisjudicatus. And Bracton hath this Writ, Rex Vicecomiti, &c. & non permittas quod A. capitalis Dominus feodi illius habeat cuſtodiam hæredis quia in Curia noſtra forisjudicatur de cuſtodia, &c. Fleta calleth it, Abiudicationem, and thereupon commeth abiudicatus; for hee ſaith, Poſt Proclamationem, &c. factam abiudicetur medius de feodo & ſeruitio ſuo.

50.E.3.23.F.N.B.137.
Bract.li.4.256.b.Brit.f.58.b.
Flet.li.2.ca 43.

Chap.7. Homage Auncestrel. *Sect.143.*

¶ *Per title de Preſcription en le Tenancie en le ſanke le tenant, & auxy en le Seignior en le ſanke le Seignior.* Here Littleton doth not define what Homage auncestrell is, but putteth an example in one caſe. For in the 146. Section it appeareth, that bloud is not alwayes neceſſarie on the Lords ſide. In this example here put, there muſt be a double preſcription both in the bloud of the Lord and of the Tenant, and therefore I thinke there is little or no land at all at this day holden by Homage auncestrel.

9.H.3.Vouch.277.47.H.3. Garr.99.Temps E.1. Gar.90. 4.E.2.Vouch.245.45.E.3.43 11.H.4.52. 4.H.6.26.

And hereof it is ſaid, Autant eſt le Seignior tenus a ſon homage, come le homage a ſon Seignior forſque ſolement en reuerence. And herewith agreeth Bracton, Eſt tanta & talis connexio per homagium inter Dominum & tenentem, quod tantum debet Dominus tenenti quantum tenens Domino præter ſolam reuerentiam.

Brit.fo.170.a.

Bract.fo.78. Glanv.li.9.ca.4,5,6.

¶ *Treit a luy garranty.*

THE Tenure p homage auncestrel eſt, lou vn Tenant tient ſa Terre de ſon Seignior per homage, & meſme le Tenant & ſes Auncestors que heire il eſt ont tenus meſme le Terre del dit Seignior, & de ſes auncestors que heire le Seigniour eſt, de temps dont memorie ne court per homage, & ont fait a eux homage. Et ceo eſt appel Homage auncestrel, per cauſe de continuance que ad eſte per title de Preſcription en le Tenancie en le ſanke le Tenaunt, & auxy en le Seigniorie

THE Tenant by homage Auncestrel is, where a tenant holdeth his land of his lord by homage, and the ſame Tenaunt and his Auncestours whoſe heire hee is, haue holden the ſame land of the ſame lord, and of his Auncestors whoſe heire the Lord is, time out of memorie of man, by Homage, and haue done to them Homage. And this is called Homage Auncestrell, by reaſon of the continuance which hath beene by title of Preſcription in the Tenancie in the bloud of the Tenant, and alſo in the Seigniorie in

rie en le lanke le Seignior. Et tiel Seruice de Homage Ancestrell trait a luy garrantie, cestascauoir, que le Seignior que est en vie & ad receiue le homage de tiel Tenant, doit garranter son Tenant quant il est implede de la terre tenus de luy per Homage Ancestrel.

the bloud of the lord. And such seruice of Homage Auncestrell draweth to it, warrantie, that is to say, that the Lord which is liuing, and hath receiued the Homage of such Tenant ought to warrant his Tenant when he is impleaded of the land holden of him by Homage Auncestrell.

Hereby appeareth what a reuerend respect the Law hath to ancient Inheritances continued in the bloud of the Lord, and of the Tenant, for in this example put, if the continuance hath not beene in the bloud of both sides, no warrantie belongeth to Homage Ancestrell, but if ancient continuance hath beene on both sides, (m) then such Homage Ancestrell draweth to it warrantie, so as ancient continued Inheritance on both parties hath more priuiledge and account in Law, then Inheritances lately or within memory acquired.

Vide Britton vbi supra. 14.H.6.25. 18.H.6.2.b. Glanuill lib.9.cap.4.5.& 6. 9.H.3.Voucher 277. 47.H.3.Voucher 270.271. 43.E.3.3.a.

See the second part of the Institutes vpon the 6.chapter of the statutes of Bigamis.

If the Lord grant the seruices of his Tenant by Homage Ancestrel, the Tenant shall not be compelled in a per quæ seruitia to attorne, vnlesse the Conusee will grant in Court to warrant the Land vnto him. *18.H.6.2.b. per Newton.*

If the Tenant vouch by force of this warrantie in Law, it is a good counterplea, that the Tenant (or any one of his Ancestors) recessit de seruitio suo & fecit seruitium suum. A. B. sine aliqua coactione propria voluntate. *9.H.3. voucher 277.*

¶ *Et ad receiue homage de tiel tenant.* (a) So as before homage receiued, the Tenant could not absolutely bind the Lord to warrantie, and therefore of ancient time there lay (b) a writ De homagio capiendo, for the Tenant against the Lord to compell him to receiue his homage for the benefit of his warrantie. Which writ you shall readein Bracton and (c) Britton and the Processe and manner of triall thereupon, and the same you shall find in 47.H.3.

(a) 9.H.3.Voucher 277. Temps E.1.Gar.90. 45.E.3.23.
(b) Glanuil lib.9.cap.4.5. & lib.1.cap.3. Bracton lib.2.fol.83.
(c) Britton fol.172.173. 47.H.3.garrantie 99.

Sect. 144.

¶ Et auxy tiel seruice per homage auncestrel trait a luy acquital. s. que le Sñr doit acquiter le Tenant enuers touts auters Sñrs paramont luy de chescun manner de seruice.

And also such seruice by homage ancestrell draweth to it acquitall, s. that the Lord ought to acquite the Tenant against all other Lords paramont him of euery manner of seruice.

¶ *Treit a luy acquitall.* Of acquitall somewhat hath beene said in the Chapter of Frankalmoigne. *Sect.142.& 540.*

Section 145.

¶ Et il est dit, q̃ si tiel tenant soit empled p vn Præcipe quod reddat, &c. & il bouche a garrantie son seignior, q̃ vient eins p proces, & demanda del tenãt que il ad de luy lier a

And it is said that if such tenant be impleaded by a *Præcipe quod reddat, &c.* and vouche to warranty his Lord who commeth in by processe & demands of the tenant what he hath to binde

¶ *VN Præcipe quod reddat.* This is vnderstood of the Kings writ directed to the Sherife of the County where the land lyeth, whereby the Sherife is authorised to command the Tenant of the land to yeeld the same to the Demandant, and of these words of the writ (Præcipe quod reddat) the writ is so called. Writs of

of Præcipe be of foure kindes, Præcipe quod reddat, Præcipe quod faciat, Præcipe quod permittat, & Præcipe quod non permittat, &c. as appeareth by the Regiſter.

Regiſt.159.

¶ *Et il vouche a garrantie.* A voucher, in Latyn vocatio, or advocatio is a word of art made of the Verbe Voco, and is in (d) the vnderſtanding of the Common Law, when the Tenant calleth another into the Court that is bound to him to Warrantie, that is, either to defend the right againſt the Demandant; or to yeeld him other land, &c. in value, and extendeth to lands or tenements of an eſtate of freehold or inheritance, and not to any chattel reall, perſonall, or mixt, ſauing only in caſe of a Wardſhip granted with Warrantie (as ſhalbe ſaid more at large in the chapter of Warranties) for in the other caſes concerning chattels, the partie, if hee hath a Warrantie, ſhall not vouche, but haue his action of Couenant, if he hath a Deed, or if it bee by parol, then an action vpon his caſe, or an action of Deceipt, as the caſe ſhall require. Now ſeeing that one Latyn, French or Engliſh word can haue this particular ſignification, therefore the common Lawyer (that I may ſpeake once for all) is driuen, as the profeſſors of other liberall ſciences vſe to doe, to vſe ſignificant words framed by art which are called vocabula artis, though they be not proper to any language. Hee that

(d) *Mir.ca.5.§.1.& 5. Bract.li.5.fo.380,381. Brit.ca.75.de Gar.Vouch. Flet.li.6.c.23,24 25,26.& 27. optime. Lamb.Explic.Verb. Aduocare.*

garranty, & il mẽ coment il & ſes auncesters q̃ heire il eſt, ount tenus ſa terre del vouchee & de ſes auncesters, de temps dont memorie ne curt. Et ſi le ſeignior que eſt vouche ne auoit reſceiue pas homage del tenant ne dascun de ſes auncesters, le ſeignior (ſil voit) poit diſclaimer en le ſeigniorie & iſſint ouſte le tenant de ſon garrantie. Mes ſi le Sũr q̃ eſt vouch ad receiue homage de le Tenant, ou de ascun de ſes auncesters, donques il ne diſclaimera, mes il eſt oblige p̃ la ley de garranter le tenant, & donq̃ ſi le tenant perd ſa fre en default del vouchee il recouera en value enuers le vouchee de terres & tenements que le vouchee auoit al temps de le voucher, ou vnques puis.

him to warranty, and hee ſheweth how hee & his anceſtors whoſe heire hee is, haue holden their land of the Vouchee and of his anceſtors time out of minde of man. And if the Lord which is vouched hath not receiued homage of the tenant, nor of any of his anceſtors, the Lord (if hee will) may diſclaime in the ſeigniory, and ſo ouſte the tenant of his warranty, but if the Lord who is vouched hath receiued homage of the tenant, or of any of his anceſtors, then he ſhall not diſclaime, but hee is bound by the Law to warrant the tenant, and then if the tenant loſeth his land in default of the Vouchee, he ſhall recouer in value againſt the vouchee of the lands and tenements which the vouchee had at the time of the voucher, or any time after.

(e) *V.Reg.Iud.for all theſe Iudiciall writs.*

(e) The proces whereby the Vouchee is called, is a ſommonicas ad warrantizandum, whereupon if the Sheriffe returneth that the Vouchee is ſummoned, and hee make default, then a (f) Magnum cape ad valentiam is awarded, when if he make default againe, then iudgement is giuen againſt the Tenant, and he ouer to haue in value againſt the Vouchee. If the Vouchee doe appeare and after make default, then Parvum cape ad valentiam is awarded, and if he make default againe, then iudgement as before. But if the Sheriffe returne, that the Vouchee hath nothing, then after Writs of Alias and plures, a Writ of ſequatur ſub ſuo periculo ſhalbe awarded, and if the like returne be made, then ſhall the Demandant haue iudgement againſt the Tenant, but he ſhall not haue iudgement to recouer in value, becauſe the Vouchee was neuer warned. And it appeareth that he hath nothing: but in the grand Cape ad valentiam, it appeareth, that he hath aſſets, and his making default after ſummons is an implied confeſſion of the Warranty. And it is called a ſequatur ſub ſuo periculo, becauſe the Tenant ſhall loſe his land

(f) *V.Vet.N.B.179.186. 39.E.3.28.14.H.6.7. 17.E.3.41.3.H.4.4. 11.H.4.72.45.E.3.19. F.N.B.134,135.*

land without any recõpence in value, vnlesse he vpon that writ can bring in the vouchee to warrant the land vnto him: and if at the Sequatur sub tuo periculo, the tenant and the Vouchee make default, and the Demandant hath iudgement against the Tenant, and after brings a Scire fac: to haue execution, the Tenant may haue a Warrantia Cartæ, and if he were impleaded by a stranger, he may vouche againe, but if hee had iudgement to recouer in value, he shall neuer haue a Warrantia cartæ, or vouche againe, for by this iudgement to recouer in value, he hath benefit of the warrantie. And you shall finde in bookes a recouery with a single Voucher, and that is when there is but one Voucher; and with a double Voucher, and that is when the Vouchee voucheth ouer, and so a treble Voucher, &c. Againe, you shall finde there also a forreine Voucher, and that is when the Tenant being impleaded within a particular iurisdiction (as in London or the like) voucheth one to Warranty and prayes that he may be summoned in some other county out of the iurisdiction of that Court: this is called a forreine Voucher, but might more aptly be called a voucher of a forreiner de forinsecis vocatis ad Warrantizandum. Note, that by the Ciuill Law euery man is bound to warrant the thing that he selleth or conueyeth, albeit there be no expresse Warranty, but the Common Law bindeth him not, vnlesse there be a Warrantie, either in Deede or in Law for Caueat emptor, as shalbe said more at large in the chapter of Warrantie in the third booke.

Glanv.li.12. F.N.B.6.c.

¶ *Le Seignior (sil voet) poet disclaymer* (u) *en le Seigniorie. Disclaimer, disclamare,* **is compounded of** de **and** clamo, **and signifieth vtterly to** renounce the Seigniorie.

Brit.174.

(a) Note there be diuers kinds of Disclaymer, that is to say, a Disclaymer in the tenantie; a Disclaymer in the bloud; and a Disclaymer in the Seigniory; whereof Littleton here putteth his case.

(a) 47.H.3.*Disclaim.*15. 16.H.7.1.20.E 2. *tit Nuper ob.* 14.F.N.B.197.& 151.b. 45.E.3.19. 21.E.3.50.E.3. 23.&c.

(b) But if the tenant in Frankalmoigne bring a Writt of Mesne against his Lord, the Lord cannot disclayme in the Seigniorie, because he cannot hold of any man in Frankalmoigne, but of his Donor and his heires. And so note a diuersity betweene a Tenure in Frankalmoigne, whereby Diuine Seruice is maintained, and Homage Auncestrell which respecteth Temporall Seruice. But if the Lord will not disclayme in the Seigniory, in the case of Homage Auncestrell, then albeit he hath not receiued Homage, he shall warrant the land.

(b) 14.H.3.*tit. Disclaim.b.*33

¶ *Si le Seignior que est vouche ad receiue homage, &c. il ne disclaymera.*

Therefore it is good for the Tenant, to the intent to oust the Lord of his Disclaymer, in his voucher to alledge, that the Lord hath taken homage of him, and if he alledge it not, and the Lord offer to disclayme, the Tenant may counterplead the same by acceptance of Homage, and the reason that the Lord cannot disclayme in that case is, for that hee hath accepted his humble and reuerent acknowledgement to become his man of life and member and terrene honour, and to be faithfull and loyall to him for the Tenements which he holds of him, and against the acceptance hereof the Lord cannot disclayme.

*47.H.3.Disclaim.*35. *V.Bract.l.*4.252.*b.*16.*H.*7.1 *Brit.*173,174.

¶ *Que il auoit al temps del voucher.* **Hereby it appeareth, that the** Tenant shall not be driuen to recouer in value only those Lands which the Lord had from that Ancestor which created the Seigniory, for that were in manner impossible, for that the Seigniory must be created before time of memory, and the first Creation of the Seigniory did not create the warranty, but the continuance of both sides time out of minde created the warranty. And that is, the reason that a Writt of Annuity shall not (c) lye against the heire by prescription because it cannot be knowne, whether he hath any land by discent from the said Ancester, that first granted the Annuity. And here is a point worthy of obseruation that in the case of Homage Ancestrell, (which is a speciall Warranty in Law) by the Authority of Littleton, the lands generally that the Lord hath at the time of the Voucher shall be liable to execution in value, whether he hath them by discent or purchase. But in the case of an expresse Warrantie the heire shall be charged but only for such lands as he hath by discent from the same Ancestor, which created the Warrantie.

(c) 49.E.3.5.*b.*10.E.4.10.*b* 19.*H.*6.74.37.*H.*6.19. 5.*H.*7.*F.N.B.*152.

Note, what priuiledge this ancient warrantie (created by operation of Law) hath more then the expresse Warrantie. And so you may obserue, that in this case, firmior & potentior est operatio legis quam dispositio hominis.

¶ *Al temps de voucher ou vnques puis.* **This is euident and worthy** of diligent obseruation, viz that the lands of the Vouchee shall be lyable to the Warranty, that the Vouchee hath at the time of the Voucher; for that the Voucher is in lieu of an action, and in a Warrantia cartæ, the land which the Defendant hath at the time of the writ brought, shall be lyable to the Warranty.

*28.E.1.Vouch.*291. 9.*Ed.*2. *War.Car.*20. 19. *Fines* 127. 29.*E.*3.3.18.*E.*3.1. 2.*H.*4. 10. 23.*E.*3 *Resou.in valu.*3. 16.*E.*3.*Vouch.*85.19.*Edw.*3. *Vouch.*14.22.*E.*3.*Fitz.Nat. Bre.*134.*f.* 2.*H.*4.14.41.*E.*3.1.42.*as.*17 9.*E.*2 *tit.Extents.*149.

Upon a Iudgement in Debt, the Plaintife (d) shall not haue Execution, but only of that land, which the Defendant had at the time of the Iudgement, for that the Action was brought in respect of the person and not in respect of the land. But if an Action of Debt bee brought

againſt the heire, and he alieneth, hanging the writ, yet ſhall the Land which he had at the time of the originall Purchaſe be charged, for that the Action was brought againſt the heire in reſpect of the land. (e) If a man be Nonſuit, the land only which hee had at the time of the amerciament aſſeſſed ſhall be charged, and not that which hee had at the finding of the pledges. For the amerciament is not in reſpect of the land, but of his want of proſecution, which was a default in his perſon. But the iſſues of a Iuror ſhall be leuied vpon the Feoffee, albeit they were not loſt before the feoffment, becauſe he was returned and ſworne in reſpect of the land. Note the diuerſitie.

(e) 22.*Aſſ.pl.*32.

If a man giue lands in fee with warrantie, and bind certaine lands ſpecially to warrantie, the perſon of the Feoffor is hereby bound, and not the Land, vnleſſe he hath it at the time of the Voucher

32.*E.*1.*Voucher* 292.

Sect. 146.

*Vide Britton. fol.*58.110.

¶ *Son Seigniorie eſt extinct, & le tenant tiendra de Seignior prochein paramount, &c.* Here two things are to be obſerued, Firſt, that by this diſclaymer in the Seigniory, the Seigniory is (f) extinct in the Land.

(f) 45.*E.*3.7. 22.*E.*4.35.

Secondly, That after the Diſclaymer the Tenant ſhall hold of the next Lord Paramount by the ſame ſeruices, as the meſne ſo diſclayming held before.

*Vide Sect.*143.

¶ *Si vn Abbe ou prior ſoit vouch &c. vncore, &c. vncore il ne poet diſclaimer, &c.* Here it appereth of the Lords ſide, that continuance of bloud is not neceſſary, but yet there muſt bee vnitie of ſucceſſion time out of mind in one politique body for if that bodie, be once diſſolued, though a new bee founded of the ſame name, and all the poſſeſſions be granted to them, yet the Homage Auncestrell is gone. But if a Prior and Couent bee tranſlated Concurrentibus his quæ in iure requiruntur to an Abbot and Couent, or to Deane and Chapter, there the Homage Auncestrell remaines, for though the name bee changed, yet the body was neuer diſſolued, but in effect it remayneth ſtill. If the body Politique were founded within time of memory, there cannot be Homage Auncestrell, for that continuance faileth, and though Auncestor is euer properly applyed to a naturall body, yet it is called Homage Auncestrell when the tenure is of a body Politique, for that it is Auncestrell of the Tenants ſide: but on the other ſide an Abbot or Prior cannot hold by Homage Auncestrell, for as appeareth by Littletons examples, it muſt euer be Auncestrell of the Tenants ſide. And where Littleton putteth his caſe of an Abbot or Prior, the ſame Law is of a Biſhop, Deane, Archdeacon, Prebend, Parſon, Vicar, and the like. Another thing here to be obſerued is, that an Abbot or Prior cannot diſclayme &c. for regularly it is true, Quod meliorem conditionem Eccleſiæ ſuæ facere poteſt Prælatus, deteriorem nequaquam, and againe, Eccleſiæ ſuæ conditionem meliorem facere poſſunt

¶ **Et eſt aſcauoir, que en cheſcun cas ou le Seigniour poit diſclaimer ẽ ſon ſeigniorie per la ley, & de ceo voit diſclaim en Court de Record, ſon ſeigniorie eſt extinct, & le tenant tiendra del Seignior procheine paramont le ſeignior que iſſint diſclaime. Mes ſi vn Abbe ou Prior ſoit vouch per force de homage auncestrel, &c. comment que il ne vnque prist homage &c. vncore il ne poit diſclamer en tiel cas, ne en nul auter cas, car ils ne poient anienter ou deueſter choſe de fee que ad eſte veſtue en lour meason.**

And it is to bee vnderſtood, that in euery caſe where the Lord may diſclaime in his Seigniorie by the Law, and of this hee will diſclaime in a Court of Record his Seigniorie is extinct, and the Tenant ſhall hold of the Lord next Paramount to the Lord which ſo diſclaimeth. But if an Abbot or Prior bee vouched by force of Homage Anceſtrell, &c. albeit that hee neuer tooke homage, &c. yet hee cannot diſclaime in this caſe nor in any other caſe, for they cannot take away or deueſt a thing in fee which hath beene veſted in their houſe.

14.*H.*6.12. 2.*H.*6.9. 38.*Aſſ.p.*22. 37.*Aſſ.*6. *Lib.*3.*fol.*73.*&c. Deane and Chapter de Norwich caſe.*

possunt sine consensu, deteriorem non possunt sine consensu. And therefore an Abbot, Prior, Bishop, Deane, Archdeacon, Prebend, Parson, Vicar, or any other sole Corporation that is seised in auter droit cannot disclayme, because as Littleton sayth, they alone cannot devest any fee which is vested in their House or Church. For the wisdome of the Law would never trust one sole person with the disposition of the Inheritance of his House or Church. But an Abbot, and Prior had their Couent, the Bishop his Chapter, the Parson and Vicar their Patron and Ordinary, and the like of other sole Corporations, without whose assent they could passe away no Inheritance. 40.E.3.27. 5.E.4.1. 6.E.3.51.52. 10.E.4.2.a. 21.H.7.20.

¶ *Ils ne poient anienter ou deuester chose de fee, &c.* These generall words haue certaine exceptions for in a quo Warranto at the suite of the King against a Bishop, Abbot, or Prior for Franchises and Liberties, if the Bishop, Abbot, or Prior disclaime in them, this should bind their Successors. If an Abbot or Prior had knowledged the Action in a Writ of Annuity this should haue bound the Successour, because hee cannot falsifie it in an higher action, and there must be an end of Suites, Expedit Reipublicæ vt sit finis litium. But if the Abbot leuie a fine, or acknowledge the action in a Præcipe quod reddat, the Successor shall be bound pro tempore, but he may haue a Writ of Right, and recouer the Land. 6.E.3.51.52. 38.E.3.33. 16.E.3.tit.Abbot.13. 19.E.3.tit.Abbot.12. 7.R.2.Abbot.7. 12.H.4.11.

¶ *Per force de Homage Ancestrell, &c.* Here (&c.) implyeth or by any other Warranty (i) as by the reason which our Authour here yeelds, appeareth. 20.H.6.fo vltims. 4.H.7.2. 2.H.4.6.

¶ *Chose de fee.* (k) For if in an Action of Debt vpon an Obligation against an Abbot, the Abbot acknowledgeth the Action, and dieth, the Successor shall not anoyd Execution though the Obligation was made without the assent of the Couent, for he cannot falsifie the recouerie in an higher Action: Et res iudicata pro veritate accipitur, and this is but a Chattell. And so it is of a Statute or Recognisance, acknowledged by an Abbot or Prior. 34.Ass.p.7. 14.E.4.tit.Abbot.B. 8.E.3.28. 12.H.8.7. (i) 12.H.8.7. (k) 7.R.2.tit.Abbot.7. See the Bookes next above.

Sect. 147.

¶ Item si home q̃ tient son terre p homage ancestrel, alien a vn auter en fee, le alienee serra Homage a son seignior, mes il ne tient de son Seignior per Homage Auncestrel, pur ceo q̃ le tenancie ne fuit continue en le sanke de les auncesters lalienee, ne lalienee nauera iames garrantie ď la terre ď son sr̃ pur ceo que le continuance del tenancie en le tenant ẽ a son sank per lalienation est discontinue. Et sic vide, que si le tenant que tient la terre per homage auncestrell de son Seig-

ALso if a Man which holds his land by Homage Ancestrell, alien to another in fee, the alienee shall doe homage to his Lord, but hee holdeth not of his Lord by homage ancestrell, because the Tenancie was not continued in the bloud of the Ancestors of the alienee, neither shal the alienee haue warrantie of the land of his Lord, because the continuance of the tenancie in the Tenant, and to his bloud by the alienation is discontinued. And so see, that if the tenant which holdeth his Land of his Lord

¶ *Alien a vn auter en fee.* For hereby the priuity of the estate is altered and the continuance of it in the bloud of the Tenant is dissolued. But if the Tenant maketh a Lease for life, or a gift in tayle, this is a continuance of the priuitie and estate in the Tenant in respect of the reuersion that remayneth in him: for the fee, whereof Littleton here speaketh was not out of him. But if the Tenant maketh a feoffment in fee vpon condition, and dieth his heire performeth the condition, and reentreth the homage ancestrell is destroyed in respect of the interruption of the continuance of the priuity and estate, and this case was put and not denied in the argument of (m) of the Case betweene the Lord Cromwell and Andrewes, Mich.14. & 15.Eliz. which I my selfe heard & obserued. As if Cesty & vse had made a feoffment in fee vpon condition and entred for the condition broken hee should haue detained the Land a- 5.H.7.

(m) 1.Mich.14.& 15.Eliz.

gainſt the Feoffees for euer, for that the eſtate and priuitie was for the time taken out of the Feoffees, and thereby diſſolued for euer. But if the Land were recouered againſt the tenant vpon a faint title, and the Tenant recouer the ſame againe in an action of higher nature, there the Homage Auncestrell remaines, for the right was a ſufficient meane for the continuance: ſo it is if he had reuerſed it in a Writ of Error. (n) If the alienee be impleaded in Littletons caſe and vouche the alienor that held by Homage Auncestrell, albeit hee commeth in by fiction of Law to many purpoſes in priuitie of his former eſtate Yet to this purpoſe he cannot come in as Tenant by Homage Auncestrell, becauſe of the diſcontinuance of the eſtate and priuitie, and as Littleton ſayth, the Tenancie was not continued in the bloud. (o) and Britton ſaith, Et come aſcun nequedent ſoit Vouche per homage, & le Seigniour tende de auerrer que le tenement dount il vouche ſuit tranſlate hors del ſanke del primer purchaſer per feoffment ou per aſcun auter tranſlation: en tiel caſe ſoit le tenant charger de voucher ſon feoffor ou ſes heires.

Item il eſt dit, que ſi home tient ſa terre de ſon ſeignior per homage & fealty, & il ad fait homage & fealty a ſon ſeignior, & le ſeignior ad iſſue fits & deuy, & le ſeigniory diſcendiſt a le fits, en ceo cas le Tenant que fiſt homage al pere ne ferra homage al fits, pur ceo que quant vn tenant ad fait vn foits homage a ſon Seignior il eſt excuſe pur terme de ſa vie de faire homage a aſcun auter heire del ſeignior, mes vncore il ferra Fealtie al fits & Heire le Seignior, coment que il fiſt Fealty a ſon Pere.

by homage anceſtrell alieneth in fee, though hee taketh an eſtate againe of the alienee in fee, yet he holds the land by homage, but not by homage anceſtrell.

(n) 5.E.3.11. *per Cantrel.*

(o) *Britton.fol.170.a.*

38.E.3.30. 11.H.4.22. 17.E.3.47.59.73.74. 26.E.3.56. 18.E.3.56. 16 E.3.*Voucher.*87. 18.E.3.30. 44.E.3. *Litt.fol.169.*

¶ *Coment que il repriſt eſtate del alienee en fee, &c.* For the cauſe aforeſaid in reſpect of the interruption and continuance of the eſtate. And hereſwith agreeth our Bookes in Caſes of Warranties in Deed or Warranties in Law. See more of this in the Chapter of Warranties.

Sect. 148.

¶ *NE ferra homage al fitz:* If A. holdeth of B. as of the Manor of Dale, whereof B. is ſeiſed in taile. B. diſcontinueth the eſtate taile, and taketh backe an eſtate in Fee ſimple. A. doth homage to B. B. dieth ſeiſed, the iſſue in taile entreth, A. ſhall doe homage againe to the heire in taile of B. becauſe hee is remitted to the eſtate taile, and the ſtate in fee that his father had; in reſpect whereof the homage is done is baniſhed, and the heire in taile is in of a new eſtate, in reſpect whereof hee ought to doe a new homage. (p) But regularly it is true

(p) *Britton.175.176.*

Alſo it is ſaid that if a man holds his land of his Lord by Homage and Fealty, and hee hath done homage and fealtie to his Lord, and the Lord hath iſſue a ſonne and dies, and the Seigniorie diſcendeth to the ſonne, in this caſe the Tenant which did homage to the father ſhal not doe homage to the ſonne, becauſe that when a tenant hath once done homage to his Lord, hee is excuſed for terme of his life to doe homage to any other heire of the Lord, but yet he ſhal do fealty to the ſonne and heire of the Lord, although he did fealty to his father.

which Littleton ſayth, that when a Tenant hath done once homage to his Lord, he is excuſed for terme of his life to make homage to any other heires of the Lord. But he ſhall doe fealtie to his ſonne, albeit he hath done fealtie to the father.

Sect.

Sect. 149.

¶ Item ſi le Sñr apres l homage a luy fait per ſon tenant grant le ſeruice de ſon tenant per le fait a vn auter en fee, & le tenant atturna, &c. Donque le tenant ne ſerra my compel de faire homage, mes il ferra fealtie, comẽt que il fiſt fealtie deuant a le grauntor. Car fealtie eſt incident a cheſcun atturnement del tenant, quant le ſeignioꝛie eſt graunt. Mes ſi aſcun home ſoit ſeiſie dun manoꝛ, & vn auter hõe tient de luy la terre come del manoꝛ auandit per homage, le quel tenant ad fait homage a ſon Sñr q̃ eſt ſeiſie del mannoꝛ, ſi apres vn eſtrange poꝛt Præcipe quod reddat enuers le Sñr del manoꝛ & recouera le manoꝛ enuers luy, et ſuiſt execution, en ceſt caſe le tenant ferra auterfoits homage a celuy q̃ recouera le manoꝛ, coment q̃ il fiſt homage deuant, p̃ ceo que leſtat celuy que receiuoit le pꝛimer homage, eſt defete per le recouerie, et ne girra en la bouche le tenant a fauꝛer ou defeater le recouerie que fuit enuers ſon Seigniꝛ. Et ſic vide diuerſitatem en

ALſo if the Lord after the homage done vnto him by the tenant, grant the ſeruice of his Tenant by Deed to another in fee, and the Tenant atturneth, &c. the Tenant ſhall not bee compelled to doe homage, but he ſhall doe fealty, although he did fealty before to the grantor. For fealty is incident to euery atturnement of the tenant, when the ſeigniorie is granted But if any man bee ſeiſed of a mannor, and another holds of him the land as of the Mannor aforeſaid by homage, which tenant hath done homage to his Lord who is ſeiſed of the Mannor, if afterwards a ſtranger bringeth a *Præcipe quod reddat* againſt the Lord of the Mannor, and recouereth the Mannor againſt him, and ſues execution, In this caſe the tenant ſhall againe do homage to him which recouered the mannor, although he had done homage before, becauſe the eſtate of him which receiued the firſt homage is defeated by the recouery, and it ſhall not lye in the power of the tenant to falſifie or defeate the recouerie which was againſt his lord. And ſo ſee a

¶ *Item ſi le Sñor, &c. grant le ſeruice de ſon tenant per fait, &c.* Brit.176.

Note a diuerſitie when the Lord alieneth the ſeigniorie, and when the tenant alieneth the tenancie, for when the Tenant hath done homage, & the ſeigniory is transferred to another either by the act of the partie as alienation, or by act in Law, as diſcent, yet the tenant ſhall not iterat homage, as he ſhall do fealty, but when the Tenant doth homage, and alieneth the tenancy, there is a new Tenant, which neuer did homage, and therefore he ought to doe homage to the Lord albeit his Alienor had done it before. And it is to be obſerued that none ſhall doe * homage but the Tenant of the land to the Lords of whom it is holden, and therfore if homage bee due to bee done by the Tenant, if the Tenant alieneth the land to another, the Alienor cannot be compelled to doe homage. 13.E.1.tit.Perque Seruitia, 22. & tit.Gar.91. 8.E.4.29.b.

¶ *Attorne, &c.* Here by (&c) is to be vnderſtood that albeit hee pay his rẽt, perform his Anual ſeruices and doe Fealtie which is a part of homage,

homage, yet homage he shall not doe.

¶ *Mes si ascun home soit seisi dun Mannor, &c.* Here it appeareth, that the case of the recouerie of the Seigniorie differeth from the alienation of the Lord, which is his owne act, or the discent of the Seigniorie to the heire, which is an act in Law. And the reason of this diuersitie is, for that by the recouerie, the state of him that receiued the homage, is defeated, for it shall not lie in the mouth of the Tenant, to falsifie, or to frustrate or defeat the recouerie which was against his Lord of the Mannor or Seigniorie, for that the Tenant had nothing therein, and euery man by Law ought to meddle in such cases with that which belongeth vnto him, which is worthy of obseruation concerning falsifying of recoueries.

Icel cas lou home vient a le Seigniorie per recouerie, & lou il vient per discent ou per graunt al Seigniorie.

diuersitie in this case, where a man commeth to a Seigniorie by recouerie, and where he commeth to the same by discent or grant.

Vide Sect. 551. 33.*E.*3.*auowrie* 255. 37.*H.*6.33. 39.*H*6. 34. 7.*H*7.11. *Dott.* & *Stud. fol.*43. 28.*H.*8.*Dier.*41

Note that to falsifie, in legall vnderstanding is to proue false, that is, to auoyd, or as Littleton here saith, to defeat, in Latine, fallare, seu falsificare, (i.) falsum facere.

7.*H.*8.*cap.*4.

But since Littleton wrote, it is recited by Act of Parliament, That whereas diuers, &c. haue suffered recoueries against them of diuers Mannors, &c. for the performance of their wils, for the suretie of their wiues ioyntures, &c. and the recoueroꝛs had no remedie to compell the Freeholders and Tenants, &c. to attorne vnto them, nor could by order of Law attaine to the rents, seruices, &c. that Act doth giue the recoueroꝛs power to distreyne and auow, whereupon many haue thought, that this doth impugne Littletons case of the Recouerie. But distinguendum est: Littleton intendeth his case either vpon a recouerie by title, (for hee saith, that the state of the Tenant in the recouerie is defeated) or without any consent vpon pretence of title, which is all one, for the Tenant cannot falsefie, and the Lord should auow as one that came in of a former title. And Littleton hath good authoritie in Law to warrant (a) his opinion, and the Statute of 7.H.8. extendeth to common recoueries had by consent and agreement, as appeareth by the Act it selfe, which then was, and yet is a common assurance and conueyance, whereof the Law taketh notice, and whereupon (as appeareth by the Act, an vse might be limitted. So as it is apparant, that such recoueroꝛs came in meerely vnder the state of the Lord, &c. and had no remedie (as the Statute saith) to compell the Freeholders and Tenants to atturne, and without atturnement, could neither distreyne nor auow; Wherefore this Statute gaue recoueroꝛs remedie to distreyne, and a forme to auow and iustifie, which they had not before, as it appeareth by the Doctor and Student, who liued at that time: The bodie of the Act is, That such recouerors may distreyne and make auowrie, &c. as those persons against whom the sayd recouerie is, should haue done, &c, if the same recouerie had not beene had, and haue like remedie, &c.

(a) 39.*H.*6.22. 37.*H.*6.38 35.*H.*6.22.

28.*H.*8.*Dier.*41.

If a man had made a lease for yeares to begin at Michaelmas, reserving a rent, and before Michaelmas he had suffered a common recouerie, the recoueroꝛ should distreyne for that Rent, which the Lessor before the recouerie could not. But if the recouerie had not beene had, then he might haue distreyned, and so it is within the Statute: but if a fine had beene leuied of a Mannor, and before atturnement the Conusee had suffered a common recouerie, the recoueroꝛs should not distreyne, &c. because the Conusee against whom the recouerie was had, could not.

But this Act extended onely to Distresses and Auowries for Rents, Seruices, and Customes, and gaue also a forme of a Quare impedit. But vpon this Statute it was holden, That the recoueroꝛ could not haue an Action of Debt against the Lessee for yeares, nor an Action of Waste against Tenant for life or yeares, and therefore remedie was prouided in these cases, by the Statute of 21.H.8.

21.*H.*8.*cap.*15.

Section 150.

¶ *Vient a son seigniour.* The tenant ought to seeke the Lord to doe him homage, if the Lord be within England, for this seruice is personall as well of the Lords side, as of the Tenants side, for Law requi-

Item si vn Tenant que doit per son Tenure fayt̃ a son Seigniour Homage, vient a son Seigniour, & dit a luy

Also if a Tenant which ought by his Tenure to doe his Lord Homage, commeth to his Lord, and saith vnto him, Sir, I

luy, Sir, ieo doy a vous faire homage pur les Tenements que ieo teigne de vous, & ieo sue icy prist a vous faire homage pur mesmes les Tenements, pur que ieo vous pry, que ore ceo voiles receiuer de moy.

ought to doe homage vnto you for the Tenements which I hold of you, and I am here readie to doe homage to you for the same Tenements, and therefore I pray you, that you would now receiue the same from mee.

reth order and decencie. And therefore Bracton saith, Et sciendum, Quod ille qui homagium suum facere debet, obtentu reuerentiæ quam debet Domino suo, adire debet Dominum suum vbicunque inuentus fuerit in Regno, vel alibi si possit comodè aditi, & non tenetur Dominus quærere suum tenentem, & sic debet homagium ei facere. And the same Law it is for Fealtie, and the diuersitie betweene these seruices, and the rent is because that these are perso-

Bracton fol. 80. a. And Britton fol. 171. agreeth herewith.

nall, and the rent may be payd and receiued by other, and therefore a tender of the rent vpon the land is sufficient.

Sect. 151.

¶ Et sile Seignour adonqs refusa de ceo receiuer, donque apres tiel refusal le Seignior ne poet distreiner le Tenant pur le homage aderere, deuant que le Seignior requiroit le Tenant de faire a luy homage, & l'Tenant a ceo faire refusa.

And if the Lord shall then refuse to receiue this, then after such refusall the Lord cannot distreyne the Tenant for the homage behind, before the Lord requireth the Tenant to doe homage vnto him, and the Tenant refuse to doe it.

¶ And the reason hereof is, for that when the Tenant hath done his endeauour and dutie to offer his corporall seruice, and the Lord refuseth the same, or doe not accept his seruice vpon his tender thereof, (which is a refusall in Law) then the Law in respect of the Lords fault, requireth, that before the Lord can distrein for it, that he doth require the tenant to doe that seruice, and if he either refuse to doe it, or doe it not when he is required, it is a refusall in Law.

Vid. Bracton fo. 83. Britton 171. 172. 21. E. 3. 24. 21. Ass. p. 73. 20. E. 3. Auowrie 223. 45. E. 3. 9. 7. E. 4. 4. 21. E. 4. 17. 20. H. 6. 31.

Sect. 152.

¶ Item home poit tener sa terre per homage auncestrel, et per Escuage, ou per auter seruice de Chiualer, auxibien sicome il poyt ten sa tr per homag auncestrel en Socage.

Also a man may hold his land by homage Auncestrell, and by Escuage, or by other Knights Seruice, as well as hee may hold his land by homage Auncestrell in Socage.

¶ So as Homage Auncestrel may belong as well to a Tenure by Escuage or Knights seruice, as to a Tenure in Socage, or to a tenure in nature of Socage, whereof there hath bin spoken in the chapter of Socage.

Chap.8. Grand Serieantie. Sect.153.

¶ *Enure per grand Serieantie.* Serieantie cõmeth of the French word (Sergeant) 1. Satelles, and (a) Serjeantia idem est quod servitium. And it is called (b) Magna Serieantia or serianteria, * or Magnum servitium, great seruice aswell in respect of the excellency and greatnesse of the person to whom it is to be done, (for it is to be done to the King only) as of the honour of the seruice it selfe, and so Littleton himselfe in this Section saith, that it is called Magna serieantia or Magnum servitium, because it is greater and more worthy than Knights seruice, for this is Re vera, servitium regale, and not Militare only Fleta saith, Magna autem serieantia dici poterit, cum quis ad eundem cum rege in exercitu cum equo cooperto vel huiusmodi ad patriæ tuitionem fuerit scoffatus.

(a) *Glanvil lib.9.ca.4.*
(b) *Bracton lib.2.35. & 84.85. lib.1 ca.10.*
* *Fleta,lib.1.cap.10.lib.2. ca.9, in fine.*
(c) *Britton, cap.66. fol.164.165. Ockam cap.quod non absoluitur.*

45.E.3.25. *per Finchden.*
* *Fleta, vbi sup.a.*

¶ *De nostre seignior le roy.* This tenure hath seuen speciall properties. 1. To bee holden of the King only. 2. It must bee done when the Tenant is able in proper person. 3. This seruice is certaine and particular. 4. The relefe due in respect of this tenure differeth from Knights seruice. 5. It is to bee done within the Realme. 6 It is subiect to neither, Aid pur faire fitz chivalein or file marier. And 7. it payeth no Escuage.

Bracton, lib.2.84.
11.H.4.34.
10.H.4. Annuitie, 267.
F.N.B.83.
10.H.6. ans. demesne, 13.

¶ *Come de porter le banner de nostre seignior le roy ou de amesner son host.* This great seruice to the King may (as it appeareth hereby) concerne the warres and matters Militarie, for some grand Ser-

23.H.3.tit. Gard Stat. de Ward & reliefs. 28.E.1.

¶ Enure per graund serieantie est lou vn home tient ses terres ou tenements de nostr̃ Sñr le Roy p tiels seruices que il doit en son proper person faire al Roy, come ô porter le banner de nostre seignior le Roy, ou sa lance, ou ô amesner son hoste, ou destre son Marshal, ou de porter son espee deuant luy a son coronement, ou destre s̃ sewer a son coronement, ou son Caruer, ou son Butler ou destre vn ô ses Chamberlains de le resceit de son Eschequer, ou de faire auters tiels seruices &c. Et la cause que tiel seruice est appell grand serieantie est, pur ĉ que il est pluis grand & pluis digne seruice que est le seruice en le tenure descuage. Car celuy q̃ tyent p Escuage nest pas limite per la tenure de faire aseun pluis especial seruice que aseun auter que tient p escuage doit faire. Mes celuy que tient

Enure by grand Seriantie is where a man holds his lands or tenements of our Soueraign Lord the King by such seruices as hee ought to doe in his proper person to the King, as to carry the Banner of the King, or his Lance, or to lead his Army, or to be his Marshall, or to carry his sword before him at his Coronation, or to bee his Sewer at his Coronation, or his Caruer, or his Butler, or to be one of his Chamberlaines of the receipt of his Exchequer, or to do other like seruices, &c. And the cause why this seruice is called grand Serieanty is, for that it is a greater and more worthy seruice, than the seruice in the tenure of Escuage. For he which holdeth by Escuage is not limitted by his tenure to doe any more especiall seruice, then any other which holdeth by Escuage ought to doe, but hee which holdeth by grand

tient p grand Serieanty doit faire vn especial ſuice al Roy, que il que tient per escuage ne doit faire.

Serianty ought to doe ſome ſpeciall ſeruice to the King which he that holds by Eſcuage ought not to doe.

teanties are to be done in the time of warre for the ſafety of the Realme, and ſome in time of peace, for the honour of the Realme.

¶ *Ou deſte ſon Marſhall.* * **If the King** giueth lands to a man to hold of him to be his Marſhall of his hoſt, or to be Marſhall of England, or to be Conſtable of England, or to be high Steward of England, * Chamberlaine of England and the like, theſe are grand Seriantes, and theſe ſuch like grand Seriantes are of great and high iuriſdiction, and ſome of them concerne matters militarie in time of warre and ſome ſeruices of honour in time of peace. And this is to be obſerued that though there were diuers Lords Marſhalls of England before the raigne of (z) R.2. yet King R.2. created Thomas Mowbrey Duke of Norfolke, and firſt Earle Marſhall of England Per nomen comitis Mariſchalli Angliæ.

* *Fleta lib.1.cap.10. 11.Eliz.Dier 285. Camden Brit.286.287.*
* *Ockam cap. officium conſtabularis.*

(z) *Intr. patent. de anno 20.R.2.*

¶ *Ou de porter ſon eſpee, &c. ou deſte ſon ſewer a ſon Coronement, &c.* Theſe and ſuch like grand Seriantes at the Kings Coronation are ſeruices of honour in time of peace.

¶ *Deſte vn de ſes Chamberlaines, &c. ou de faire autiels ſeruices.* **It is** alſo a Tenure by grand Seriantie to hold (a) by any office to be done in perſon concerning the receipt of the Kings treaſure, Quia theſaurus regis reſpicit regem & regnum; And cenſus regius eſt anima Reip. ſo it is Firmamentum belli, & Ornamentum pacis.

(a) *Vid. 51.H.3. ſtatu..5. 10.E.3 ca.11.14.E.3.ca.14. 26.H.8.ca.2.34.& 35. H 8.ca.16.11.E.4 fo.1. Pl. Com.207.208.*

Milites camerarij dicuntur, quia pro camerarijs miniſtrant, and concerning their office, this is the effect as Ockam (b) ſaith, Officium camerariorum in recepta conſiſtit in tribus, Scilicet claues arcarum, &c. baiulant, pecuniam numeratam ponderant, & per centenas libras in ſorulas mittunt. But diſcontinuance in effect hath worne out their office. And yet they continue their name, and keepe the keyes of the Treaſurie where the Records doe lye.

(b) *Ockam cap qui ſit Scaccarium.*

And another ſaith, Camerarius dicitur a camera, quia camera eſt locus in quem theſaurus recolligitur, vel conclaue in quo pecunia reſeruatur. So as camerarius in legall ſignification eſt cuſtos regij cenſus: and Willielmus de Bellocampo comes Warwici (held) officium camerarij in Scaccario.

Gervaſ Tilburienſis in libero ingreſſu cuſtodia camerariorum

Rot.clauſſ.6.E.1. Membr.1.

Or by any office concerning the Adminiſtration of Juſtice, quia juſticia firmatur ſolium.

Exlectura Marrowe.

It appeareth by an ancient Record (c) that Varianus de ſancto Petro tenuit de domino rege in capite medietatem ſeriantiæ pacis per ſervicium inveniendi decem ſervientes pacis ad cuſtodiendam pacem in Ceſtria.

(c) *Ex Inqueſitione poſt mortem Vriani de Sancto Petro, 4.E.2.Ceſtr.*

See Ockam of the inſtitution and ancient order of the Exchequer; Dier 4.Eliz.213. the Vſherie of the Exchequer holden by grand Seriantie.

Vid.7.Aſſ.12.7.E.3.57.

¶ *Tiels ſeruices, &c.* **Here by** (&c.) **is to be vnderſtood other like** ſeruices not expreſſed, as partly appeareth by that which hath beene ſaid, viz. to bee Steward of England, Conſtable of England, Chamberlaine of England, and other honorable ſeruices whereof more ſhall be ſaid in this chapter.

¶ *Ou vn eſpeciall ſeruice al roy.* **That is to ſay, that this great** ſeruice be ſpecially ſet downe, for it may conſiſt of diuers branches, as to goe with the King in his warre in the foreward, and to returne in the reareward. And alſo to pay Rent, &c. but yet it muſt be certaine and particular.

23.H.3.gard.148.

Section 154.

¶ **Item ſi tenant q̄ tient per eſcuage mourust ſon heire eſteant de pleine age, ſil tenoit per vn fee de chiualer, le heire ne paiera forſq; C.s. pur reliefe, come eſt ordeine per l' ſtatute de** Magna Carta, cap.2. **Mes ſi celuy que tient de roy per grand**

ALſo if a tenant which holds by Eſcuage dieth his heire being of full age, if hee holdeth by one Knights fee, the heire ſhall pay but a C.s. for reliefe, as is ordained by the ſtatute of *Magna Carta, cap.2.* But if hee which holdeth of the King by grand Serieanty

Seriantie moꝛuſt, ſon heire eſteant de plein age, le heire paiera al Roy pur reliefe le value de les terres ou tenements per an (couſter les charges & repriſes) queux il tient ỏl Roy per grand Serieantie. Et eſt aſcauoir, que Serieantia en Latin, idem eſt quod ſeruitium, & ſic Magna Serieantia, idem eſt quod magnum ſeruitium.

dieth, his heire being of full age, the heire ſhall pay to the King for reliefe one yeares value of the lands or tenements which hee holdeth of the King by Grand Serieantie ouer and beſides all charges and repriſes. And it is to be vnderſtood, that *Serieantia* in Latine, is the ſame *quod ſeruitium*, and ſo *Magna Serieantia* is the ſame *quod magnum ſeruitium*.

11.H.4.72.b

¶ *Paiera al Roy pur releife le value de ſes terres, &c.* And herewith agreeth 11.H.4.72.b.

¶ *Serieantia idem eſt quod ſeruitium.* Hereby it appeareth that the explanation of ancient words and the true ſence of them are requiſite, and to bee vnderſtood per verba notiora.

Section 155.

¶ *Tenãts per eſcuage doient faire lour ſeruice hors del Roialme.*

¶ Item ceux que teignont per eſcuage doient faire lour ſeruice hors de roialme mez ceux que teignont per graund ſerieantie, pur le grienór part doient faĩ lour ſeruices deins le Roialme.

ALſo they which hold by Eſcuage, ought to doe their Seruice out of the Realme, but they which hold by Grand Serieantie (for the moſt part) ought to do their Seruices within the Realme.

4.H.8.3.F.

For hee that holdeth by Cornage or Caſtle-gard holdeth by Knights Seruice, & is to doe his Seruice within the Realme, but hee holdeth not by Eſcuage, and therefore Littleton materially ſaid Tenant per Eſcuage, and not tenant by Knights Seruice.

¶ *Pur le greinder part.* For to beare the Kings Banner, or his Lance, or to lead his Hoſt, and to be his Marſhall, &c. may be aſwell without the Realme, and therefore Littleton ſaid (for the greateſt part.)

Sect. 156.

¶ *En le marches de Scotland. Marches* is either a Saxon word and ſignifieth, limites bourdours, or an Engliſh word, viz. Markes. Nota, for that it lyeth neere to Scotland, it is ſaid in the Marches of Scotland, and yet the Land

4.H.5.cap.7.
22.E.4.cap.8.
Camden. in Britannia.

¶ Item il eſt dit, que en le Marches de Scotland, aſcuns teignont de Roy per Cornage, ceſtaſcauoir, pur bentier vn cornu, pur garner hões de pais quant ils oyent que le Scottes ou auters enemies veignont ou voilent enter en Engleterre, quel ſeruice eſt

ALſo it is ſaid that in the Marches of Scotland ſome hold of the King by Cornage that is to ſay, to winde a horne to giue men of the Countrie warning when they heare that the Scots or other enemies are come or will enter into England, which ſeruice is grand Seriantie.

graund

graund Serieãty. Mes ſi alcun tenant tient daſcun auter Seignior que de Roy per tiel ſeruice de Cornage, ceo neſt pas grande Serieanty, mes eſt ſeruice de chiualer, & trait a luy garde & marriage, car nul poit tener per grand Serieanty ſi non de Roy tantſolemẽt.

But if any tenant hold of any other Lord then of the King by ſuch ſeruice of Cornage, this is not grand Seriantie, but it is Knight Seruice. And it draweth to it Ward and Marriage, for none may hold by grand Seriantie, but of the King only.

whereof Littleton here ſpeaketh, lieth in England.

¶ *Per Cornage. Cornagiũ* is deriued (as cornuare alſo is) à cornu, and is as much (as before hath bene noted) as the ſeruice of the Horne. It is alſo called in old bookes Horngeld.

Note a tenure by Cornage of a common perſon is Knights Seruice, of the King it is Grand Seriantie, ſo as the Royall dignitie of the perſon of the Lord maketh the difference of the tenure in this caſe. And I find that there were Cornicularij amongſt the Romans, & dicti fuerunt cornicularij quia cornu faciebant excubias militares, and Magna Seriantia is appropriated only to this tenure.

23.H.vi.gard.148. 8.E.3.66. in fine. 16.E.3.auowrie 90. F.N.B.83.

Sect. 157.

¶ Item home poit deier Anno 11. H. 4. que Cokayne adonque chiefe Baron deſchequer, vient en le common banke, portãt ouesques luy la Copie dun recorde in hæc verba; Talis tenet tantam terram de domino Rege per Serieantiam, ad inueniendum vnum hominem ad guerram vbicunque infra quatuor Maria, &c. Et il demaunda ſil fuit graund Serieãty ou petite Serieantie. Et Hanke, adonques diſoit, que il fuit graunde Serieantie, pur ceo que il ad ſeruice a faire p corps dun home, & ſil ne purra trouer nul home a faire l'ſeruice pur luy, il meſme doit faire. Quod alij

ALſo a man may ſee in *Anno* 11. *H.* 4. that *Cokayne* then Chiefe Baron of the Exchequer came into the Common Place, and brought with him the Copie of a Record in theſe words. *Talis tenet tantam terram de Domino Rege per Serieantiam ad inueniendum vnum hominem ad guerram vbicunque infra quatuor Maria, &c.* And hee demanded if this were Grand Seriantie, or petite Seriantie. And *Hanke* then ſaid, that it was Grand Seriantie, becauſe hee had a Seruice to do by the bodie of a man, and if he cannot find a man to doe the ſeruice for him, hee himſelfe ought to doe it. *Quod alij Iuſticiarij conceſſe-*

¶ *ET ſil ne purra trouer nul home a faire le ſeruice pur luy, &c.* Hereby it appeareth that Tenant by Grand Seriantie, may in ſome Caſes make a deputie, and therefore the diuerſitie is, that where the Grand Seriantie is to bee done to the royall perſon of the King, or to execute one of thoſe high and great Offices, there his Tenant cannot make a Deputie without the Kings Licence, and therefore Littleton hath ſaid before that ſuch ſeruices are to bee done in proper perſon. But he that holdeth to ſerue him in his warre within the Realme or by Cornage may make a Deputie.

11.H.4.72. 24.E.3.32. *Vide Hil.8.E.1. Middle inter Placita de Banco. Sir Iohn Meyſe Caſe.*

11.H.4.72.

(*) Iohannes de Archier qui tenet de Domino Rege in capite per Seriantiæ archerie, &c. in Comitatu Glouc. hæres in cuſtodia.

(*) *Clauſ.* 18.H.3.M.5.

¶ *Infra quatuor Maria.* That is within the Kingdome of England, and the Dominions of the ſame Kingdome.

Rot. Eſcaetor. 41.H.3.nu.23. *Stephen Haringdon caſe.*

Now it is good to bee ſeene what perſons that hold by Grand Seriantie may doe and performe that honourable ſeruice in perſon, and who ought not to be receiued thereunto

unto, but ought to make a ſufficient Deputie. At the Coronation of (a) King R. 2. Iohn Wilſhire Citizen of London exhibited his Petition to the high Steward of England in his Court, that where the ſaid Iohn held certaine lands in Hayden in the Countie of Eſſex, of the King by Grand Seriantie, viz. to hold a Towell when the King ſhould waſh his hands before dinner the day of his Coronation, &c. and prayed that he might bee accepted to doe this Office of Grand Seriantie, the iudgement followeth. Et quia apparet per record' de Scaccario Domini Regis in Curia monſtrat' quod prædicta tenementa tenentur de Domino Rege per ſeruitium prædictum. Ideo dictus Iohannes admittitur ad ſeruitium ſuum huiuſmodi faciendum per Edmondum Comitem Cantabrigiæ deputatum ſuum, & ſic idem Comes in iure ipſius Iohannis Manutergium tenuit quando Dominus Rex lauabat manus ſuas dicto die Coronationis ſuæ ante prandium.

(a) 1.R.2.Rot.claus.m.45.

By which Record it appeareth that the ſaid Iohn Wilſhire being of his qualitie, and hauing not any dignitie, could not do and performe this high and honourable ſeruice to the Royall perſon of the King, but did make an honourable Deputie who performed it in his right which is worthy of obſeruation.

Vide 1.R.2.memb.45.

At the ſame Coronation William Furneuall exhibited his Petition in the ſame Court, That where he held the Mannor of Farnham, in the Countie of Buck. with the Hamlet of Cete in the ſame Countie, by the ſeruice to find to the King at his Coronation a Gloue for his right hand, and to ſupport the Kings right hand the ſame day, whiles he held in his hand the Verge Royall, the iudgement followeth. Quæ quidem Petitione debite intellecta & facta publica proclamatione ſi quis clameo ipſius Willielmi in ea parte contradicere vellet, nemineque ei contrariante, conſideratum fuit, quod idem Willielmus aſſumpto per eum primitus ordine militari, ad ſeruitium prædictum admitteretur faciendum, & poſtmodo (videlicet) die Martis proximo ante Coronationem prædictam Dominus Rex ipſum Willielmum apud Keningron honorifice præfecit in militem, & ſic idem Willielmus ſeruitium ſuum prædictum, dicto die Coronationis iuxta conſiderationem prædictam perfecit & in omnibus adimpleuit. By which it appeareth, that a Knight is of that dignitie, that he may performe this high and honourable ſeruice in his owne perſon, and although this William Furneuall was diſcended of an honourable Family, yet before he was created Knight he could not performe it.

And Sir Iohn de Argentine Chiualier performed the ſeruice of Grand Seriantie, to bee the Kings Cup-bearer at the ſame Coronation.

(m) Vide 1.R.2.m.45.

(m) Anne, which was the wife of Sir Iohn Haſtings Earle of Pembroke who held the Mannor of Aſhley in Norfolke of the King by Grand Seriantie, viz. to performe the Office of the Napery at his Coronation, was adiudged to make a Deputie, becauſe a woman cannot doe it in perſon, and thereupon ſhe deputed Sir Thomas Blount Knight, who performed the ſame in her right. Iohn ſonne and heire of Iohn Haſtings Earle of Pembroke, exhibited in the ſame Court his Petition, ſhewing that by his tenure he was to carrie the great Spurres of Gold before the King at his Coronation, &c. The Iudgement is, Audita & intellecta billa prædicta pro eo quod dictus Iohannes eſt infra ætatem, & in cuſtodia Domini Regis quanquam ſufficienter oſtenditur per recorda, & euidentias, quod ipſe ſeruitium prædictum facere deberet. Conſideratum extitit, quod eſſet ad voluntatem Regis, quis dictum ſeruitium iſta vice in iure ipſius Iohannis faceret, & ſuper hoc Dominus Rex aſſignauit Edmundum Comitem Marchiæ ad deferendum dicto die Coronationis prædicta calcaria in iure præfati herædis, ſaluo iure alterius cuiuſcunque. Et ſic idem Comes Marchiæ Calcaria illa prædicto die Coronationis coram ipſo Domino Rege deferebat.

Vide 1.R.2.m.45.

By which it appeareth, that the heire before he hath accompliſhed his age of one and twentie yeares, cannot performe this great and honourable ſeruice, but during his minoritie the King ſhall appoint one to performe the ſeruice.

Section 158.

46.E.3.15.a. per Finchden.

THere Littleton ſaith that hee that holds by Grand Seriantie, doth hold by Knights

CET nota que touts q̄ teignont de Roy p grand

AND note that all which hold of the King by Grand

Ser-

Serieanty, teignont de Roy per ſeruice de chiualrie, & le Roy p̄ ceo auera garde, mariage, & reliefe, mes le Roy nauera de eux Eſcuage, ſils ne teignont de luy per Eſcuage.

Seriantie, hold of the King by Knights Seruice, and the King for this ſhall haue Ward, Mariage and Reliefe, but hee ſhall not haue of them Eſcuage, vnleſſe they hold of him by Eſcuage.

Seruice which is ſo ſaid of the effects. And therefore Littleton doth adde that the King ſhall haue ward, Mariage, and Reliefe, which are the effects of Knights Seruice, &c.

Sometimes in ancient records, Seruitium Militare, is called Seruitium Hauberticum, or Seruitium Brigandinum, or Seruitium Loricatum. And a Haubert or Brigandine ſignifieth a Coat of Maile.

Chap.9. Petit Serjeantie. *Sect.159*

THEnure p petit ſerieantie, eſt lou home tient ſa terre ō noſtre Seignior le Roy ō render al Roy annuelment vn arke, ou vn eſpee, ou vn dagger, ou vn cuttel, ou vn launce, ou vn paier de Gants de ferre, ou vn paire de Spoures doze, ou vn ſete, ou diuers ſetes, ou de render auſs tiels petit choſes touchants le guerre.

THEnure by petie Serianty is where a man holds his Land of our Soueraigne Lord the King, to yeeld to him yeerely a Bow, or a Sword, or a dagger, or a Knife, or a Lance, or a paire Gloues of Male, or a paire of gilt Spurres, or an Arrow, or diuers Arrowes, or to yeeld ſuch other ſmall things belonging to Warre.

DE noſtre ſeignior le roy. And ſo Littleton concludeth this chapter that a man cannot hold by grand Serieanty or petite Seriantie, but of the King, and of the King as of his perſon, and not of any honour or Mannor. And it is to bee obſerued that regularly a Tenure of the King as of his perſon is a Tenure in Capite ſo called κατ' ἐξοχην propter excellentiam, becauſe the head is the principall part of the body, and hee that holdeth of any common perſon as of his perſon he in truth holdeth in Capite, but againe κατ' ἐξοχην it is only in common vnderſtanding applied to the King, and that Seigniory of a common perſon is called a Tenure in groſſe, that is by it ſelfe, and not linked, or tyed to any Mannor, &c.

Britton, fol 164. Bracton. lib.2.fol.35. Fleta lib.2. cap.9. Ockam cap. quidde avibus oblatis.

And this Tenure of the King in Capite, is ſaid (a) to be a Tenure of the King as of his Crowne, that is as he is King. (b) And therefore if one holdeth land of a common perſon in groſſe as of his perſon, & not of any Mannor, &c. and this Seigniory eſcheateth to the King (yea though it be by attainder of treaſon) he holdeth of the perſon of the King, and not in Capite, becauſe the originall tenure was not created by the King. And therefore it is directly ſaid that a Tenure of the King in Capite is when the land is not holden of the King as of any Honor, Caſtle or Mannor, &c But when the land is holden of the King as of his Crowne.

(a) *Bracton, lib.2.fo.87.*
(b) *3.E.3.tenures.B.94. 30 H.8.43. 28.H.8.Liuery.B.57. 29.H.8.ibid.58. 6.H.8.Dier.58. Vid.Leſtatut de 1.E.6.ca.4. F.N.B.5.K.*

Note that an Honor is the moſt noble Seigniorie of all others, and originally Created by the King, but may afterward be granted to others. See for the creation of an Honor. 31.H.8. ca. 32.H.8.cap.37.38 37,H 8.cap.18.

And it is to be obſerued that a man may hold of the King in capite, or of his Crowne aſwell in Socage as by Knights ſeruice.

¶ *De render al Roy annuelment vn arke, ou vn eſpee, &c.* As grand Serieantie muſt be done by the body of a man, So petite Serieanty hath nothing to doe with the body of a man, but to render ſome things touching Warre, as a bowe, a ſword, a dagger, a knife, a launce, a paire of gantlets of iron, or ſhafts and ſuch like.

Magna Carta, cap.27.

It is to be obſerued that grand Serieantie or Knights ſeruice is not in law called Liberum ſervitium, as Socage, is but per feodum vnius militis, &c. but to finde the King ſo many Ships for

Regiſtr.fo.2. F.N.B.fo.1.

for his paſſage is called liberum ſeruitium, and therefore it is ſaid, Per liberum ſeruitium ad inuentendum nobis quinque naues ad tranſitum noſtrum ad mandatum noſtrum. And therefore clerely ſuch a Tenure is neither Grand Serieantie, nor Knights Seruice, becauſe nothing is to be done by the bodie of any man, nor in that caſe, touching warre, but Ships to be found. And this is the reaſon that Littleton yeeldeth of the examples he doth here put, becauſe that ſuch a Tenant by his Tenure ought not to goe, nor to doe any thing in his perſon touching warre. And herewith agreeth Bracton, Ex paruis Serjeantijs quæ non reſpiciunt Regem, nec Patriæ defenſionem nullum competere debet maritagium nec cuſtodiam, &c.

Bract.li.2.fo.35.

9.H.3.Gard.145.

If a man holdeth land of the King, to find an horſe of ſuch a price, and a Saddle and a bridle by fortie dayes, or any other time when the King goeth with his Armie againſt Wales, this is Petite Serieantie, and no Grand Serieantie for the cauſe aforeſaid.

Section 160.

¶ *Tiel ſeruice neſt forſque Socage, &c.* But as it hath beene ſayd, the dignitie of the perſon of the King, giueth the name of Petit Serjeantie, which in caſe of a common perſon ſhould be called plain ſocage ab affectu: for it ſhal haue ſuch effects or incidents as belong to Socage, and neither Ward nor marriage, &c. for they belong to Knights Seruice.

9.H.3.Gard.145.

Of this Tenure the great Charter in the perſon of the King ſaith thus, Nos non habebimus cuſtodiam hæredis, &c. occaſione alicuius paruæ Serjeantiæ quam tenet de nobis per ſeruitium reddendo nobis cultellos, ſagittas, &c.

Mag.Chart ca.28. Vid.Stat.de Wards & Relief. 28.E.1.

¶ Et tiel ſeruice nē forſq; Socage en effect, pur ceo que tiel Tenant per ſon Tenure ne doit aler ne fayre aſcun choſe en ſon proper perſon, touchant le guerre mes de render & paier annualment certaine choſes al Roy, ſicōe home dopt payer vn Rent.

And ſuch Seruice is but Socage in effect, becauſe that ſuch Tenant by his Tenure ought not to goe nor doe any thing in his proper perſon touching the war, but to render & pay yearly certaine things to the King, as a man ought to pay a Rent.

Section 161.

¶ Of this ſufficient hath beene ſayd before, ſauing that parua Serjeantia is only appropriate to this Tenure.

Vid.Sect.1.

¶ Et nota que hōe ne poyt tener per graund Serjeantie, ne per petit Serjeanty, ſinon de Roy, &c.

And note that a man cannot hold by grād Serjeantie, nor by petite Serjeantie, but of the King, &c.

Bracton lib.3.Tract.2. Britton fol.164. Mirror.cap.2.§.18. Lib.10 fol.123.124. The Mayor of Lynns Caſe. 40.Aſſ.p.27. 43.E.3.32. 21.E.4.53. & 54. 21.H.7.15. 2.E.3.cap.3.

Burgage, in Latyne Burgagium, is deriued of this word Burgus, which is Vicus, Pagus, or Villa, a Towne, and it is called a Burgh, becauſe it ſendeth Burgeſſes to Parliament.

¶ Tenur en Burgag eſt, lou auntient Burgh eſt, de que le Roy eſt Seignior, & ceux

¶ Tenure in Burgage is where an antiēt Burrough is, of the which the king is lord,

(b) *Bracton lib.3.fol.124. Fleta lib.1.cap.47.*

Of Burghs ſome be incorporate, and ſome not, and ſome be walled, and ſome not. (b) It

ceux que ont Tenements deins le Burgh teignont del Roy lour Tenemẽts que chescun Tenant pur son Tenement doit payer al Roy vn certain Rent per an, &c. Et tiel Tenure nest forsque Tenure en Socage.

and they that haue tenements within the Burrough, hold of the King their tenements, that euerie Tenant for his Tenement ought to pay to the King a certaine rent by yeare, &c. and such Tenure is but Tenure in Socage.

was in former times taken for those Companies of ten Families, which were one anothers pledge, and therfore a Pledg in the Saxon tongue a Borhoe, whereof (some take it) that a Burgh came, whereof also commeth headborough, or Borowhead, Capitalis Plegius, a Chiefe Pledge, viz. the chiefe man of the Borhoe, whom Bracton calleth Frithburgus, and hereof also commeth Burghbote, which as Fleta saith, signifieth Quietanciam reparationis murorum ciuitatis aut Burgi.

Euerie Citie is a Burgh, but euerie Burgh is not a Citie, whereof more shall be said hereafter. And the termination of this word Burgagium, (as before hath beene noted) signifieth the seruice whereby the Burgh is holden. And of this word (Burgh) two antient and noble Families take their names, viz. de Burgo, and de Burgo caro, Burchier.

¶ *De que le Roy est Seignior.* But it may be holden of another as by that which immediatly followeth appeareth. F.N.B.64.d.

Sect. 163.

ET meisme le manner est, lou vn auter Seigniour Esperitual ou Temporall, est Seignior de tiel Burgh, & les Tenants de Tenements en tiel Burgh teignont de lour seignior a payer, chescun d eux vn annual Rẽt.

AND the same manner is, where another Lord Spiritual or Temporall is Lord of such a Burrough, and the Tenants of the Tenements in such a Burrough hold of their Lord, to pay each of them yearely an annuall Rent.

¶ This is euident, and needeth no explanation, onely this by the way is to be obserued, That Bishops being Lords of Parliament, haue not beene called Lords Spirituall so lately, as some haue imagined. 16.R.2.ca.5. 1.H.4.ca.2.&c.

Section 164.

ET est appel tenure en Burgage, pur ceo que les Tenements deins le Burgh sont tenus del Seigniour del Burgh per certaine rent, &c. Et est a scauoire que les antient villes appel Burghs

AND it is called Tenure in Burgage, for that the Tenemẽts within the Burrough be holden of the Lord of the Burrough by certaine rent, &c. And it is to wit, that the antient Townes called Burroughs, bee the

¶ *Per certaine Rent, &c.* By (&c.) here is implied fealtie, or other seruice, as to repaire the house of the Lord, &c.

¶ *Les antient Villes appel Burghes.*

So as a Burgh is an antient Towne holden of the King or any other lord, which sendeth Burgesses to the Parliament.

And it is to be obserued, that Burgh and Burie haue all one signification, as Canterbutie, Burie Saint Edmond, Sudburie, Salisburie, Banbury, Heytesbury, Malmesburie, Shaftesbury,

Shaftesbury, Teukesbury, and others send Burgesses to the Parliament, Vide pro Villis, Parochijs & Hamlettis postea, Sect. 171.

¶ *Cities.* Ciuitas, whereof commeth the word Citie. A Citie is a Borough incorporate, which hath, or haue had a Bishop: and though the Bishopricke be dissolued, yet the Citie remayneth.

Lamb. fo. 125. In the time of William the Conquerour it is declared in these words, Item nullum mercatum, vel forum sit, nec fieri permittatur nisi in ciuitatibus regni nostri, & in Burgis clausis & muro vallatis & castellis, & locis tutissimis, vbi

sont les pluis anciēt villes que sont deins Engleterre, car ceux villes q̄ ore sont cities, ou counties, en auncient temps fueront burghes, & appelles burges, car de tielx auncient villes, appelles Burghes, veignont les Burgesses al Parliament, quant le Roy adsummon son parliament.

most anciēt townes that be within England, for the Townes that now bee Cities or Counties, in old time were Boroughes, and called Boroughs, for of such old Townes called Boroughes, come the Burgesses of the Parliament, to the Parliament, when the King hath summoned his Parliament.

consuetudines regni nostri, & jus nostrum commune, & dignitates coronæ nostræ quæ constitutæ sunt à bonis prædecessoribus nostris deperire non possunt, nec defraudari, nec violari, sed omnia rite, & per judicium & justitiam fieri debent: & ideo castella & burgi & civitates sunt & fundatæ & edificatæ scilicet ad tuitionem gentium, & populorum regni, & ad defensionem regni, & idcirco observari debent cum omni libertate & integritate, & ratione. So as by this it appeareth that Cities were instituted for three purposes: First, Ad consuetudines regni nostri, & jus nostrum commune & dignitates coronæ nostræ conseruand'. 2. Ad tuitionem gentium & populorum regni. And thirdly, Ad defensionem regni. For conseruation of Lawes, whereby euery man enioyeth his owne in peace: for tuition and defence of the Kings subiects, and for keeping the Kings peace in time of sudden vprores; And lastly for defence of the Realme against outward or inward hostility.

Civitas & vrbs in hoc differunt, quod incolæ dicuntur civitas, vrbs verò complectitur ædificia, but with vs the one is commonly taken for the other. Villeins sont coultivers de fiefe demurrants in villages vpland, car de ville est dit villen, & de Boroughes Burgesses, & de cities, citizens.

Mirror, cap. 2 §. 18. *Britton, fo.* 87.

Euery Borough incorporate that had a Bishop within time of memory is a Citie, albeit the Bishoprieke be dissolued, as Westminster had of late a Bishop, and therefore it yet remaines a Citie. The Burghe of Cambridge, an ancient Citie, as it appeareth by a iudiciall Record (which is to be preferred before all others) where Mos civitatis Cantabrigiæ is found by the oath of 12. men the recognitors of that assise, which (omitting many others) I thought good to mention, in remembrance of my loue and dutie Almæ Matri Academiæ Cantabrigiæ.

Mich. 7. *R.* 1. *Rot.* 1. (*which was in anno Dom.* 1195.) *in an Ass. of darreine presentment for the Church of St. Peters in Cambridge.*

There be within England two Archbishoprickes, and 23. other Bishoprickes therefore so many Cities there be, and Cambridge and Westminster being added, there are in all 27. Cities within this Realme, and may be more, then at this time I can call to memory.

It is not necessary that a City be a County of it selfe, as Cambridge, Elye, Westminster, &c are Cities, but are no Counties of themselues, but are part of the Counties where they be.

¶ *Counties*, or Shires, **the one taken from the French, the other** from the Saxon, in Latyn Comitatus. Counties are certaine circuits or parts of the kingdome, into the which the whole Realme was diuided for the better gouernment thereof, so as there is no land, but it is within some County. And euery of them is gouerned by a yearly officer which we call a Shireue. Which name is compounded of these two Saxon words Shire and reue, (i.) præpositus or præfectus comitatus; but hereof more hereafter in his proper place shall be spoken. There be in England 41. Counties, and in Wales twelue.

Lib. 10. *fo.* 123. 124. *Vide Devant, Sect.* 97.

¶ *Veignont les Burgesses al Parliament, &c.* Parliament **is the highest,** and most honourable and absolute Court of Iustice of England consisting of the King, the Lords of Parliament, and the Commons. And againe, the Lords are here deuided into two sorts, viz. Spirituall and Temporall; And Cōmons are deuided into three parts, viz. into Knights of Shires or Counties, citizens out of Cities, and Burgesses out of Boroughs. The words of the Writ to the Shiriffe for the election being, Duos milites gladijs cinctos magis idoneos, & discretos comitatus tui, & de qualibet civitate comitatus tui duos ciues, & de

quolibet

quolibet Burgo duos Burgenſes de diſcretioribus, & magis ſufficientibus,&c. All which haue voyces, and ſuffrages in Parliament; You ſhall reade in the Parliament Rolls that (as hath beene ſaid) there is Lex & conſuetudo parliamenti, quæ quidem lex quærenda eſt ab omnibus, ignorata à multis, & cognita à paucis. Of the members of this Court ſome be by diſcent, as ancient Noble men, ſome by Creation, as Nobles newly created, ſome by ſucceſſion, as Biſhops, ſome by Election, as Knights, Citizens, and Burgeſſes. *Vid Sect.3.*

It is called Parliament becauſe euery member of that Court ſhould ſyncerely and diſcreatly Parler la ment for the general good of the Cõmon wealth. Which name it hath alſo in Scotland, and this name before the Conqueſt was vſed in (a) the time of Edward the Confeſſor, William the Conquerour, &c. It was anciently before the Conqueſt called Michel Sinoth michel gemote, alſa Witenage mote, that is to ſay, the great Court or meeting of the King and of all the Wiſemen, ſometime of the King with the counſell of his Biſhops, Nobles, and Wiſeſt of his people. This Court the Frenchman calleth Les Eſtates, or Laſſemble des Eſtates.) In Germany it is called a Diet: for thoſe other Courts in France that are called Parliaments, they are but ordinary Courts of Juſtice, and (as Paulus Iouius affirmeth) were firſt eſtabliſhed by vs. *4.H.8.cap.8.* (a) *Treatiſe de modo tenend. Parliam. 21.E.3.fo.60.a. Iohannes de Rupicella tempore regis Iohannis. Pol.Virgil.lib.3. tempore H.1. W.1. 3.E.1. in the title.*

The King of England is armed with diuers councells, one whereof is called Commune concilium, and that is the Court of Parliament, and ſo it is legally called in Writes and iudiciall proceedings Commune concilium regni Angliæ. And another is called (b) Magnum concilium: this is ſometime applied to the vpper houſe of Parliament, and ſometime out of Parliament time to the Peeres of the Realme, Lords of Parliament, who are called Magnum concilium regis, for the proofe whereof take one (c) Record, for many in the fift yeare of King H.4. at what time there was an exchange made betweene the King, and the Earle of Northumberland, whereby the King promiſeth to deliuer to the Earle lands to the value, &c. Per advice & aſſent des eſtates de ſon realme & de ſon Parliament (parenſi que Parliament ſoit devant le feaſt de St.Lucy) ou auterment per advice de ſon graund councell, & auters eſtates de ſon Realme, que le Roy ferra aſſembler devant le dit feaſt, in caſe que le Parliament ne ſoit. And herewith agreeth the Act of Parliament in 37 E.3.cap.18. where it is ſaid, before the Chancellour, Treaſurer, and great Councell. Thirdly, (as euery man knoweth) the King hath a priuie Councell for matters of ſtate, (as for example) (d) Henricus de bello monte Baro de magno & de priuato conſilio regis juratus; and many others before and after. The fourth Councell of the King are his Iudges of the Law for Law matters, and this appeareth frequently in our (e) bookes, and muſt be intended, when it is ſpoken generally by the Councell it is to bee vnderſtood Secundum ſubiectam materiam; for example if it be legall, then by the Kings Councell of the Law, viz. his Iudges. (b) *Bracton, lib.1.ca.2. Regiſt.280.* (c) *27.Aug.5.H.4.* (d) *In Doſſ. Clauſ. 16.E.2.M.5.* (e) *43.Aſſ.15 27.H.6.5. 1.R.3.11.Regiſt.191.122. 123. 4.E.3.2.39.E.3.35. 3.Aſſ.15.19.E.3. iudgement 174. W.1.ca.1. Laſtat.de templar. 16.R.2.ſtat. de Præmunire. See the ſame publiſhed by Mr.Lambert.*

Now for the Antiquitie of this high Court of Parliament, whereof Littleton here ſpeaketh; It appeareth that diuers Parliaments haue beene holden long before and vntill the time of the Conqueror, which be in print, and many more appearing in ancient Records and Manuſcripts. (f) Le Roy Alfred aſſembler' ſes Comities,&c & ordeina pur vſage perpetual que deux foitz per an ou pluis ſovent pur miſter in temps de peace ſe aſſemblerent a Londres a Parlementer ſur le guidament del people de Dieu, & coment ſoy garderent de pecher, viueront en quiet, & receiueront droit per vſages & ſanits judgements per ceſte eſtate ſe fierent pluſors ordinances per pluſors Roys jeſque a temps le Roy que ore eſt, que fuit le Roy E.1. The concluſion of that great Parliament holden by King Ethelſtan at Grately is very remarkeable, which I haue ſeene in theſe words: All this was enacted in that great Synod or Councell at Grately, whereat was the Archbiſhop *Wolfhelme* with all the Noblemen and wiſe men which King *Ethelſtan* called together. (f) *Mirror.ca.1.§.2.* *Vid.Statutes de 4.E.3. ca.14.& 36.E 3.ca.10.*

There haue beene in the time of, and ſince, the Conqueſt in the raignes of H.1. King Stephen, H.2. R.1 King Iohn, H.3. &c.280. Seſſions of Parliament, and at euery Seſſion diuers Acts of Parliament made, no ſmall number whereof are not in print. *Mirr.ca.2.§.4.7 10.14. cap.4.de deſaults, & cap.de Homicide.cap.1 §.13.ca.4.de Poyns. Ockam quid cum Veh. Math.Pariſ.212.213.*

The Iuriſdiction of this Court is ſo tranſcendent, that it maketh, inlargeth, diminiſheth, abrogateth, repealeth and reuiueth Lawes, Statutes, Acts and Ordinances concerning matters Eccleſiaſticall, Capitall, Criminall, Common, Ciuill, Martiall, Maritime and the reſt. None can begin, continue or diſſolue the Parliament but by the Kings authority. Of which Court it is ſaid (a) Que il eſt de treſgrand honor & Iuſtice, de que nul doit imaginer choſe diſhonorable. (b) Habet rex curiam ſuam in concilio ſuo in Parliamentis ſuis, preſentibus prælatis, comitibus, baronibus, proceribus, & alijs viris peritis vbi terminatæ ſunt dubitationes judiciorum, & novis injurijs emerſis nova conſtituuntur remedia, & vnicuique iuſtitia prout meruerit retribuetur ibidem. But this properly doth belong to the Juriſdiction of Courts, and therefore this little taſte hereof ſhall ſuffice. (a) *Pl.Com.398.b. Dodter & Stud ca.55.fo.164.* (b) *Fleta lib.2.ca.2. Forteſcue de laudibus legum Angliæ. Bracton, lib.1.ca.2.*

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¶ *Vſtomes & vſages.* Conſuetudo, is one of the maine triangles of the Lawes of England, thoſe Lawes being deuided into Common Law, Statute Law and Cuſtome. Of which it is ſaid, * that Conſuetudo quandoque pro lege ſeruatur, in partibus vbi fuerit more vrentium approbata, & vicem legis obtinet, longeui enim temporis vſus & conſuetudinis non eſt vilis authoritas (c) Longa poſſeſſio (ſicut jus) parit jus poſſidendi, & tollit actionem vero domino.

(*) *Bract. lib.* 1. *ca.* 3. *fol.* 2.

(c) *Idem lib.* 2. *fol.* 52.

Of euery cuſtome there be two eſſentiall parts, Time and Vſage, Time out of minde, (as ſhall be ſaid hereafter) and continuall and peaceable Vſage without lawfull interruption.

¶ Item, p̄ greinder part tielx burghes ont diuers cuſtomes & vſages que nont pas auters villes. Car aſcuns burghes ont tiel cuſtome, q̄ ſi home ad iſſue pluſors fits & mozuſt, le puiſne fits enheriteꝝ touts les tenements que fueꝝ a ſon pere deins m̄ le burgh come heire a ſon pere per force de cuſtome. Et tiel cuſtome eſt appel Burgh Engliſh.

Alſo for the greater part ſuch Boroughes haue diuers cuſtomes and vſages, which bee not had in other towns, for ſome Boroughes haue ſuch a cuſtome, that if a man haue iſſue many ſonnes and dyeth, the youngeſt ſon ſhall inherit all the tenements which were his fathers within the ſame Borough as heire vnto his father, by force of the cuſtome, the which is called Borough Engliſh.

¶ *Que nont pas auters villes.* It is necessary to bee knowne what cuſtomes may bee alledged in an vpland towne which is neither Citie nor Borough, * In an vpland towne, that is neither in Citie nor Borough, ſuch a Cuſtome to deuiſe lands cannot be alledged. Neither in an vpland towne can there be a cuſtome of Borough Engliſh or Gauelkinde, but theſe are cuſtomes which may be in Cities or Boroughes. (d) Alſo if lands be within a Mannor, Fee, or Seigniory, the ſame by the cuſtome of the Mannor, Fee, or Seigniory may be deuiſable, or of the nature of Gauelkinde or Borough Engliſh. * But an vpland Towne may alledge a cuſtome to haue a way to their Church, or to make By-lawes for the reparations of the Church, the well ordering of the Commons and ſuch like things. And it is to bee obſerued, that in ſpeciall caſes a cuſtome may be (e) alledged within a Hamlet, a Towne, a Burgh, a Citie, a Mannor, an Honour, an Hundred, and a Countie: but a cuſtome cannot be alledged generally within the kingdome of England, for that is the Common Law.

(*) 44. *E.* 3. 33. 40. *Aſſ.* 4. 27. 41. 21. *E.* 4. 54 43. *E.* 3. 32.

(d) 21. *E.* 4. 53. 54.

(*) 21. *E.* 4. 54. 15. *E.* 4. 29. 11. *H.* 7. 14. 44. *E.* 3. 18. 21. *H.* 7. 40.

(e) *Bract. lib.* 4. 271. 34. *E.* 1. *detinue* 60. 17. *E.* 2. *detinue* 58. 3. *E.* 3. *dett.* 156. 30. *E.* 3. 25 39. *F.* 3. 6. 9. 10. 31. *E.* 3. *reuder* 6. 17. *E.* 3. 27 21. *E.* 4. 28. 22. *E.* 4 8. 7. *E.* 3. 51. 30. *E.* 3. 23. 34. *H.* 8. *Dier.* 54 *F.N.B.* 122. 5. *E.* 3. *treſp.* 13.

¶ *Le puiſne fits enheritera.* And yet by ſome cuſtomes the youngeſt brother ſhall inherit, for Conſuetudo loci eſt obſeruanda.

¶ *Touts les terres ou tenements:* Either in fee ſimple, fee taile, or any other inheritance. If lands of the nature of Borough Engliſh be letten to a man and his heires during the life of I. S. and the Leſſee dieth, the youngeſt ſonne ſhall enioy it.

Vide Glanuil. lib. 7. *cap.* 3. 9.

¶ *Borough Engliſh;* (as ſome hold) in England. So called becauſe this cuſtome was firſt,

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¶ And this is called Frank banke, Francus bancus. Conſuetudo eſt in partibus illis, quod vxores maritorum defunctorum habeant francum bancum ſuum de terris Sockmannorum tenent' nomine dotis.

Bract. lib. 4. *tract.* 6 *ca.* 13. *F.N.B.* 150. *e. Pl. Com.* 413.

¶ Item, en aſcun burghes per le cuſtome feme auera pur ſa dower touts les tenements q̄ fueront a ſa baron, &c.

Alſo in ſome Boroughes by cuſtome, the wife ſhall haue for her dower all the tenements which were her husbands.

¶ *Que*

¶ *Que fueront a ſa baron, &c.* **Here is implied by (&c.) that in** some places the wife ſhall haue the moity of the lands of her husband ſo long as ſhe liues vnmaried, as in Gauelkinde. And of lands in Gauelkinde a man ſhall be Tenant by the Curteſie without hauing of any iſſue. In ſome places the widow ſhall haue the whole; or halfe Dum ſola & caſta vixerit, and the like. (l) *F.N.B.150.* 10.*E.3.aide.129.*

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¶ Item, en aſcuns burghes per le cuſtome hõe poit deuiſer per ſon teſtament ſes terres & tenements que il ad en fee ſimple deins meſme le burgh al temps de ſa mozant, & per force de tiel deuiſe, celuy a que tiel deuiſe eſt fait, apres le mozt le deuiſor poit enter ẽ les tenements iſſint a luy deuiſes, a auer & tener a luy ſolonque la forme & effect del deuiſe, ſans aſcun liuerie ou ſeiſin deſtre fait a luy, &c.

ALſo in ſome Boroughs by the cuſtome, a man may deuiſe by his Teſtament his Lands and Tenements which hee hath in Fee ſimple within the ſame Borough at the time of his death, and by force of ſuch deuiſe, hee to whom ſuch deuiſe is made after the death of the deuiſor, may enter into the Tenements ſo to him deuiſed, to haue & to hold to him after the forme & effect of the deuiſe, without any liuerie of ſeiſin thereof to bee made to him, &c.

¶ *Deuiſer.* **This is a French word and ſignifieth** ſermocinari to ſpeake, for teſtamentum eſt teſtatio mentis, & index animi ſermo. **So as** a deuiſer per ſon teſtament, **is** to ſpeake by his Teſtament what his minde is to haue done after his deceaſe

¶ *Per ſon teſtament.* Teſtamentum eſt (ir) duplex 1. in ſcriptis. 2. nuncupatiuum ſeu ſine ſcriptis. **And in** ſome Cities and Boroughs **Lands may** (n) paſſe as chatteis by Will nuncupatiue or paroll without writing. Reuera (o) terminatum eſt quod poteſt legari vt catallum tã hæreditas quam perquiſitum per Barones London, & Burgenſes Oxon. ideo verum eſt quod in Burgis non iacet aſſiſa mortis anteceſſoris. **But in Law** moſt commonly, Vltima voluntas in ſcriptis, **is** vſed where Lands or Tenements are deuiſed, and teſtamentum when it concerneth chatteis. (m) *Vide Sect.586.* (n) *Britton fol.164.212.b.* (o) *Bract.lib.4 fol.272. Fleta lib.5.cap.5. & lib.2. cap.50.*

¶ *Ses terres ou tenements.* **And by the ſame cuſtome he may deuiſe** a Rent out of the ſame Lands and Tenements. *4.E.2.53.7.H.6.1. 14 H 8.5. 22.Aſſ.78. Abbr.Aſſ.118.b. 4.E.2.mordanc.39. 49.E.3. 17.F.N.B.156. 21.H.6.38.a. 7.E.2.ti.mordanc.*

¶ *Que il ad en fee ſimple.* **For Lands in taile are not deuiſable by** Will, and therefore he in this place neceſſarily added (que il ad en fee ſimple) and purpoſely omitted the ſame in the clauſe concerning Borough Engliſh, becauſe there an eſtate taile is included.

¶ *Poet enter.* Note **the cuſtome of a Citie or Borough concerning** the deuiſe of lands is, Quod liceat vnicuique ciui ſiue burgenſi, &c. eiuſdem ciuitatis ſiue burgi tenementa ſua in eadem ciuitate ſiue burgo in teſtamento ſuo in vltima voluntate ſua, tanquam catalla ſua legare cuicunque voluerit, &c. (p) **Now if a man deuiſeth either by ſpeciall** name or generally, goods or chatteis reall or perſonall, and dieth, the deuiſee cannot take them without the aſſent of the Executors. **But when a man is ſeiſed of lands in fee, and deuiſeth** the ſame in fee, in taile, for life, or for yeares, the deuiſee ſhall enter, for in that caſe the Executors haue no medling therewith. **And in the caſe of a deuiſe by Will of lands, whereof the De**uiſor is ſeiſed in fee, the freehold or intereſt in Law is in (q) the Deuiſee before hee doth enter, and in that caſe nothing (r) (hauing regard to the eſtate or intereſt deuiſed) diſcendeth to the heire. **But if the heire of Deuiſor entreth and holdeth the Deuiſee out, hee may either enter as** Littleton here ſaith, or haue his Writ called ex graui quærela, **and this Writ** (without any particular vſage) **is** incident to the cuſtome to deuiſe, for otherwiſe, if a diſcent were caſt before the deuiſee did enter, the deuiſee ſhould haue no remedie. **After an actuall poſſeſſion this Writ** lyeth not, for then the deuiſee may haue his ordinary remedie by the Common Law. (p) *2.H.6.16. 27.H.6.8. 2.E.4.13. 21.E.4.21. 4.H.7.16.* (q) *4.Mar.Br.tit.deuiſe 49.* (r) *Reg.ſt.fol.244 39.Aſſ.pl.6.3.E.3.deuiſe 12 29.Aſſ.31. 34.E.3.tit.formedon. Pl poſt cem. 30.H.8.deuiſe 28. F.N.B.198 199.&c. Britton.fol.212.b.*

And well ſaid Littleton that Lands and Tenements were deuiſable in Burghes by cuſtome, for that (f) at the Common Law no Lands or Tenements were deuiſable by any laſt Will and Teſtament, nor ought to be transferred from one to another, but by ſolemne liuerie of ſeiſin, matter of record, or ſufficient writting, but as Littleton here ſaith, that by certaine priuate cuſtomes in ſome Burghes they are deuiſable. But now ſince Littleton wrote by the Statutes of 32. and 34. H.8. Lands and Tenements are generally deuiſable by the laſt Will in writing of the tenant in fee ſimple, whereby the ancient (r) Common Law is altered, whereupon many difficult queſtions, and moſt commonly diſherſon of heires (when the Deuiſors are pinched by the meſſengers of death) doe ariſe and happen. But (u) theſe Statutes take not away the cuſtome to deuiſe, whereof Littleton ſpeaketh: for though Lands deuiſable by cuſtome be holden by Knights Seruice, yet may the Owner deuiſe the whole Land by force of the cuſtome, and that ſhall ſtand good againſt the heire for the whole. But the deuiſe of lands holden by Knights Seruice by force of the Statutes is vtterly void for a third, and the ſame ſhall diſcend to the heire. If he hath any Lands holden by Knights Seruice in Capite, and Lands in Socage, he can deuiſe but two parts of the whole, but if he hold Lands by Knights Seruice of the King, and not in Capite, or of a meane Lord, and hath alſo Lands in Socage, he may deuiſe two parts of his Land holden by Knights Seruice, and all his Socage lands. If he holds any Land of the King in Capite, and by Act executed in his life time he conueyeth any part of his Lands to the vſe of his wife, or of his children, or payment of his debts, though it bee with power of reuocation, hee can deuiſe by his Will (x) no more, but to make vp the Land ſo conueyed two parts of the whole. And if the Lands ſo conueyed amount to two parts or more, then hee can deuiſe nothing by his Will. But if hee hath land only that is holden in Socage, then he may deuiſe by his Will all his Socage lands; ſo as it is apparant that the benefit of the Lords was more carefully prouided for, then the good of the heire. But if a man holding ſome Land of the King by Knights Seruice in Capite, conuey two parts of his Land to the vſe of his wife for life, now (as hath beene ſaid) hee can deuiſe no part of the reſidue, but yet he may by his Will deuiſe the reuerſion of the two parts ſo conueyed to his wife for the intention of the Act is to giue power to diſpoſe two parts intirely.

If the Deuiſor leaue a full third part of the Land immediatly to diſcend in Fee ſimple or in taile, he may deuiſe the other two parts in Fee ſimple if a third part be not left, it ſhall be made vp according to the Act. But hereditaments that are not of any yearely value, as bona & catalla felonum & fugitiuorum, waiues, eſtrayes, and the like can neither be left to diſcend for any part of the third part, or deuiſed as part of the two parts. But yet if ſuch Franchiſes of vncertaine value be holden of the King in Capite, they ſhall reſtraine the deuiſe of all his lands and make it void for a third part. So it is if a man hath a reuerſion expectant vpon an eſtate taile dry & fruitles holden of the King by Knights Seruice in Capite, yet that ſhall reſtraine him to deuiſe but two parts of his lands only. And where the Statute ſpeakes of a remainder, it is to be intended only of ſuch a remainder, as may draw Ward & Mariage by the Common Law. As if a reuerſion vpon a ſtate for life be granted to one for life, the remainder in fee, during the life of the grantee for life it is not within the Statute, but if he dieth this is ſuch a remainder, as is within the Statute, although it be dry and fruitleſſe. If a gift in taile or a leaſe for life be made, the remainder in fee, this remainder in fee is not within the Statute. But if a man hath Lands holden by Knights Seruice in Capite in poſſeſſion, reuerſion, or remainder, and alſo ſeiſed of Socage Land, and deuiſe by his Will all his lands, and after he ſelleth away the Capite Land, or that land is recouered from him, the Will is good for the whole Socage land. The values both of the third part, and the two parts of the lands ſhall be taken as they happen to be at the time of the death of the Deuiſor, for then his Will takes effect.

He that holds by Knights Seruice in chiefe deuiſeth by his Will a Rent, common or other profit as ſhall amount to the value of two parts out of all his Lands, this Rent iſſueth only out of the two parts, & the third part is free of it. And if he hath lands holden by Knights Seruice, & not in Capite, he may charge two parts of the Knight Seruice Land as is aforeſaid, and all his Socage Land, &c. And if he hath only Socage Land, hee may by his Will charge it at his pleaſure, ſo as the Kings and Lords third part is free, and the heires two parts charged, and this is only only by force of the Statute of 34 H.8.

If a man make a feoffment in fee of his Lands holden by Knights Seruice to the vſe of ſuch perſon and perſons, and of ſuch eſtate and eſtates, &c. as he ſhall appoint by his Will, in this Caſe by operation of Law, the vſe and ſtate veſts in the Feffor, and he is ſeiſed of a qualified fee. In this caſe, if the Feoffor limit Eſtates by his Will, by force, and according to his power, there the vſes and eſtates growing out of the feoffment are good for the whole, and the laſt Will is but directorie. But in that caſe if the Feoffor had deuiſed the land (as Owner thereof) without any reference to the feoffment and power thereby giuen then taking effect by the Will, it is void for a third part. But if he had formerly conueyed two parts to the vſe of his wife, &c. and after deuiſed the reſidue by his Will without any reference to his power by the feoffes

(f) 27.H.8.cap.10. Britton.fol.212.78.b.164. Vide.be.e.in this Section. 32.H.8.ca 2. 34.H.8.cap.5.

(r) Vide lib.3.fol.25. &c. in Butler & Bakers caſe. Lib.6.fol.16. & 76. Lib.8.fol.84.85. Lib.9.133. Lib.10.82.83.84. Lib.11. fol.24. Lib.1.fol.25.a.

(u) Dier 4. & 5.Th. & Mar.155.an.6.Eliz.Daliſon. Paſch.20.Eliz.betweene Barber and his wife plaintiffe and William Long defendant in a Writt of partition. Bendloes adiudged.

(x) Lib 6.fol.17.18. Sir Edw. Clares caſe. Lib.3.fol.34.b. Butler & Bakers caſe.

Lib.10.fol.80.81. Leon.Loueyes caſe.

Leon.Loueyes caſe, & Butler & Bakers caſe. Vbi ſupra.

Leon.Loueyes caſe. Vbi ſupra, fol.81.

Lib.8.fol.84.85. Sir Richard Texhals caſe. Lib.3.fol.33. Butler & Bakers caſe.

Lib.6.fol.17.18. in Sir Edw. Clares caſe.

feoffment, yet this will ſhall enure to declare the vſe vpon the feoffement, becauſe hee had no power as Owner of the Land to deuiſe any part of it. But if the feoffement had beene made to the vſe of his laſt will, although he deuiſeth the Land with reference to the feoffment, yet it taketh effect only by the will, and not by the feoffement. All which and many other points of intricate and abſtruſe learning you ſhall more largely reade in my Reports.

¶ *Sauns aſcun liuerie de ſeiſin deſte fait a luy, &c.* For in his life time Liuery of ſeiſin could not be made becauſe his will is ambulatorie till his death, and no eſtate paſſeth during his life, neither can Liuery be made after his deceaſe, for then it commeth too late. 40.Aſſ.38

Here (&c.) implyeth that the deuiſe is good without any Atturnement of any Leſſee or Tenant.

Section 168.

¶ NOta coment q̄ home ne poit granter ne doner ſes tenements a ſa feme, durant le couerture, pur ceo que ſa feme & luy ne ſont forſq; vn perſon en ley, vncore per tiel cuſtõe il poit deuiſer per teſtamẽt, ſes tenements a ſa feme, a auer & tener a luy en fee ſimple, ou en fee taile, pur termẽ de vie ou pur terme des ans, pur ceo que tiel deuiſe ne prist effect forſque apres la mort le deuiſor, car touts deuiſes ne preignõt effect forſq; apres la mort le deuiſor. Et ſi home fait a diuers tẽps diuers teſtaments, & diuers deuiſes, &c. vncore le darrein deuiſe & volũt fait p luy eſtoiera, & lauters cõt voides.

ALſo though a man may not grant nor giue his tenements to his Wife during the couerture, for thar his Wife and hee bee but one perſon in the Law, yet by ſuch cuſtome hee may deuiſe by his Teſtament his tenements to his wife, to haue and to hold to her in Fee ſimple, or in Fee taile, or for tearme of life, or yeares, for that ſuch deuiſe taketh no effect, but after the death of the Deuiſor. And if a man at diuers times make diuers Teſtaments, and diuers deuiſes, &c. yet the laſt deuiſe and will made him, ſhall ſtand and the other are voyd.

¶ *Home ne poet graunter ne doner ſes tenements a ſa feme, &c.* This opinion is (a) cleere, for by no conueyance at the Common Law a man could during the couerture either in poſſeſſion, reuerſion or remainder, limit an eſtate to his wife. But a man may by his deed couenãt with others to ſtand ſeiſed to the vſe of his wife, or make a Feoffement or other Conueyance to the vſe of his wife, and now the ſtate is executed to ſuch vſes by the Statute (b) of 27.H.8. for an vſe is but a truſt and confidence, which by ſuch a meane might be limited by the huſband to the wife. But a man cannot couenant with his wife to ſtand ſeiſed to her vſe, becauſe he cannot couenant with her for the reaſon that Littleton here yeelds. (a) 4.H.7. (b) 27.H.8.cap.10.

¶ *Durant le couerture.* That is during the continuance of the Marriage. For to couer in Engliſh is Tegere in Latine, and is ſo called, for that the wife is ſub poteſtate viri, and ſhe is diſabled to contract with any without the conſent of the huſband. (c) Omnia quæ ſunt vxoris ſunt ipſius viri, non habet vxor poteſtatẽ ſui ſed vir. *Bract.lib.2.ca.15.*

¶ *Vn perſon en ley.* Vir & vxor ſunt quaſi vnica perſona quia caro vna, & ſanguis vnus, res licet ſit propria vxoris, vir tamen eius cuſtos, cum ſit caput mulieris. *Idem lib.5.tract.5.cap.25.*

If Ceſtey que vſe had deuiſed, that his wife ſhould ſell his land, and made her executrix and died, and ſhe tooke another huſband, ſhe might ſell the land to her huſband, for ſhe did it in auter droit, and her huſband ſhould be in by the deuiſor. 10.H.7.20.

¶ *Per teſtament.* Teſtamentum is (as is ſaid before) teſtatio mentis, and is honorably to be expounded according to the meaning of the Teſtator. In contractibus

tractibus benigna in teſtamentis benignior, in reſtitutionibus benigniſſima interpretatio facienda eſt.

(d) 4.E.2.Tit.Deviſe 23.
(e) 44. Aſſ.p.36. 44.E.3 33 18.E.3.8.
(f) Britton 264.

¶ *A ſon feme.* And Littleton himſelfe yeeldeth the reaſon, (d) becauſe the deuiſe doth not take effect till after the deceaſe of the deuiſor. And in ſome (e) places the cuſtome is generall, that he may deuiſe any lands, &c. In ſome (f) places Lands only which the Deuiſor purchaſed. In ſome place that he may deuiſe any eſtate, in ſome places for life only, &c.

But albeit the laſt will doth not take effect vntill after his deceaſe, yet if a Feme Couert bee ſeiſed of Lands in fee, ſhe cannot deuiſe the ſame to her huſband, becauſe at the making of her will ſhe had no power being ſub poteſtate viri to deuiſe the ſame, and the Law intendeth it ſhould be done by coertion of her huſband.

2.H.5.8. 2.R.3 22.

¶ *Diuers teſtaments.* For Voluntas teſtatoris eſt ambulatoria vſque ad mortem (as hath beene ſaid before) and the latter will doth countermand the firſt. And it is truly ſaid that the firſt grant, and the laſt will is of greateſt force.

¶ *Diuers deuiſes, &c.* Hereby (&c.) is to bee vnderſtood aſwell deuiſes of Chattels reall or perſonall, as of freehold and inheritance. Alſo that in one will where there be diuers deuiſes of one thing the laſt deuiſe taketh place. Cum duo inter ſe pugnantia reperiuntur in teſtamento vltimum ratum eſt.

Sect. 169.

¶ *Queſes executors poent aliener ou vender ſes tenements.* And that which in Littletons time a man might doe by cuſtome in ſome particular places he may now doe by the Statutes of 32. & 34. H.8 generally.

* 32.H.8.cap.2. 34.H.8.cap.5.

¶ *Les Executors apres le mort lour teſtator poient vender.* Here it appeareth, that the Executors hauing but a power, as Littleton putteth the caſe) to ſell, they muſt all ioyne in the ſale. Then put the caſe that one dieth, it is regularly true, that being but a bare authoritie, the ſuruiuors cannot ſell. But if a man deuiſeth his land to A. for terme of life, and that after his deceaſe, his lands ſhall be ſould by his executors generally, (as Littleton here putteth his caſe) and make three or foure Executors, and during the life of A. one of the Executors dieth, and then A. dieth, the other two or three Executors may ſell, becauſe the land could not be ſould before, and the Plurall number of his Executors remaine. But if they had beene named by their names, as by I.S. I.N. I.D. and I. G. his Executors,

49.E.3.16. 29.Aſſ.17. 39.Aſſ.17. 9.H.6.24. 15.H.7.12.21. 14.H.8.6. 30.H.8. Tit.Deviſe Br.31. 2.Eliz. Dier 177.

¶ Item p tiel cuſtome hõe poyt deuiſer per ſon teſtament que ſes Executors poyent aliener & vender ſes tenemẽts que il ad en fee ſimple, pur certain ſumm de money a diſtributer p ſon alme. En ceſt cas, coment que le deuiſor deuie ſeiſie de les tenements, et les tenements diſcẽdont a ſon heire: vncore les executors apres l' mort lour teſtator, poient vender les tents iſſint a eux deuiſes, & ouſte l' hr̃, & ent fait feoffmẽt, alienation, & eſtate p fait, ou sãs fait a cux a q̃x l' vendi eſt fait. Et iſſint pois veier icy vn cas ou hõe poit fair loial eſtat̃, & vncor il nauoit riens en les

ALſo by ſuch cuſtome a man may deuiſe by his Teſtament, that his Executours may alien and ſell the Tenements that he hath in Fee ſimple, for a certaine ſum, to diſtribute for his Soule: In this caſe though the deuiſor die ſeiſed of the tenemẽts and the tenements diſcend vnto his heire, yet the executors after the death of the teſtator may ſell the tenemẽts ſo deuiſed thẽ, & put out the heire, and thereof make a feoffement, alienation, and eſtate by Deed, or without deed, to them to whom the ſale is made. And ſo may yee here ſee a caſe where a Man may make a lawfull eſtate,

les Tenements al temps del eſtate fait. Et le cauſe eſt, pur ceo que la cuſtome & vſage ad eſte tiel. Quia conſuetudo ex certa cauſa rationabili viſitata priuat communem Legem.

& yet hee hath naught in the Tenements at the time of the eſtate made: and the cauſe is, for that that the cuſtome & vſage is ſuch. *For a cuſtome vſed vpon a certain reaſonable cauſe deprineth the cõmon law.*

then in that caſe the ſuruiuors could not ſell the ſame, becauſe the words of the Teſtator could not be ſatisfied; & I my ſelf knew this caſe adiudged*: A ſpecial verdict was found, that A. was ſeiſed of certaine lands in fee, and deuiſed the ſame in taile, and if the Donee died without iſſue, that his ſaid land ſhould bee ſould by his ſonnes in Law, he in truth hauing fiue ſons in Law) one of his ſonnes in Law died in the life of the Donee, and after the Donee died without iſſue, and then the foure of the ſonnes in Law ſould the land, and it was adiudged that the ſale was good, becauſe they were named generally by his ſonnes in Law, and the Lands could not be ſould by them all. And the words of the Will, in a benigne interpretation are ſatisfied in the plurall number, albeit they had but a bare authoritie: but if they had bin particularly named, it had beene otherwiſe. But if a man deuiſeth lands to his Executors to bee ſould, and maketh two Executors, and the one dieth, yet the ſuruiuor may ſell the land, becauſe as the ſtate, ſo the truſt ſhall ſuruiue; and ſo note the diuerſitie betweene a bare truſt, and a truſt coupled with an intereſt. In both thoſe caſes the Executors may (a) ſell part of the land at one time and part at another as they may find purchaſers.

* *Hill.26.El.in ſe Vincent & Lee in the Kings Bea.b.*

39.*Aſſ.p.17.*
4.*Eliz.Dier 210.*
23.*Eliz.Dier 371.*
Paſch.32.Eliz.Ro.1307.in Communi Banco. and ſo reſolued in Vincents caſe.
(a) *Lib.1.fol.173.in Digges caſe.*

In Littletons caſe admit that one Executor had refuſed to ſell, then (as the Law ſtood when Littleton wrote) it was cleare that the others could not ſell, but now by the ſtatute (b) of 21.H.8 it is prouided that where lands are willed to be ſold by Executors, that though part of them refuſe, yet the reſidue may ſell. And albeit the Letter of the Law extendeth only where Executors haue a power to ſell, yet being a beneficiall Law, it is by conſtruction extended where lands are deuiſed to Executors to be ſold. Yet in neither of thoſe caſes, albeit one refuſe, can the other make ſale to him that refuſed, becauſe he is party and priuie to the laſt Will, and remaine Executor ſtill. Mine aduice to them that make ſuch deuiſes by Will is, to make it as certaine as they can, as that the ſale be made by his Executors or the Suruiuors or ſuruiuor of them, if his meaning be ſo, or by ſuch or ſo many of them, as take vpon them the probate of his Will, or the like. And it is better to giue them an Authority then an eſtate, vnleſſe his meaning be they ſhould take the profits of his lands in the meane time, and then it is neceſſary that he deuiſeth, that the meane profits till the ſale ſhalbe aſſets in their hands, for otherwiſe they ſhall not be ſo. But hereof thus much ſhall ſuffice.

(b) 21.*H.8.cap.4.*

Tr.27.H.8. *in the Common Place. Scriuen Bendloes reports.*

¶ *Et ent faire feoffment.* **For albeit the Executors in this caſe** haue no eſtate or intereſt in the land, but only a bare and naked power, yet this Feoffment amounteth to an alienation, to veſt the land in the Feoffee, as it appeareth here, and the Feoffee ſhalbe in by the Deuiſor.

49.*E.3.16. 38.Aſſ.3.*
39.*Aſſ.17. 13.E.3.deuiſe.3.*
14.*H.8.10. 15.H.7.12.b.*

¶ *Per fait ou ſauns fait.* **And therefore if by the cuſtome a man deuiſeth** that a Reuerſion or any other thing that lyeth in Grant ſhall bee ſold by the Executors, they may ſell the ſame without Deede for the Vendee ſhall be in by the Deuiſor, and not by the Executors as hath beene ſaid.

19.*H.6.*

¶ *Conſuetudo ex certa cauſa rationabili viſitata priuat communem legem.* Quia conſuetudo contra rationem introducta potius vſurpatio quam conſuetudo appellari debet. Conſuetudo præſcripta & legittima vincet legem.

¶ *Priuat communem legem.* **For no cuſtome or preſcription can** take away the force of an Act of Parliament, and therefore Littleton materially ſpeaketh here of the Common law.

4.*E.4.4 11.H.4.7.*
39.*H.6.39. 7.H.6.1.a.*
9.*H.6.56. 8.H.7.4.*
8.*Eliz.Dier.247.*

Sect. 170.

¶ Et nota q̃ nul cuſtome eſt allowable, meſq̃ tiel cuſtome q̃ ad eſte vſe

And note that no cuſtome is to bee allowed, but ſuch cuſtome as hath bin vſed

¶ *Preſcription.* **Preſcription is a title taking his ſubſtance of vſe and time allowed by the Law,** Præſcriptio eſt titulus ex vſu & tempore ſubſtantiam capiens

capiens ab authoritate legis. In the Common Law a preſcription which is perſonal is for the moſt part applied to perſons being made in the name of a certaine perſon and of his Anceſtors or thoſe whoſe eſtate he hath, or in bodies politique, or Corporate, and their predeceſſors, for as a naturall body is ſaid to haue Anceſtors, ſo a body politique or corporate is ſaid to haue predeceſſors. And a cuſtome which is locall is alledged in no perſon, but laid within ſome Mannor or other place. As taking one example for many, I.S. ſeiſed of the mānor of D. in fee preſcribeth thus: That I.S his Anceſtors, and all thoſe whoſe eſtate hee hath in the ſaid Mannor haue time out of minde of man had and vſed to haue Common of paſture, &c. in ſuch a place, &c. being the land of ſome other, &c. as pertaining to the ſaid Mannor. This properly we call a preſcription. A cuſtome is in this manner. A Copiholder of the Mannor of D. doth pleade, that within the ſame Mannor, there is and hath beene ſuch a cuſtome time out of minde of man vſed, that all the Copiholders of the ſaid Mannor haue had and vſed to haue common of paſture, &c. in ſuch a waſte of the Lord parcell of the ſaid Mannor, &c. where the perſon neither doth or can preſcribe, but alledgeth the cuſtome within the Mannor. But both to cuſtomes and preſcriptions, theſe two things are incident inſeparable, viz. poſſeſſion, or vſage: and Time Poſſeſſion muſt haue three qualities, it muſt be long, continuall, and peaceable, Longa, continua, & pacifica: for it is ſaid, Transferuntur dominia ſine titulo & traditione, per vſu captionem, s. per longam, continuam, & pacificam poſſeſſionem. Longa. i. per ſpatium temporis per legem definitum, of which hereafter ſhall bee ſpoken. Continuam dico ita quod non ſit legittime interrupta.

12.E.4.1 2. *Marie, Br. Preſer.* 100. 6.E.6. *Dyer* 71. 14.*Ed.*3. *Bar.* 177 43.*E.*3.32. 7.*H.*6.26. 22.*H.*6.14. 16.*E.*2 *tit. Preſcript.* 53. 45.*Aſſ.*8. 40.*Aſſ.*27.41. 21.*E.*4.53.54.

*Brad. fo.*51,52.

per title de preſcription, ſ. ô temps dont memorie ne curt. Mes diuers opinions ont eſte ô temps dont memorie, &c. & ô title p preſcription, q̃ eſt tout vn en ley. Car aſcuns ont dit que temps de memorie ſerra dit ô temps de limitation en vn briefe ô droit, ſcilicet de temps le Roy R. le i. puis le conqueſt, come eſt done per le ſtatute de Weſtminſter 1. pur ceo que le briefe de droit eſt le pluis hault briefe en ſa nature que poit eſtre, & per tiel briefe hõe poit recouer ſon droit de la poſſeſſion ſon auncеſtors de pluis aunciẽt temps que home purroit p aſcun briefe per l'ley, &c. Et entant que il eſt done p le dit eſtatute que en briefe de droit nul ſoit oye a demander de le ſeiſin ſon auncеſtors de pluis longe temps q̃ de temps le Roy R. auantdit, iſſint ceo eſt proue q̃ continuance de poſſeſſion, ou auters cuſtomes, & vſages vſes puis le dit temps, eſt le title de preſcriptiõ, &c. & hoc certum eſt. Et auters ont

by title of preſcription, that is to ſay, from time out of minde. But diuers opinions haue beene of time out of minde, &c. & of title of preſcription, which is all one in the law. For ſome haue ſaid, that time of minde ſhould bee ſaid from time of limitation in a Writ of right, that is to ſay, from the time of King *Richard* the firſt after the Conqueſt, as is giuen by the ſtatute of Weſtminſter the firſt, for that a writ of right is the moſt higheſt Writ in his nature that may be. And by ſuch a writ a man may recouer his right of the poſſeſſion of his Anceſters, of the moſt ancient time that any man may by any writ by the Law, &c. And in ſo much that it is giuen by the ſaid Eſtatute, that in a writ of right none ſhall be heard to demād of the ſeiſin of his anceſtours of longer time, than of the time of King Richard aforeſaid, therefore this is prooued, that continuance of poſſeſſion, or other cuſtomes & vſages vſed after the ſame time is the title

ont dit, q̄ bien & verity eſt, que ſeiſin & continuance puis le dit limitation, eſt vn title de preſcription, come eſt auantdit, & per cauſe auandit. Mes ils ont dit, que il y auxy vn auter title de preſcription, que fuit a la common ley deuant aſcun eſtatute de limitation de briefe, &c. & ceo fuit lou vn cuſtome, ou vn vſage, ou auter choſe ad eſte vſe de temps dont memorie des homes ne Curt a la contrarie. Et ils ont dit, que il eſt proue per l'pleder, lou home voit pleder vn title de preſcription de cuſtome il dirra q̄ tiel cuſtome ad eſte vſe, de tempore cuius contrariū memoria hominū non exiſtit, & c̄ eſt autant a dire, quāt tiel matter eſt pleð, q̄ nul home adonq̄ en vie ad oye aſcun proofe a l'contrarie, ne auoit aſcun conuſans a l'contrarie. Et entāt que tiel title de preſcription fuit a le common ley, & nient ouſte p aſcun eſtatute, ergo, il demurt come il fuit a le common ley, & le pluis toſt, entant que la dit limitation de briefe ð droit eſt de cy long tēp̄ paſſe, Ideo de

of preſcription, and this is certaine. And others haue ſaid, that well and truth it is, that ſeiſin and continuance after the limitation, &c. is a title of preſcription, as is aforeſaid, and by the cauſe aforeſaid. But they haue ſaid that there is alſo another title of preſcription that was at the Common law, before any eſtatute of limitation of writs, &c. And that it was where a Cuſtome or vſage, or other thing hath beene vſed, for time whereof minde of man runneth not to the contrary: And they haue ſaid that this is proued by the pleading: where a man will pleade a title of preſcription of cuſtome, hee ſhall ſay that ſuch cuſtome hath beene vſed from time whereof the memory of men runneth not to the contrary, that is as much to ſay, when ſuch a matter is pleaded, that no man then aliue hath heard any proofe of the contrary, nor hath no knowledge to the contrary, and inſomuch that ſuch title of preſcription was at the Common Law, and not put out by an eſtatute, *Ergo*, it abideth as it was at the Cōmon Law, and the rather, inſomuch that the ſaid limitation of a writ of Right, is of ſo long time paſſed, *Ideo quære de hoc.* And

Pacificam dico, quia ſi contentioſa fuerit, idem erit quod prius, ſi contentio fuerit iuſta. Vt ſi verus dominus ſtatim cum intruſor vel diſſeiſor ingreſſus fuerit ſeiſinam, niratur tales viribus repellere, & expellere, licet id quod inceperit perducere non poſſit ad effectum dum tamen cum defecerit diligens ſit ad impetrandum & proſequendum. Longus vſus nec per vim, nec clam, nec precario, &c. *Idem fo.222.b.*

If a man preſcribeth to haue a Rent, and likewiſe to take a Diſtreſſe for the ſame, it cannot bee auoyded by pleading, that the Rent hath beene alwayes paid by coherſion, albeit it began by wrong. 13.E.4.6.

¶ *Vn title de preſcriptiō.* Seeing that preſcription maketh a title, it is to be ſeene, firſt to what things a man may make a title by preſcription without Charter. And ſecondly, how it may be loſt by interruption.

For the firſt, as to ſuch Franchiſes and Liberties as cannot be ſeiſed as forfeited, before the cauſe of forfeiture appeare of Record, no man can make a Title by preſcription becauſe that preſcription being but an Vſage in pais, it cannot * extend to ſuch things as cannot bee ſeiſed nor had without matter of Record: as to the goods and chattels of Traitors, felons, felons of themſelues, fugitiues, of thoſe that be put in exigent, Deodands, Conuſance of

11.H.6 Preſcrip.44. 21.E.4.6. 1.H.7.23. 9.H.7.11.20. 7.H.6.45. 6.E.3.32.42. 45.E.3.2. 2.E.4.26.

(*) *Flet.li.1.cap.25. Brit.fo.6.& 15. 44.aſſ.p.8 49.E.3.3.Sträf.Pl.Cr.21.51 Lib.5.fo.109.110.Li.9.f.29*

of pleas, to make a Corporation, to haue a Sanctuarie, to make a Coroner, &c. to make Conseruators of the peace, &c. hoc quære. **Et plusors auters customes & vsages ont tiels auncient burghes.** many other customes and vsages haue such ancient boroughes.

(c) 22.E.3.Coron.241. 9.H.7.11.20. 18.H.6.prescr.45. 11.H.4.10. 21.H.7.33. 9.E.4.12. 39.E.3.35. 46.E 3.16. 11.H.6.25. F.N.B.91. 1.H.7.24. Stanf.pl.Cor.38. 44.E.3.4. 22.E.4.43. 44. 3.E.3.Brook prescr.57. 44.Ass.pl. (*)8.H.6.16. (f) 12.E.4.16. 32.H.6.25. 12.Eliz. Dier.288.289.

(c) But to Treasure Trove, Waifes, Estraies, Wrecke of Sea, to hold Pleas, courts of Leets, Hundreds, &c. Infange thiefe, Outfange thiefe, to haue a Parke, Warren, Royall fishes, as Whales, Sturgions, &c. Faires, Markets, Franke foldage, the keeping of a Goale, Tolle, a Corporation by prescription, and the like, a man may make a Title by vsage and prescription only without any matter of record, (*) Vide Sect. 310. where a man shall make a Title to lands by prescription.

But it is to bee obserued (f) that although a man cannot as is aforesaid prescribe in the said Franchise to haue Bona & catalla proditorum, felonum, &c. yet may they and the like be had obliquely or by a meane by prescription; For a County palatine may be claimed by prescription, and by reason thereof to haue Bona & catalla proditorum, felonum, &c.

11.E.3.tit.issue 40.

As to the second, by what meanes a Title by prescription, or Custome may be lost by interruption; It is to be knowne that the Title being once gained by prescription or custome cannot be lost, by interruption of the possession for 10. or 20. yeares, but by interruption in the right, as if a man haue had a Rent or Common by prescription, vnity of possession of as high and perdurable estate is an interruption in the right.

15.E.3.tit.iudgement 133. 14.E.3.ibid.155.

In a Writ of Mesne the Plaintife made his title by prescription, that the Defendant and his Ancestors had acquitted the Plaintife and his Ancestors, and the Terre-tenant time out of minde, &c. the Defendant tooke issue, that the Defendant and his Ancestors had not acquitted the Plaintife and his Ancestors & the Terre-tenant, and the Jury gaue a speciall verdict, that the Grandfather of the Plaintife was enfeoffed by one Agnes, and that Agnes and her Ancestors were acquitted by the Ancestors of the Defendant time out of minde before that time, since which time no acquitall had beene; and it was adiudged and affirmed in a Writ of error, that the Plaintife should recouer his Acquitall, for that there was once a title by prescription vested, which cannot be taken away by a wrongfull Cessor to acquite of late time, and albeit the verdict had found against the letter of the issue, yet for that the substance of the issue was found, viz. a sufficient title by prescription, it was adiudged both by the Court of Common pleas, and in the Writ of error by the court of Kings bench for the Plaintife, which is worthy of obseruation. So a modus decimandi was alledged (*) by prescription time out of minde for tithes of Lambes, and thereupon issue ioyned, and the Jury found that before 20. yeares then last past there was such a prescription, and that for these 20. yeares he had paid tithe Lambe in Specie, and it was obiected first that the issue was found against the Plaintife, for that the prescription was generall for all the time of prescription, and 20. yeares faile thereof. 2. That the party by payment of tythes in Specie had waued the prescription or custome. But it was adiudged for the Plaintife in the prohibition, for albeit the Modus decimandi had not beene paid by the space of 20. yeares, yet the prescription being found, the substance of the issue is found for the Plaintife. And if a man hath a Common by prescription, and taketh a Lease of the land for 20. yeares, whereby the common is suspended, after the yeares ended, hee may clayme the common generally by prescription, for that the suspensation was but to the possession, and not to the right; and the inheritance of the common did alwayes remaine, and when a prescription or custome doth make a title of inheritance (as Littleton speaketh) the partie cannot alter or waiue the same in pais.

(*) *Mich.43.& 44.Eliz. in a prohibition betwne Nowell pl. and Hicks Vicar of Edmonton defendant in the Kings Bench.*

¶ *Temps dont memory, &c. & de title per prescription que est tont vn en ley.* **So as the time prescribed or defined by Law is, time, whereof** (c) there is no memory of man to the contrarie. (c) Omnis querela, & omnis actio iniuriarum limitata infra certa tempora.

(c) *Bract.fol.314.*

¶ *Temps de limitation.* **Limitation as it is taken in Law is a** certaine time prescribed by Statute, within the which the demandant in the action must proue himselfe or some of his Ancestors to be seised.

¶ *En briefe de droit.* **In** (f) **ancient time the limitation in a Writ** of Right was from the time of H.1. whereof it was said, à tempore Regis Henrici senioris. After that by the Statute of (g) Merton the limitation was from the time of H.2. and by the Statute (h) of W.1. the limitation was from the time of R.1. And this is that limitation that Littleton here speaketh of. Whereof in the Mirror in reproofe of the Law it is thus said, (i) Abusion est de counter ey longe temps dount nul ne poet testmoigner de vien & de oyer que ne dure my generalment ouster 40. ans.

(f) *Regist.158. Bract.fol.373. 5.Ass.p.2. 34.H.6.40.*
(g) *Stat.de Mert. 20.H.3.ca.8.*
(h) *West.1.an.3.E.1.ca.38. Vide W.2. 13.E.1.ca.46.*
(i) *Mirror.ca.5.§.1.*

Time

Time of limitation is two fold, Firſt, in Writs, and that is by diuers Acts of Parliament. Secondly, To make a title to any Inheritance, and that (as Littleton here ſaith) is by the Common Law.

Glanuil.lib.13.ca.3.& 34. Mirror.ca.5.§.4. Fleta.lib.2.ca.38.& li.4.ca.5 Britton.fol.79.82. Bracton.lib.2.fol 52.& fol. 179.253.373.

Limitation of times in Writs are prouided by the ſaid Statute of Merton, and after by the ſaid Statute of W.1. which Littleton here citeth, and which was in force when hee wrote, but is ſince altered by a profitable and neceſſary Statute (k) made Anno 32.H.8. and by that Act, the former limitation of time in a Writ of Right is changed and reduced to three ſcore yeares next before the Teſte of the Writ, and ſo of other actions as by the Statute at large appeareth. But it is to be obſerued, that this Act of 32.H.8. extendeth (l) not to be a Formedon, in the Diſcender, nor to the Seruices of Eſcuage, Homage, and Fealtie, for a man may liue aboue the time limited by the Act, neither doth it extend to any other ſeruice which by common poſſibilitie may not happen or become due within ſixtie yeares, as to couer the hall of the Lord, or to attend on his Lord when he goeth to warre or the like, nor where the ſeiſin is not trauerſable or iſſuable, neither doth it extend to a Rent created by Deed, nor to a Rent reſerued vpon any particular eſtate, for (m) in the one caſe the Deed is the title, and in the other the reſeruation, nor to any Writ of Right of Aduowſon, Quare impedit, or Aſſiſe of Darreine preſentment (for there was a parſon of one of my Churches that had beene Incumbent there aboue ſixtie yeares, and died but lately) or any Writ of Right of Ward, or rauiſhment of Ward, &c. but they are left as they were before the Statute of 32.H.8. But hereof thus much for the better vnderſtanding of Littleton ſhall ſuffice.

(k) *32.H.8.ca.2. See the ſecond part of the Inſtitutes. Merton.ca.8.*

(l) *Mich.10.& 11.Eliz. Dier.278. Fitzwilliams caſe.*

(m) *Lib.8.fol.65. Sir Williams Peſters caſe.*

¶ *De temps le Roy, R.1.* **And that was intended from the firſt day** of his raigne, for (from the time) being indefinitely doth include the whole time of his Raigne, which is to be obſerued.

Vide 34.H.6.36.

¶ *Briefe de droit*, breue de recto, **a Writ of Right ſo called, for that** the words in the Writ of Right are, Quod ſine dilatione plenum rectum teneas.

Lib.4.fol.10.& 11. Bewis caſe.

¶ *Title de preſcription al common ley, &c. de temps dont memorie des homes ne curge al contrarie.* Docere oportet longum tempus, & longum vſum illum, viz. qui excedit memoriam hominum, tale enim tempus ſufficit pro iure.

Bract.lib.4.fol.230. Fleta lib.4.cap.24.

¶ *Aſcun proofe al contrarie.* **For if there bee any ſufficient proofe** of Record or Writing to the contrary, albeit it exceed the memory, or proper knowledge of any man liuing, yet is it within the memory of man: for memorie or knowledge is two fold. Firſt, By knowledge by proofe, as by Record or ſufficient matter of Writing. Secondly, By his owne proper knowledge. If Record or ſufficient matter in Writing are good memorials for Litera ſcripta manet. And therefore it is ſaid, when we will by any Record or Writing commit the memory of any thing to Poſteritie, it is ſaid tradere memoriæ. And this is the reaſon that regularly a man cannot preſcribe or alleage a Cuſtome againſt a Statute, becauſe that is matter of Record, and is the higheſt proofe and matter of Record in Law. But yet a man may preſcribe againſt an Act of Parliament when his Preſcription or Cuſtome is ſaued or preſerued by another Act of Parliament.

28.Aſſ.25. 38.Aſſ.18. 45.E.3.26. 5.H.7.10. 8.H.7.7. 11.H.7.21. Dier 23.Eliz.273.

There is alſo a diuerſitie betweene an Act of Parliament in the negatiue and in the affirmatiue, for an affirmatiue Act doth not take away a cuſtome as the Statutes of Wills of 32. and 34.H.8. doe not take away a Cuſtome to deuiſe Lands, as it hath beene often adiudged. Moreouer, there is a diuerſitie betweene Statutes that be in the negatiue, for if a Statute in the negatiue be declaratiue of the ancient Law, that is in affirmance of the Common Law, there as well as a man may preſcribe or alledge a cuſtome againſt the Common Law, ſo a man may doe againſt ſuch a Statute, for as our Author ſaith, Conſuetudo, &c. priuat communem legem. As the Statute of Magna Charta prouideth, that no Leet ſhall be holden but twice in the yeare, yet a man may preſcribe to hold it oftener, and at other times, for that the Statute (n) was but in affirmance of the Common Law.

Magna Charta cap.35.

(n) *6.H.7.2. 8.H.4.34. 12.H.7.18. 31.H.6.leet.11. 18.H.6.13.*

So the Statute (o) of 34.E.1. prouideth that none ſhall cut downe any trees of his owne within a Foreſt without the view of the Foreſter: but inaſmuch as this Act is in affirmance of the Common Law, a man may preſcribe to cut downe his woods within a Foreſt without the view of the Foreſter. And ſo was it adiudged in 16.Eliz. in the Exchequer by Sir Edward Sanders Chiefe Baron, and other the Barons of the Exchequer, as Sir Iohn Popham Chiefe Iuſtice of the Kings Bench reported to me.

(o) *34.E.1.tit. foreſt. Raſt. 1.E.3.cap.2.*

In the Eire of the Foreſt of Pickering before Willoughby, Hungerford and Hanburie, Iuſtices Itinerants there, Anno 8.E.3. I reade (p) a clayme made by Henry de Percy, Lord of the Mannor of Semor within the ſaid Foreſt, the Foreſters, Verderours, and Regarders found his clayme to be true, viz. Quod prædictus Henricus de Percy, & omnes anteceſſores ſui tenen-

(p) *Itin. Pickering. anno 8. E.3.Rot.38.*

tes manerium prædictum à tempore quo non extat memoria & sine interruptione aliquali tenuerunt prædictum manerium cum pertinentijs extra regardum Forestæ, & habuerunt Wnodwardum portantem arcum & sagittas ad præsentandum præsentanda de venatione tantum, &c. & habuerunt in boscis suis de Semere forgeas, & mineras, & amputârunt, dederunt, & vendiderunt boscum suum infra manerium prædictum sine visu forestariorum pro voluntate sua, & fugarunt, & ceperunt Vulpes, Lepores, Capriolos, &c. sicut idem Henricus Percy superius clamat. which clayme by prescription, and found as is afore said, the Justices doubted only of two points. The first, forasmuch as the said Wannor was within the limits of the Forest, it should not only be Contra assisam Forestæ, for his Woodward to beare Bow and Arrowes, where by Law he ought to beare but an Hatchet and no Bow nor Arrowes within the forest, but also de facili cedere possit in destructionem ferarum, &c. and therefore doubted whether it might be claymed by prescription. Their second doubt was concerning fugationem, & captionem Capriolorum in boscis suis prædictis, eo quod est bestia venationis Forestæ, & transgressores inde conuicti finem facerent vt pro transgressione venationis, and for that difficultie, the clayme was adiourned into the Kings Bench. But of the other parts of the Prescription no doubt at all was made: and the like had beene allowed in the same Eire, as in the case of Thomas Lord Wake of Lydell, and of Gilbert of Acton, in the same Eire, Rot.37. and of others.

¶ *Il est proue per le pleader.* Note one of the best arguments or proofes in Law is drawne from the right entries or course of pleading, for the Law it selfe speaketh by good pleading, and therefore Littleton here saith, It is proued by the pleading, &c. as if pleading were ipsius legis viua vox.

Entant que tiel title per prescription fuit al comon ley &c. Note all the prescriptions that were limited from a certaine time were by Act of Parliament, as from the time of H.1. which was the first time of limitation set downe by any Act of Parliament, and so from the Raigne of R.1. &c. But this Prescription of time out of memory of man was (as Littleton here saith) at the Common Law, and limited to no time. Also here is implyed a maxime of the Law, viz. That whatsoeuer was at the Common Law, and is not ousted or taken away by any Statute remayneth still.

¶ *Common ley.* The Law of England is deuided, as hath beene said before into three parts; the Common Law, which is the most generall and antient Law of the realme; of part whereof, Littleton wrote, 2. Statutes or Acts of Parliament; and 3. particuler Customes (whereof Littleton also maketh some mention) I say particuler, for if it be the generall Custome of the realme, it is part of the Common Law.

The Common Law hath no controller in any part of it, but the high Court of Parliament, and if it be not abrogated or altered by Parliament, it remaynes still as (Littleton here saith) The Common Law appeareth in the Statute of Magna Charta and other ancient Statutes (which for the most part are affirmations of the Common Law) in the originall writs in iudiciall Records, and in our Bookes of termes and yeares, Acts of Parliament appeare in the Rolls of Parliament, and for the most part are in print. Particular customes are to be proued.

Section 171.

¶ *Ville.* Villa quasi vehilla quod in eam conuehantur fructus. And it is called Vicus, because it is prope viam. Villa est ex pluribus mancionibus vicinata & collata ex pluribus vicinis. If a Towne be decayed so as no houses remayne, yet it is a Towne in Law. And so if a Borough bee decayed, yet shall it send Burgesses to the Parliament, as old Salisbury and others doe. It cannot bee a Towne in Law, vnlesse it hath, or in time past hath had a Church and celebration of Diuine Seruice, Sacraments and Burials: what alteration hath beene made in Townes, heare what a great Lawyer saith, In Anglia Villula tam parua inueniri non poterit, in qua non est Miles, Armiger, vel Paterfamilias, &c. magnis ditatus possessionibus, nec non liberi tenentes alij & valecti plurimis suis patrimonijs sufficientes, &c. And it appeareth by Littleton, that a Towne is the genus, and a Borough is the species, for he saith that euery Borough is a Towne, but euery Towne is not a Borough. Et sub appellatione Villarum continenter Burgi & Ciuitates.

¶ Item, chescun Burgh est vn ville, mes nẽpe conuerso. Plus serra dit de custome en le tenure de villenage.

Also euery Borough is a Towne but not *è conuerso*: more shall bee said of custome in the tenure of villenage.

Vide Linwood verbo vicus. Bracton. lib. 5. fol. 434. & lib. 4. fol. 211. Fortescue cap. 29. 7. E. 6. fines levis de terre. Br. 91.

34. E. 1. quare. Imp. 187.

Fortescue cap. 29.

Fortescue cap. 34.

Bere-

Berewica, or Berewit in Domeſday ſignifieth a Towne, Hæ Berewicæ pertinent ad Berchley. (Et ſic recitat plus quam viginti villas.) *Domeſday. Gleue.*

There be in England and Wales eight thouſand, eight hundred and three Townes, or there abouts.

Sæ more De villis, parochijs & Hamlettis in the ancient Authors of the Law, and plentifully in our other bookes. But let vs now heare what Littleton ſaith. *Bract. vbi ſup. Flet. l. 4 c. 15. & lib. 6. ca. 49. but ſo 124. & 274. &c.*

Chap. 11. Villenage. *Sect.* 172.

¶ Enure en villenage eſt plus propermẽt quant vn villein tient de ſon Sñr a que il eſt villein, certaine terres ou tenemẽts ſolonq; l' cuſtome del manor, ou autrement a la volunt ſon Seignior, & de faire a ſon ſeignior villein ſeruice: Come de porter & de carier le fime le Sñr hors del Citie ou del Manor ſon Seignior ieſques a l' terr ſon Seignior, en giſant ceo ſur le terre, & huiuſmodi. Et aſcuns franke homes teignont lour tenements ſolonq; le cuſtome del certaine manors per tiels ſeruices. Et lour tenure auxy eſt appell tenure en villenage, & vncore ils ne ſont pas villeines: Car nul fre tenus en villenage, ou villeine terre, ne aſcun cuſtome ſurdant de la fre, ne vnques ferra

TEnure in villenage is moſt properly when a Villeine holdeth of his Lord, to whom he is a villeine, certaine lands or tenements according to the cuſtome of the Mannor, or otherwiſe at the will of his Lord, and to doe to his Lord villeine ſeruice: As to carry and recarry the dunge of his Lord out of the Citie, or out of his Lords Mannor, vnto the land of his Lord, and to ſpread the ſame vpon the land, and ſuch like. And ſome free men hold their tenements according to the cuſtome of certaine Manors by ſuch ſeruices. And their tenure alſo is called Tenure in villenage, and yet they are not villeines. For no land holden in villenage or villein land, nor any cuſtome ariſing out of the land, ſhall euer make a free man villeine, but a

¶ *Tenure en Villenage.* Villeine is the French word Vilaine, and that A villa quia villæ adſcriptus eſt, for they which are now called Villani of ancient times were called Aſcriptitij, and in the Common Law hee is called Nativus, quia pro maiore parte natus eſt ſeruus, and this is hee which the Civilians call ſervus. (a) Theyn in the Saxon tongue is Liber, and Then ſervus. Theme (ſometime writtẽ Theame corruptly) is an old Saxon word, and ſignifieth Poteſtatem habendi in nativos ſive villanos cum eorum ſequelis, terris, bonis & catallis But Teame ſometime corruptly writtẽ Theam is of another ſignification, for it is alſo an old Saxon word, (b) and ſignifieth where a man cannot produce his Warrant of that which he bought according to his Voucher. *Lib. Rub. 76. & 77. Glanu. li. 5. ca. ... & 2. &c. Vide Bract. li. 1. ca. 6. &c. Brit. fo 77. & 67. 82. 97. 98. 125. 126. 147. Flet. li. 1 c. 3. Flet. li. 2 cap. 44. Idem lib 4. ca 11. & 12. M r. ca. 2. §. 18. Ockam.*

(a) *Flet. li. 1. ca. 24.*

(b) *Vide Lamb. inter Leges Sancti Edw. fo. 132. nu 25.*

¶ *Villenage.* Villenagium, (as in like caſes hath beene ſaid when the termination is in Age) is the ſeruice of a bondman, And yet a free man may doe the ſeruice of him that is bound. And therefore a tenure in Villenage is twofold, one where the perſon of the Tenant is bound, and the tenure ſervile, the other where the perſon is free, and the tenure ſeruile. (c) Serva terra liberos de ſanguine exiſtentes, villanos facere non poteſt. And therefore it is ſaid (d) Eſt enim ratio & regula generalis in iſtis duobus caſibus quod liber homo nihil libertatis propter perſonam

(c) *Hil. 29. E. 1. coram Reg. Ebor. in Theſaur.*

(d) *Bract. li. 4 fo. 170.*

franke home villein. Mes vn villein puit faire franke terre de-ste villein terre a ſon Sſir. Sicome lou vn villeine purchaſe terre en fee ſimpl, ou en fee taile, le Seig-niour del villein poet enter en la terre, & ouſte le villeine & ſes heires a touts iours, & puis le Seigniour (ſil voloit) puit leſ-ſer meſme la terre, a le Villein a tener en Villenage.

Villeine may make free land to be Villein land to his Lord. As where a Villeine pur-chaſe land in fee ſimple, or in fee taile, the Lord of the Villeine may enter into the land, and out the Villeine and his heires for euer: And after, the Lord (if he will) may let the ſame land to the Villein, to hold in Villenage.

perſonam ſuam liberam confert villenagio, nec liberum tenementum è contrario mutat ſtatum aut conditionem villani. And againe, (e) Villenagium ve. ſeruitium nihil detrahit libertati, habita tamen diſtinctione vtrum tales ſint villani, & tenuerunt in villano ſocagio de dominico Domini Regis. And againe, (f) Tenementum non mut t ſtatum liberi non magis quam ſeruj, poterit enim liber homo tenere purum villinagium faciendo quicquid ad villanum pertinebit, & nihilominus liber erit, cum hoc faciat ratione villenagij, & non ratione perſonæ ſuæ, & ideo poterit quãdo voluerit villenagium deſerere, & liber diſcedere niſi illaqueatus ſit per vxorem natiuam ad hoc faciendũ ad quam ingreſſus fuit in villenagium, & quæ præſtare poterit impedimentum, &c. And againe, (g) Purum villenagium eſt a quo præſtatur ſeruitium incertum & indeterminatum vbi ſcire non poterit veſpere, quale ſeruitium fieri debet mane, viz. vbi quis facere tenetur quicquid ei præceptum fuerit. And another ſaith to the ſame intent, Ceux ne ſcauoient le veſpere de quoy ils ſeruoient en la Matyn. (h) Fuerunt in Conqueſtu liberi homines qui libere tenuerunt tenementa ſua per libera ſeruicia, vel per liberas conſuetudines, & cum per potentiores ejecti eſſent poſtmodum reuerſi receperunt eadem tenementa ſua tenenda in Villenagio, faciendo inde opera ſeruilia ſed certa & nominata, &c. & nihilominus liberi, quia licet faciunt opera ſeruilia, cum non faciunt ea ratione perſonarum, ſed ratione tenementorum, &c.

(e) *Idem lib.*1.*ca.*6. *Brit.c.*31 & 66. *Flet.li.*1.*ca.*3.

(f) *Bract.fo.*26. 43.*E.*3.5.*acc.*

(g) *Bract.li.*4.*fo.*208. *Brit.ca.*31.

(h) *Bract.li.*1.*fo.*7.

How Villenage or ſeruitude began, and for what cauſe, it is ſaid, (i) Ab homine, & pro vitio introducta eſt ſervitus, ſed libertas à Deo hominis eſt indita naturæ, quare ipſa ab homine ſublata ſemper redire gliſcit, vt facit omne, quod libertate naturali priuatur. And another ſaith, (k) That the condition of Villeines from freedome vnto bondage, of antient time greſw by conſtitutions of Nations, (l) Fiunt etiam ſerui liberi homines captiuitate de iure gentium; And not by the Law of Nature, as from the time of Noahs Floud forward, in which time all things were common to all, and free to all men alike, and lived vnder the Law Naturall, and by multiplication of people, and making proper and priuate thoſe things that were common, aroſe battells. And then it was ordained by conſtitution of Nations, That none ſhould kill another, but that he that was taken in battell, ſhould remaine bond to his taker for euer, and to doe with him, and all that ſhould come of him, his will and pleaſure, as with his beaſt, or any other Chattell, to giue, or to ſell, or to kill: And after it was ordained for the cruelties of ſome Lords, That none ſhould kill them, and that the life and members of them, as well as of freemen, were in the hands and protection of Kings, and that he that killed his Villeine, ſhould haue the ſame iudgement as if he had killed a Freeman. Thereupon they were called, Serui, quia ſeruabantur a Dominis & non occidebantur, & non a ſeruiendo. He is called, Nativus a naſcendo, quia plerumque natus eſt ſervus: And he is called Villanus, for that he doth his Villeine ſeruice in Villis.

(i) *Forteſc.ca.*42.

(k) *Brit.ca.*31.
(l) *Bract.li* 1.*ca.*6. *Flet.li.*1.*ca.*3.*&* *ca.*5. *Mir.ca.*2 §.18.

Eſt autem libertas naturalis facultas eius quod cuique facere libet niſi quod de iure, aut vi prohibetur. Seruitus eſt conſtitutio de iure gentium qua quis Domino alieno contra naturam ſubjicitur. And againe, (m) Et tout ſoyt que touts creatures duiſſont eſte franks ſolonque le Ley de nature, per conſtitution nequidant, & fait de homes ſont auters creatures enſeruies ſicome eſt dit beaſts en Parkes, piſſons en ſeruors, & oyſeaux en cages.

*Bracton Lib.*1.*cap.*6. *Britton cap.*31. *& vbi ſupra. Fleta Lib.*1.*cap* 2.*&* 3. (m) *Mirror cap.*2.§.18.

(n) This is aſſured, That bondage or ſeruitude was firſt inflicted for diſhonouring of parents: for Cham the father of Canaan (of whom iſſued the Canaanites) ſeeing the nakedneſſe of his father Noah, and ſhewing it in deriſion to his brethren, was therefore puniſhed in his ſonne Canaan, with bondage. And herewith agreeth the Diuine, Ante Vini inuentionem inconcuſſa libertas: non eſſet hodie ſeruitus ſi ebrietas non fuiſſet.

(n) *Mirror cap.*2.§.18. *Geneſis* 9.*verſ.*10. 11. *&c.*

Ambroſe.

¶ *Hors del citie ou del Mannor, &c.* This is falſe printed, for the originall

originall is, Hors del ſcite del Mannor, and ſo would it be amended at the Impreſſions of the Bookes hereafter.

¶ *Et auſcuns frank homes teignont, &c.* This is apparant enough, eſpecially vpon that which hath beene ſaid. *Mirror ca.2.§.18.Acc.*

¶ *Ou vn Villeine purchaſe terre en fee ſimple.* Yet the Villeine may purchaſe ſome kind of Inheritances in fee ſimple, which the Lord of the Villeine cannot haue. As if a Villeine purchaſe a Common ſauns nomber, the Lord ſhall not haue it, for the Lord may ſurcharge the ſame, which ſhould be a preiudice to the Terre-tenant, and the ſame law of a Corodie in certaine granted to a Villeine, and ſuch like Inheritances. And therefore Littleton materially ſayd, Purchaſe terre: when the Villeine hath an eſtate of any thing certaine, the Lord ſhall haue it as a rent granted to the Villeine, Commons certaine, Eſtouers certaine, and ſuch like. (o) But that which lieth in action as a Warrantie made to the Villeine, his heires, and Aſſignes, the Lord ſhall not take aduantage of by Voucher, becauſe it is in lieu of an action, neither ſhall the Lord take aduantage of any Obligation or Couenant, or other thing in Action made to the Villeine, becauſe they lie in priuitie, and cannot be tranſferred to others. *Mirror cap.2.§.18.* *22.Aſſ.p.37.* (o) *Doctor & Stud.cap.43.*

(p) If a man be Leſſee of a Villeine for life, for yeares, or at will, and the Villeine purchaſeth lands in fee, if the Leſſee entreth into the Lands, he ſhall hold the lands as a perquiſite to him and his heires for euer. But if a Biſhop hath a Villeine in the right of his Biſhopricke, and he purchaſeth lands, and the Biſhop entreth, the Biſhop ſhall haue this Perquiſit to him and his ſucceſſors, and not to him and his heires, for the Law reſpecteth the quantitie, and not the quantitie of his eſtate. So if Executors haue a Villeine for yeares, and the Villeine purchaſe lands in fee, and the Executors enter, they ſhall haue a fee ſimple, but it ſhall be aſſets. (p) *L.5.E.4.61.18.E.3.29. 21.H.6.37. Bro.tit.Vil.70.*

¶ *Fee taile.* By this it is apparant, that if lands be giuen to a Villeine, and to the heires of his bodie, the Lord may enter and put out the Villeine and the heires of his bodie, for, Quicquid acquiritur ſeruo acquiritur Domino. And in this caſe the Lord gaines a fee ſimple determinable vpon the dying of the Villeine, without heire of his bodie, and the abſolute fee ſimple remaineth ſtill in the Donor. And if the Lord enter, and after infranchiſe the Donee, and after the Donee hath iſſue, yet that iſſue ſhall neuer haue remedie either by Formedon or entrie, to recouer this Land, by force of the Statute of Donis Conditionalibus, for that Statute giueth remedie to the iſſues of the Donee that haue capacitie and power to take and retaine ſuch a gift. And the title of the Lord remaines as it did at the Common Law, for the Statute reſtraineth acts done onely by the Tenant in taile. And ſo it is, if lands be giuen to an alien, and to the heires of his bodie, vpon office found, the land is ſeiſed for the King, afterwards the King makes the Alien a Denizen, who hath iſſue and dieth, the King ſhall detaine the land againſt the Iſſue. *15.E.4.9.b. Pl.Com. 555. in Walſinghams caſe.*

Section 173.

¶ ET nota, ſi feoffm̃t ſoit fait a certaine perſon ou perſon ſen fee al vſe dun villeine, ou ſi vn villeine, oue auters perſons ſoient enfeoffes al vſe le villeine, quel eſtate que le villeine ad en le vſe, en fee Taile, pur terme de vie, ou dans, le Seignior del villeine poit enter en touts ceux terres & tenements, ſicome le villein vſt eſte ſole ſeiſie del demeſn̄. Et ceſt per Leſtatute de Anno 19.H.7.cap. 15.

¶ AND note, if a feoffement be made to a certaine perſon or perſons in fee, to the vſe of a Villeine; or if a Villeine with other perſons, be infeoffed to the vſe of the Villein, what eſtate ſoeuer that the villeine hath in the vſe, in fee taile, for terme of life or yeares, the Lord of the Villein may enter into all thoſe lands and tenements, as if the Villeine had been ſole ſeiſed of the Demeſne. And this is giuen by the ſtatute of *Anno 19.H.7.ca.15.*

¶ THis is an addition to Littleton, and the Statute of 19 H.7.ca.15. therein mentioned, for the cauſe that hath beene aforeſaid, hath loſt his force.

Sect. 174.

¶ *A Paier vn fine pur le mariage,&c.* (q) And this villeine and ſeruile tenure is called in old bookes Marchetum or merchet Marchetum verò pro filia dare non competit libero homini inter alia propter liberi ſanguinis priuilegium,&c. And this is true De Communi jure,ſed modus & conventio vincunt legem. And as Littleton here ſaith, it is the folly of a ſuch a free man to take ſuch Mannors, Lands or Tenements to hold of the Lord by ſuch bondage. And yet this doth not make ſuch a free man a villeine, (r) Quia hujuſmodi præſtationes fiunt ratione tenementi & non ratione perſonæ in donatione comprehenſæ & reſervat', non enim vnum & idem eſt,ſed longe aliud,tenere libere,& per liberũ ſervitium, &c. for the ſignification of this word, vide Sect. 194 & 74 & 441.

¶ **Mes ſi aſcun franke home voile prender aſcun fees ou tenements a tener de ſon Sñr p tiel villein ſeruice,ſ. a payer vn fine a luy pur le mariage de ſes fits ou files, donq̃ il paiera tiel fine pur le mariage, & nient obſtant que il eſt le folie de tiel frank home de prender en tiel forñ terres ou tenements a tener de la ſeignior per tiel bondage, vncore ceo ne fait le franke home villeine.**

BVt if a free man will take any lands or tenements to hold of his Lord by ſuch villeine ſeruice,*viz.* to pay a fine to him for the marriage of his ſonnes or daughters, then hee ſhall pay ſuch fine for the mariage, yet notwithſtanding though it be the folly of ſuch free man to take in ſuch forme lands or tenements to hold of the Lord by ſuch bondage, yet this maketh not the free man a villeine.

(q) 15.E.3.tit.aid.33. *Bracton. lib* 2.*fo.*26. *Mirror,cap.*2.§.18.

*See more of this after in this chapter, Sect.*194.

(r) *Fleta,lib.*2.*cap.*13. *Mirror cap.*2.§.18.

Sect. 175.

¶ *Heſcun villeine ou eſt villeine per title de preſcription, &c.* Euery villeine is either by preſcription or confeſſion Servi autem naſcuntur aut fiunt. By preſcription, either regardant to a Mannor, &c. or in groſſe. In groſſe either by preſcription or by granting away a villeine that is regardant or by confeſſion. (f) Fit etiam ſervus liber homo per confeſſionem in curia Regis fact'.

*Lib.Rub.cap.*76.77. *Bracton,lib.*1.*cap.*6. *Brack.fol.*77.

(f) *Brack.lib.*1.*cap.*6. *Fleta,lib.*1.*cap.*3. 3.*Aſſ.*p.13. 11.*Aſſ.*12. 24.*Aſſ.*1.73.*Aſſ.*1. 17.*E.*3.78.79. 27.*E.*3.89. 18.*E.*4.25. 27.*H.*8.7.b. *Le ſtatute de* 17.*E.*3.*ca.*17.

¶ **Item cheſcun villeine, ou eſt vn villeine p title de preſcription, ceſtaſcauoir,q̃ il & ſes auncestors ont eſte villeines ô temps dont memoric ne curt, ou il eſt villein per ſon confeſſion demeſne en Court de Record.**

ALſo euery villeine is either a villeine by title of preſcription, to wit, that hee and his Anceſtors haue beene villeines time out of minde of man, or hee is a villeine by his owne confeſſion in a Court of Record.

¶ *En court de Record.* Record is deriued of the Latyn word Recordor, that is to keepe in minde as the Poet ſaith, Si rite audita recordor And therefore a Record or Inrolment is a memoriall or monument of ſo high a nature, (t) as it importeth in it ſelfe ſuch an abſolute verity, as if it be pleaded, that there is no ſuch Record, it ſhall not receiue any tryall by Witneſſe, Jury or otherwiſe, but only by it ſelfe, (u) And euery Court of Record is the Kings Court, albeit another may haue the profit, wherein if the Judges doe erre, a Writ of error doth lye. (w) But the County Court, the Hundred court, the court Baron, and ſuch like are no courts of Record, and therefore the proceedings therein may be denied, and tryed by Jury, and vpon their iudgements a Writ of error lyeth not, but a Writ of falſe iudgement

(t) 17.*E.*3.23.11.*H.*4.26. 37.*H.*6.21. *Dier,Mich.*7. & 8. *Eliz.*242. *Pl.Com.*77.&c.
(u) *Glanuil.lib* 9.*cap.*8. *Bracton,lib.*3.*fo.*156. *Britton,fo.*121.
(w) *Lib.*6.*fo.*11.& 12.*in Ieoffemans caſe.*

ment for that they are no Courts of record, becauſe they cannot hold plea of debt or treſpaſſe if the debt or damages doe amount to 40. ſhillings, or of any treſpaſſe Vi & armis.

Monumenta quæ nos recorda vocamus ſunt veritatis & vetuſtatis veſtigia.

Sect. 176.

¶ MEs ſi frank home ad diuers iſſues, & puis il confeſſe luy m̃ deſtre villein a vn auter en Court de Record, vncore les iſſues que il auera deuant le confeſ. ſont franks, mes les iſſues que il auera apres le confeſſion ſerront villeines.

BVt if a free man hath diuers iſſues, and afterwards he confeſſeth himſelfe to be a villaine to another in a Court of Record, yet thoſe iſſues which he hath before the confeſſion are free, but the iſſues which hee ſhall haue after the confeſſion ſhall be villaines.

This is ſo euident as it needeth no explication.

Section 177.

¶ ITem, ſi le villein purchaſe tre & alien la terre a vn auter deuant que le ſeignior enter, donques le Seignior ne poit enter, car il ſerra adiudge ſon follie q̃ il nentra pas quant la terre fuit en le maine le villein. Et iſſint eſt dez biens ſi le villein achate biens, & eux vend ou done a vn auter deuant que le Seignior ſeiſiſt les biens, adonques le ſeignior ne poit eux ſeiſer. Mes ſi le ſeignior deuant aſcũ tiel vender ou done, viẽt deins la ville la lou tielx biens ſont, & la ouertment enter les vicines claima les biens et ſeiſiſt parcel

ALſo if a Villaine purchaſe land and alien the land to another, before that the Lord enter, then the Lord cannot enter, for it ſhall bee adiudged his folly, that hee did not enter when the Land was in the hands of the Villaine. And ſo it is of goods: If the Villaine buy goods & ſell or giue them to another, before the LORD ſeiſeth them, then the Lord may not ſeiſe the ſame: but if the Lord before any ſuch ſale or gift, commeth into the Towne where ſuch goods be, and there openly amongſt the neighbors clayme the goods, and ſeiſe part of the goods in the name of ſeiſin

¶ IN this caſe before the Lord doth enter, hee hath neither Ius in rence ius ad rem, but only a poſſibilitie of an eſtate, which eſtate hee muſt gaine by his entrie, and therefore if the Villaine doth by way of preuention alien before the Lord doth enter the Lord is barred of the poſſibilitie which he had to the Land for euer (a) Si autem ſeruus vẽdiderit feodum quod ſibi & hæredibus perquiſierit antequam Dominus ſeiſinam inde ceperit valet donatio & Dominus ſibi ipſi imputet, quod tantum expectauit. But (b) if the Villaine of the King purchaſeth Land and alieneth before the King (vpon an office found for him) doth enter, yet the King after office found ſhall haue the Land, Quia nullum tempus occurrit Regi, as Littleton himſelfe ſaith in the next Section. And yet after office found the King ſhall not haue the meane profits becauſe the title is by the ſeiſure.

(a) *Fleta lib.* 3. *cap.* 13. *Britton. fol.* 98. a. 19. E. 2. *Dower* 171.

(b) 35. H. 3. *tit. Villenage* 22. 9. H. 6. 21. *per Babington.* 12. H. 7. 12.

¶ *Purchaſe terre.* The like Law is of Seigniories, Aduowſons, Reuerſions, Remaynders, Rents, Commons certaine, and ſuch like certaine Inheritances, wherein the Villaine hath

hath any eſtate or intereſt. If the Villaine purchaſe Land either in Fee ſimple, Fee taile, or for life, if the Villaine doth alien before the Lord doth enter, he doth preuent the Lord. But yet the iſſue of the Villaine ſhall recouer the Land intayled in a Formedon, and then the Lord may enter.

des biens en noſme de ſeiſin de touts les biens q̄ le villeine ad ou auer poit &c. Ceo eſt dit bon ſeiſin en ley, et le occupation que le villeine ad a-preſtiel claime en ſz biens, ſerra pris en le droit le Seigni-our.

of all the goods which the Villaine hath or may haue, &c. this is a good ſeiſin in law, and the occupation which the Villaine hath after ſuch clayme in the goods ſhall bee taken in the right of the Lord.

¶ *Alien la terre.* Alien commeth of the Verbe Alienare, id eſt, alienum facere vel ex noſtro dominio in alienum transferre, ſiue rem aliquam in Dominium alterius transferre. If a freeman hath iſſue and afterward by confeſſion becommeth bond, and purchaſe Lands in fee, and before the Lord enter hee dieth ſeiſed, and the Land diſcends to his iſſue which is free, in this caſe the Lord ſhall not enter vpon the heire, and yet this is a diſcent and no alienation. The like Law it is if the land ſo purchaſed by the Villaine doth eſcheate to the Lord of the Fee before any entry made by the Lord of the Villaine, ſo as the act of the Law that is the diſcent or eſcheat may aſwell preuent the Lord of his entrie, as the act of the partie by alienation.

If a Villaine be diſſeiſed before the Lord doth enter, the Lord may enter into the Land in the name of the Villaine, and thereby gaine the Inheritance of the land, but if there bee a diſcent caſt, ſo as the entrie of the Villaine be taken away, then the Villaine muſt recontinue the eſtate of the land by iudgement and execution, before the Lord of the Villaine can enter, and this word alien doth not only extend to alienations of land in deed, but alſo to alienations in law, as if the Villaine purchaſe land and dieth without heire, and the land eſcheate, or if there be a recouery againſt the Villaine in a Ceſſauit or the like.

¶ *Et iſſint eſt des biens, &c. Biens*, bona **includes all chattels aſwell** reall as perſonall. Chattels is a French word, and ſignifieth goods, which by a word of art we call Catalla. Now Goods or Chattels are either perſonall or reall, perſonall as horſe and other beaſts, houſholdſtuffe, Bowes, weapons, and ſuch like, called perſonall becauſe for the moſt part they belong to the perſon of a man, or elſe for that they are to be recouered by perſonall actions. Reall, becauſe they concerne the realtie, as tearmes for yeares of Lands or Tenements, Wardſhips, the intereſt of tenant by Statute Staple, by Statute Merchant, by Elegit and ſuch like.

Bona diuiduntur in mobilia & immobilia, mobilia rurſum diuiduntur in ea quæ ſe mouent, & quæ ab aliis mouentur: but by the Common Law, no eſtate of Inheritance or Free-hold is comprehended vnder theſe words bona or catalla. And it is to be obſerued, that as the title of the Lord to his villains lands beginneth by his entrie, ſo his title to the goods beginneth by the ſeiſure of them. And here againe it is to bee obſerued, that where our Author in this branch concerning goods vſeth theſe words (ſell or giue) that the ſame extendeth aſwell to gifts in Law as gifts in deed. And therefore if a neife hath goods, and taketh Baron by this gift in Law by force of the Marriage, the Lord is barred. And ſo it is if a Villaine make his Executors and dieth, by this gift in law the Lord is barred as ſhall be ſaid hereafter.

3.H.4.15.46.E.3.barre 217 Doct. & Stud. cap.43.fol.139. 22.E 3.6. Baldwyn Freuils caſe.

¶ *Et claime les biens & ſeiſiſt parcel des biens.* **For a claime only of** the goods of the Villaine is not ſufficient in Law, but he muſt ſeize ſome part in the name of all the reſidue, as here it appeareth, or that the goods be within the view of the Lord, for the claime and his view amount to a ſeizure, as the clayme of a Ward being preſent by word is a ſufficient ſeiſure, albeit the Gardeine layeth no hands of him. See hereafter Sect.321. And ſo note a diuerſitie betweene a clayme of Lands or Tenements, and goods. (c) In an Action of treſpaſſe or detinue brought by the Villaine, a releaſe made to the defendant by the Lord is a good barre, for that amount to a ſeiſure and grant. If the Villaine doth buy goods and make his Executors and dieth before the Lord doth ſeize them, the Executors ſhall detaine them againſt the Lord of the Villaine

(c) 18.H.6.13.b. pur Accough. 3.H.4.16. 46.E.3.barre 217.

¶ *Ad ou auer poet, &c.* **Here** (&c.) **doth imply an excellent point** of learning, for that ſuch a claime doth not only veſt the goods which the Villeine then hath, but alſo which he after that ſhall acquire and get. But otherwiſe it is of lands of freehold or Inheritance, for there ſuch a generall entrie or clayme extends only to the lands the Villeine hath

at

at that time, and not to any other which he shall purchase after, as by our Author in this Section may iustly be collected.

Sect. 178.

¶ Mes si le Roy ad vn villein que purchase terre, & alien deuant que le roy entra, vncore le roy poit enter en que maines que la terre deuiendra. Ou si le villein achata biens, & eux vendist deuant que le roy seisist les biens, vncore le roy poit seiser les biens en que maines que les biens sont, Quia nullum tempus occurrit Regi.

BVT if the King hath a Villeine who purchases Land, and alien it before the King enter, yet the King may enter into whose hands soeuer the land shal come. Or if the villeine buyeth goods and sell them before that the King seizeth them; yet the King may seize these goods in whose hands soeuer they bee. Because *Nullum tempus occurrit Regi.*

¶ *Si le roy ad villein, &c.* This is euident vpon that which hath beene said before. *Vide Sect.* 125. *Vide Stanford prær. fol* 32 a.

¶ *Ou si tiel villeine achata biens &c.* If the Kings Villeine acquire any goods or chattels, the propertie of them is in the King before any seisure or office, and it is well said of an ancient Author, (d) Al roy quant al droit, de la corone ou a franch estate ne poet nul temps occurre, and another (e) speaking in the person of the King saith, Nul temps nest limit quant a mes droits. 35. E. 3. tit. Villenage 22. (d) *Alinor cap.* 3. (e) *Britton. fol.* 88. *Bract. lib.* 1. *quæres Domini posint.*

Sect. 179.

¶ Item si home lessa cert terre a vn auter pur terme de vie sauant le reuersion a luy, & vn villeine purchase del lessor le reuersion; en cest cas il semble que le seignior del villeine poit maintenant venir a la terre, & claime le reuersion come le Seignior le dit villeine, & per cel claime le reuersion est maintenant en luy. Car en auter forme il ne poit vener a le reuersion. Car il ne poit enter sur le tenant a terme de vie. Et sil doit demurrer tanque apres le mort le tenant a terme

ALso if a man let certaine land to another for terme of life sauing to himselfe the reuersion, and a villeine purchase of the lessor the reuersion: In this case it seemeth that the Lord of the villeine may presently come to the land and claime the reuersion as the Lord of the said villeine, and by this claime the reuersion is forthwith in him. For in other forme or manner he cannot come to the reuersion. For hee cannot enter vpon the Tenant for life. And if hee should stay vntill after the death of the Tenant for

¶ *Vit maintenant vener a la terre.* For hee cannot claime the reuersion but vpon the Land, and hee by his comming vpon the Land for that purpose is no trespassor; because the Law giueth him power to claime the reuersion, lest hee should bee preuented, and claime hee cannot vnlesse hee commeth to the Land. So likewise if the villeine purchase a Seigniorie, rent, Common or any other freehold or Inheritance out of any Lands or Tenements of another, the

the Lord may lawfully come to the Land to make his claime to the seigniorie, rent or other profit out of the Land. But if the villeine purchase a Seigniorie or a rent common, or other inheritance issuing out of the Land of the Lord himselfe, it is said that the Seigniorie Rent common or such other Inheritance is extinguished in the Lords possession without any claime.

de vie, donques per cas il viendra trope tarde. Car peraduent le villeine voile granter ou aliene le reuersion a vn auter en le vie le tenant a terme d vie, &c.

life, then perchance hee should come too late. For peraduenture the villeine will grant or alien the reuersion to another in the life of the Tenant for life, &c.

Vide 41.*E.*3.18. *Audita querela.* 18. 22.*H.*4 tit. *Execution.* 28.*F.N.B.*104. 1.*H.*7.15.*b.*

¶ *Grant.* Here must be intended an attornment, for after the grant and before attornment the Lord may claime the reuersion.

¶ *En la vie del tenant per vie, &c.* Hereby, (&c.) is included tenant in taile, tenant pur auter vie, tenant by Statute Marchant, Staple, Elegit, and for yeares, for during all these estates the Lord may claime the Reuersion aswell as in case of the Tenant for life.

Section 180.

¶ A *Duowson.* Aduocatio so called because the right of presenting to the Church was first gained by such as were Founders, Benefactors, or Maintayners of the Church, viz. ratione fundationis, as where the Ancestor was founder of the Church, or ratione donationis, where he endowed the Church, or ratione fundi as where hee hegaue the soile whereupon the Church was built, and therefore they were called Aduocati: they were also called Patroni, and thereupon the Aduowson is called Ius Patronatus. And in one word Aduowson of a Church is the right of presentation or collation to the Church. Aduocatus est ad quem pertinet ius aduocationis alicuius Ecclesiæ, vt Ecclesiam nomine proprio non alieno possit præsentare. Euery Church is either presentatiue, collatiue, donatiue or electiue. Vide Section 645.648.

¶ En Meisme le maner est, lou vn villein pchase vn Aduowson dun esglise plein dun incumbēt, le Seignior del villein poit vener al dit esglise, & claime le dit aduowson, & per cel claim laduowson est en luy. Car il doit attēdre tanq; apres le mort lencumbent, & adonque a presenter son clerk a le dit esglise, donque en le meane temps le villeine poit aliener le aduowson, & issint ouste le Seignior de son presentment.

IN the same manner it is, where a villeine purchases an Aduowson of a Church full of an Incumbent, the Lord of the villeine may come to the said Church, and claime the said Aduowson, and by this claime the Aduowson is in him. For if hee will attend till after the death of the Incumbent, and then to present his Clarke to the said Church, then in the meane time, the villeine may alien the Aduowson, & so oust the Lord of his presentment.

Fleta. lib. 5. *cap.* 14.

¶ *Plein dun incumbent.* If the Church bee presentatiue, the Church is full by admission and Institution against any common person, but against the King it is not full vntill induction.

24.*E.*3.30. 25.*E.*3.47. 38.*E.*3.9. 44.*E.*3.3. 9.*H.*6.31. 22.*H.*6.27. 21.*E.*4.34.*b.* *Vide Sect.* 648.

¶ *Incumbent*, commeth of the verbe incumbo, that is to be diligently resident, id est, obnixe operam dare, and when it is written encumbent it is falsely written, for it ought to be Incumbent, as Littleton doth here. And therefore the Law doth intend him to bee resident on his Benefice.

10.*H.*6.7.

¶ *Le*

¶ *Le Seignior del villeine poit venir al egliſe & claime le dit advowſon.* Note albeit the Aduowſon is a thing incorporeall, and not viſible, yet becauſe the principall dutie of the Preſentee of the Patron is to be done in the Church the clayme of the Lord of the Villeine muſt be made there, and by that clayme the inheritance of the Aduowſon ſhall be veſted in the Lord, for euery clayme or demand to deueſt any eſtate or intereſt muſt bee made in that place which is moſt apt for that purpoſe.

¶ *Apres la mort del incumbent.* Nota, **a Church preſentatiue may** become voide fiue manner of wayes, viz. by death whereof Littleton here ſpeaketh. 2. By creation. 3 By reſignation. 4. By depriuation. 5. By ceſſion as by taking [redacted] a [redacted] benefice incompatible.

Doct & Stud. lib. 2. ca. 31. 5. E. 3. 180. 10. E. 3 482. 25. E. 3. 49 9 E. 3. 462. 11. H. 4. 37. 59. & 76. 41. E. 3. 5. F. N. B. 31. 32.

¶ *Et adonques a preſenter ſon Clerke al dit egliſe, &c.* **A preſentation** is deriued A preſentando, quia preſentare nihil aliud eſt quam præſto dare, ſeu offerre. And Littleton here briefely expreſſeth the effect of a preſentation, for it is the act of the Patron offering his Clerke to the Biſhop of that Diocelle to be inſtituted to ſuch a Church in theſe or the like words directed to the Biſhop, Præſento vobis A.B. Clericum meum ad Eccleſiam de Dale, &c. This may be done aſwell by word, as by writing, and if it be by writing it is no Deede, for the preſentation is of the Clerke, and the direction to the Biſhop, ſo as this writing is in nature of a Letter to the Biſhop: and this is the reaſon that the King himſelfe may preſent by word as elſewhere is ſaid. A Villein at this day purchaſeth an Aduowſon in fee, the Church becomes voyde, the Lord for 100. pound giuen by A.B. Clerke preſents him to the Church, and his Clerke is admitted, inſtituted and inducted, yet this gaineth not the Aduowſon to the Lord. (d) And ſo it is in that caſe if any on the behalfe of A.B had giuen or contracted with the Lord in conſideration of any valuable thing to preſent A B. to the ſaid Church, albeit it had beene without the conſent or knowledge of A.B. yet it ſhould not haue veſted the Aduowſon in the Lord. But this was not Law when Littleton wrote. (e) But now by the ſtatute of 31. Eliz. the preſentation, admiſſion, inſtitution and induction in both the ſaid caſes and in the like are made voide, where before the ſaid ſtatute they were but voydable by depriuation. And if a man preſent by vſurpation to a benefice by reaſon of any corrupt contract, agreement, &c. that preſentation, and the inſtitution and induction thereupon are voyde, for that act extends to all Patrons aſwell by wrong as by right, but where any preſents by vſurpation, the rightfull Patron and not the King ſhall preſent, for otherwiſe euery rightfull Patron may loſe his preſentation. And ſuch an incumbent that commeth in by reaſon of any ſuch corrupt agreement is ſo abſolutely diſabled for euer after to be preſented to that Church, as the King himſelfe, to whom the Law giueth the title of Preſentation in that caſe, cannot preſent him againe to that Church, for the Act being made for ſuppreſſion of ſymonie, and ſuch corrupt agreements ſo binds the King in that caſe, as he cannot preſent him that the Law hath diſabled, for the words of the Act be, Shall thereupon and from thenceforth be adjudged a diſabled perſon in Law to haue or enioy the ſame benefice. (f) And the partie being diſabled by the Act of Parliament, (which being an abſolute and direct Law) cannot be diſpenſed withall by any grant, &c. with a Non obſtante, as it may be, when any thing is prohibited Sub modo as vpon a penaltie giuen to the King. And the ſaid Act doth not only extend to benefices with cure, but to Dignities, Prebends, and all other Eccleſiaſticall liuings.

(d) Adiudge in communi banco. Mich. 41 & 42 El. C. inter Baker & Rogers.

(e) Adiudged in the Kings bench. Mich. 13. Iac. in a quare Imp: brought by the King against the Biſhop of Norwich, Thomas Cole & Robert Secker Clerke for the Vicarage of Hauerhill in Suff.

(f) Pl. Com. 502. 27. H. 8. 2. H. 7 6. 11. H. 7. 11. 13. H. 7 8. b. 11. H. 4. 76. 5. E. 3. 29. F. N. B. 211. E.

¶ *Clerke.* Clericus **is twofold**, Eccleſiaſticus (**which** Littleton here intendeth) and he is either ſecular, or regular, ſo called becauſe he is Servus & hæreditas domini: and Laicus, and in this ſence is ſignified a Pen-man, who getteth his liuing in ſome Court or otherwiſe by the vſe of his pen.

4. H. 4. ca. 12.

Note if the Church becommeth voide, albeit the preſent auoydance be not by Law grantable ouer, yet may the Lord of the Villeine preſent in his owne name, and thereby gaine the inheritance of the Aduowſon to him and his heires for albeit it be not grantable ouer, yet it is not meerely a Thoſe in action, (g) for if a Feme couert be ſeiſed of an Aduowſon, and the Church becommeth voide, and the wife dieth the husband ſhall preſent to the Aduowſon, (h) but otherwiſe it is of a bond made to the wife, becauſe that is meerely in action.

(g) 14. H. 4. 12. 38. E. 3. 35. 13. E. 3. quare. imp 57.
(h) 43. E 3. 10. 39. E. 3. 5. 4. H. 6. 5.

Section 181.

¶ Item il y ad villein regard, & villeine en gros. A Lſo there is a villeine regardant, and a villein in groſſe.

¶ *Villein regardant.* **Hee is called regardant to the Manor, becauſe he hath the charge**

8. H. 7. 4.

to

to do all base or villenous ſeruices ſwithin the ſame, and to gard and keepe the ſame from all filthie or loathſome things that might annoy it, and his ſeruice is not certaine, but hee muſt haue regard to that which is commanded vnto him. And thereupon hee is called Regardant, A quo præſtandum ſeruitium incertum & indeterminatum, vbi ſcire non poterit veſpere, quale ſeruitium fieri debet mane, viz. vbi quis facere tenetur quicquid ei præceptum fuerit, As before hath beene obſerued. And Littleton ſayeth hereafter, That no other thing is ſaid to be regardant but onely a Villeine: (l) Yet in old Bookes it was ſometimes applied to Seruices.

Bract.li.2.fo.26. Mir.ca.2. §.18.

Vid.Sect.184.

(l) 20.E.3.tit.Iſſue 30.

¶ *In groſſe*, is that which belongs to the perſon of the Lord, and belongeth not to any Mannor, Lands, &c.

villein regardant eſt ſicome home eſt ſeiſi dun Manñ a que vn villein eſt regardāt, & celuy que eſt ſeiſie del dit manñ, ou ceux q̃ eſtat il ad en meſm̃ le mannor ount eſte ſeiſes de le dit villein & de ſes Auncеſtors, come villeins & niefs regardants a meſme le mannor de temps dont memorie ne curt. Et villeine en groſſe eſt, lou vn hõe ſeiſie dun Mannor a que vn villeine eſt regardant, & il graunt meſm̃ le villein p̃ ſon fait a vn auk, donq̃s il eſt villein en groſſe, & nemy regardant.

A villein regardant is, as if a man be ſeiſed of a Mannor, to which a villeine is regardant, and he which is ſeiſed of the ſaid Mannor, or they whoſe eſtate he hath in the ſame Mannor, haue beene ſeiſed of the Villein & of his Anceſtours as villeins & niefs regardant to the ſame mannor time out of memory of man. And villein in groſſe is, where a man ſeiſed of a Mannor wherunto a villein is regardāt, & granteth the ſame villein by his Deed to another, then he is a villein in groſſe, and not regardant.

Sect. 182.

Mir.ca.2.§.18.

¶ This needeth no explanation, but to adde the ſaying of an antient Author, Seruage de home eſt ſubiection, iſſuant de cy grand antiquitie, que nul franke coppe poet eſtre troue per humane remembrance.

Item ſi vn hõe & ſez Anceſtors que hẽ il eſt, ount eſte ſeiſies dun villein et de ſes anceſtors, come des Villeins en groſſe, de tẽps dont memorie ne curt, tiels ſont Villeines en groſſe.

ALſo if a man and his Anceſtours whoſe heire he is, haue beene ſeiſed of a Villeine, and of his Auncеſtors as of Villeines in Groſſe, time out of memorie of man, Theſe are Villeines in Groſſe.

Sect. 183.

Vi.Sect.441.234.274.74. (l) Bract.li.5.Tract.5.ca.28.

¶ *Or fine.* In Latyne, Finis. (l) Ideo dicitur finalis concordia, quia imponit finem litibus, & eſt exceptio peremptoria.

(m) Glan.li.ca.1.

(m) Finis eſt amicabilis compoſitio & finalis concordia ex conſenſu & licentia

Et hic nota, que tiels choſes q̃ ne poiẽt eſte grants, ne aliẽs ſans fait ou fine, home que voile auer tiels choſes per pre-

AND heere note, that ſuch things which cannot be granted nor aliened without Deed or Fine, a man which will haue

prescription, ne poet autrement prescriber forsque en luy, & en ses Auncestors que heire il est & nemy per ceux parols, en luy & en ceux que estate il ad. p̄ ceo q̄ il ne poet auer lour estate sans fait ou auter escripture, le quel couient deste monstre a le court, si il voile auer aleun aduantage de ceo. Et pur ceo que le grant & alienation dun villeine en gros ne gist sās fait ou aut escriptur̄, hōe ne poit p̄scriber ē vn villein ē gros sās mōstrās d̄ scriptur̄, sinon en soy mesme que claime le villeine, & en ses Ancestors que heire il est, Mes d̄ tiels choses que sont regardants ou appendāts a vn mannor, ou a auters terres & Tenements home poet prescriber que il et ceux que estate il ad, queux fueront seisies de le Mannor, ou de tiels terres & Tenements, &c. ont este seisies de tiels choses come regardants ou appendants a l'manor, ou a tiels tres & tenements, de temps dont memorie, &c. Et la cause est, pur ceo que tiel Manor, such things by prescription, cānot otherwise prescribe, but in him and in his Auncestors whose heire hee is, and not by these words, In him & them whose estate hee hath, for that he cānot haue their estate without Deed or other Writing, the which ought to bee shewed to the Court, if hee will take any aduantage of it. And because the grant and alienation of a villeine in grosse, lieth not without Deed or other Writing, a man cannot prescribe in a Villein in grosse, without shewing forth a Writing, but in himselfe which claims the Villeine, and in his Aunceſtours whose heire hee is. But of such things which are regardant or appending to a Mannour, or to other lands and tenements, a man may prescribe, that hee and they whose estate hee hath who were seised of the Mannour, or of such lands and Tenements, &c. haue bin seised of those things, as regardant or appendant to the mannor or to such lands & tenements time out of mind of man: And the

Domini Regis, vel eius Iusticiariorum. (n) Talis concordia finalis dicitur eo quod finem imponit negotio, adeo vt neutra pars litigant̄ ab eo de cætero poterit recedere. Of the seuerall parts of a Fine, and many incidents to the same, you shall read in my Reports.

(n) *Lib.9.cap.3.Statut. & Modo leuandi Fines. Pl.Com.357.*

Lib.5.fol.38.Tayes case.

¶ *Que estate, &c.* Quorū statum, as much to say, whose estate he hath. Here Littleton declareth one excellent rule, (o) That a man cannot prescribe in any thing by a que estate, that lyeth in grant, and cannot passe without Deed or Fine, but in him and his Auncestors he may, because he comes in by discent, without any conueyance. Neither can a man plead a que estate in himselfe, of any thing that cannot passe without Deed, (p) but in another he may, as in barre of an auowrie, the Plaintife may plead, a que estate in the seignorie in the auowant. But Littletons words are to bee obserued, (Home que voile auer tiels choses per prescription) Therefore (q) when a thing that lieth in graunt is but a conueyance to the thing claimed by prescription, there a que estate may bee alledged of a thing that lieth in grant, as a man may prescribe, that he and his Ancestors, and all those whose estate hee hath in an Hundred, haue time out of mind, &c. had a Leet, &c. this is good, &c.

(o) *22.Ass.53.23.Ass 6. 12.H.7.10.18.*

(p) *39.H.6.8.18.E.4.23.*

(q) *11.H.4.89.19.R 2. Action sur le case 51. 13.E.3.Br.674.*

(r) Regularly the Plaintife shall not intitle him by A que estate, but hee must shew how he came by it, but after Auowrie made, the Plaintife shall plead a que estate, because he is now become as a Defendant.

(r) *9.E 4.3.6.29.Ass.19. 2.H.6.10.48.E.3.Tit,33. 3.H.28.*

(s) A man may plead, A que estate of a tenure in taile, or of an estate for life, so as he auerreth the life of them, but he cannot plead a que estate, of a Lease for yeares, or at will.

(s) *41.Ass 2.40.Ass.28. 2.H.4.20.15.E.4.1. 5.H.7.39. 18.E.4.10. 7.E.6.Tit.Que estate Br.31. 27.H.6.3.7.El.Dyer 238.*

(t) A Disseisor, Abatour, Intruder, Recoueror, or any other that commeth in the post, shall

(t) *22.H.6.34.6.E.4.13. 31.H.8. Que estate Br.48. 39.H.6.14. 9.H.6.Estop.25*

shall plead a que eſtate.

(u) 11.H.4.81.27.H.6.32. 9.E.4.3. 2.E.6.111.que eſtate,8.1.E.6.que eſtate, Br.49.

(v) A que eſtate muſt bee alledged in the Tenant or Defendant himſelfe, and not in one in the meane conueyance from whom hee claymeth and yet ſome bookes be to the contrary.

ou tres ſ tenemẽts, poyent paſſer per alienation ſans fait, ꝛc.

reaſon is for that ſuch manor or lands and tenements may paſſe by alienation without deed,&c.

℄ *Le quel covient deſte monſtre al court.* The reaſon whereof a Deede that is pleaded ought to be ſhewed to the Court is,becauſe euery Deede muſt proue it ſelfe to haue ſufficient words in Law whereof the Court muſt adiudge, and alſo to bee proued by others as by Witneſſes or other proofe if the Deede be denied which is matter of fact.

℄ *Per alienation ſauns fait,&c.* Here by (&c.) is implyed, that whatſoeuer paſſeth by Liuery of ſeiſin either in Deede or in Law, may paſſe without Deede, and not only the Rents and ſeruices parcell of the Mannor ſhall with the demeanes as the more principall and worthy paſſe by Liuery without Deede, but all things regardant, appendant, and appurtenant to the Mannor as incidents or adiuncts to the ſame ſhall together with the Mannor paſſe without Deede, all which, as here it appeareth, and elſe-where is ſaid,ſhall paſſe without ſaying Cum pertinentijs.

Section 184.

℄ R *Egardant, Vide Sect.* 181.

℄ *Appendants.* Appendant is any inheritance belonging to another that is ſuperiour or more worthy. In law it is called Pertinens quaſi invicem tenens holding one another, a word indifferent both to things appendant and things appurtenant, the quality and nature of the things doe make the difference; but regardant (as our Author ſaith) is only applied to a villeine.

℄ E Teſt aſcauoir, que nul choſe eſt noſme regardant a vn manor,ꝛc.forſq villein, mes certeine auters choſes come aduowſon ſ cõmon de paſture,ꝛc. ſont noſmes appendants al mannor ou al tres ſ tenements,ꝛc.

AND it is to be vnderſtood that nothing is named regardant to a mannor,&c. but a villeine, but certaine other things as an aduowſon, & common of paſture,&c. are named appendant to the mannor or to the lands and tenements,&c.

*Vide Sect.*1.
(w) 5.*Aſſ.*9.8.*H.*7.4.5. 28.*H.*8.*Dier.*30.*b.* *Pl. Com.*381.*F.N.B.* *fo.*181.

(w) Appendants are euer by preſcription, but appurtenants may be created in ſome caſes at this day. As if a man at this day grant to a man and his heires common in ſuch a more for his beaſts leauant or couchant vpon his mannor, or if he grant to another common of Eſtouers or turbary in fee ſimple to be burnt or ſpent within his mannor, by theſe grants theſe Commons are appurtenant to the mannor, and ſhall paſſe by the grant thereof In the ciuill Law it is called Adjunctum.

(x) 43.*Aſſ.p.*10. 43.*E.*3.22.

(x) If A. beſeiſed of a mannor whereunto the franchiſe of waife and ſtray and ſuch like are appendant, and the King purchaſeth the mannor with the appurtenances,now are the royall Franchiſes reunited to the Crowne, and not appendant to the Mannor,but if he grant the mannor in as large and ample manner as A. had,ꝛc. it is ſaid that the Franchiſes ſhall bee appendant (or rather appurtenant) to the Mannor.

(y) *Hill & Granges caſe. Pl.Com.*168.

Concerning things appendant ſ appurtenant,two things are implied. (y) Firſt that preſcription (which regularly is the mother thereof) doth not make any thing appendant or appurtenant, vnleſſe the thing appendant or appurtenant agree in quality and nature to the thing whereunto it is appendant or appurtenant, as a thing corporeall cannot properly bee appendant to a thing corporeall, nor a thing incorporeall to a thing incorporeall. But things incorporeall which lye in grant as Aduowſons, Villeines, Commons and the like, may bee appendant to things corporeall, as a Mannor houſe or lands, or things corporeall to things incorporeall, as lands to an Office.

(z) 1*H.*7.24.*Pl.Com.*169.
(a) 5.*Aſſ.*9.
(b) 10.*E.*3.5. 37 *H.*6.34. 26.*H.*8.4.*lib.*4.*fo.*36.37. *in Tirringhams caſe.*

(z) But yet as hath beene ſaid) they muſt agree in nature and quality, for (a) common of Turbary or of Eſtouers cannot be appendant or appurtenant to land, but to a houſe, to be ſpent there. (b) Nor a Leete that is temporall, to a Church or Chappell which is Eccleſiaſticall Neither can a Nobleman, Eſquire,ꝛc. clayme a ſeate in a Church by preſcription

tion as appendant or belonging to land, but to a house, for that such a seat belongeth to the house in respect of the inhabitancie thereof, and therefore if the house bee part of a Mannor, yet in that case he may clayme the seate as appendant to the house for the reason aforesaid.

Secondly, that nothing can be properly appendant or appurtenant to any thing vnlesse the principall or superiour thing bee of perpetuall subsistance and continuance, for example. An Aduowson, that is said to be appendant to a Mannor, is in rei veritate appendant to the Demesnes of the Mannor, which are of perpetuall subsistance and continuance, and not to Rents or services, which are subiect to extinguishment and destruction. 5.E.6. Dier.70.b.

An Aduowson is appendant to the Mannor of Dale, of which Mannor the Mannor of Sale is holden, the Mannor of Sale is made parcell of the Mannor of Dale by way of Escheat, the Aduowson is only appendant to the Mannor of Dale.

And where it is said that a chamber may be parcell of a Cozody, and passe by the name of the Cozody which may be extinguished, there he that hath the Cozody hath but his habitation in the chamber, as a Fellow of Trinity Colledge in Cambridge hath in his chamber, or as one that had a Cozody and a chamber in an house of Religion, he had but his habitation only. As for Offices of fee whereunto land may appertaine they are of perpetuall subsistance, either being in esse, or in that they are grantable ouer. 31.H.6.15.b.

Note that an Aduowson at one turne may be appendant, and at another Turne in grosse, as if the Mannor be deuided betweene Copercencrs, and euery one hath a part of the Mannor without saying any thing of the Aduowson appendant, the Aduowson remaines in copercenarie, and yet in euery of their turnes, it is appendant to that part which they haue; and so it is if they make composition to present against common right, yet it remaines appendant. But if vpon such a partition an expresse exception be made of the Aduowson, then the Aduowson remaines in Copercenarie and in grosse, and so are the bookes reconciled. 13.E.2.quar.Imp.170. 43.E.3.35. 13.E.3.quar. Imp.58. 17.E.3.38. 9.Eliz. Dier.259.7.E.3.20. 19.E.3.quar.Imp.59. 35.H.6.32.33.38.H.6.9. 2.H.7.5.

¶ *Comon de pasture.* (c) Communia, It commeth of the English word Common, because it is common to many, and thereupon, and accordingly is here called by Littleton Common of pasture, for that the feeding of beasts in the land wherein the Common is to be had belongs to many. (c) Glanuill,lib.13.ca.36. Bract. lib.4.ca.19.& 40. Brit.cap.55.56.57. Fleta,lib.4.ca.19. Mirror ca.5 §.3.

(d) There be foure kindes of Common of pasture, viz. Common appendant which is of common right, (and therefore a man need not prescribe for it) for beasts commonable (that is) that serue for the maintenance of the plough, as horse and oxen to plow the land, and for kine and sheepe to compester the land, and is appendant to arrable land. (d) 20.E.3.Admeasurement 8. Temps E.1.Common 24.17. E.2.ibid.23.4.H.6.22.H.6.

(e) The second is Common appurtenant that is for beasts not commonable, as Swine, goates, and the like. (f) If a man purchase part of the land wherein Common appendant is to bee had, the Common shalbe apportioned, because it is of common right, but not so of a Common appurtenant, or of any other Common of what nature soeuer. But both Common appendant and appurtenant, shalbe apportioned by alienation of part of the land to which Common is appendant or appurtenant, and for Common appurtenant one must prescribe. (e) 37.H.6.34. 26.H.8.4. F.N.B.181. (f) Lib.4.fo.37.38.&c. Turnghams case.

(g) The third is Common per cause de vicinage, which differeth from both the other Commons, for that no man can put his beasts therein, but they must escape thither of themselues by reason of vicinity, in which case one may Inclose against the other, though it hath beene so vsed time out of minde, for that it is but an excuse for trespasse. (g) Lib.8.fo.78.79. W.Wildes case.

The last is Common in grosse, which is so called for that it appertaineth to no land, and must be by writing or prescription. Of Common appendant, appurtenant, and in grosse, some bee certaine, that is for a certaine number of beasts, some certaine by consequent, viz. for such as be tenant and couchant vpon the land, and some be more incertaine, as common sans number in grosse, and yet the Tenant of the land must common or feed there also.

There bee also (h) diuers other Commons as of Estouers, of Turbary, of Pischarye, of digging for Coles, Mineralls and the like. (i) If Common appendant bee claymed to a Mannor, yet in rei veritate it is appendant to the Demesnes and not to the services, and therefore if a Tenancie escheate, the Lord shall not encrease his Common by reason of that (k) If a man clayme by Prescription any manner of Common in another mans land, and that the owner of the land shall be excluded to haue Pasture, Estouers or the like, this is a prescription or custome against the Law, to exclude the owner of the soyle, for it is against the nature of this word Common, and it was implyed in the first graunt that the owner of the soyle should take his reasonable profit there, as it hath beene adiudged. * (l) But a man may prescribe or alledge a custome to haue and enioy Solam vesturam terræ, from such a day till such a day, and hereby the owner of the soyle shall be excluded to pasture or feede there, and so hee may prescribe to haue Seperalem pasturam, and exclude the owner of the soyle from feeding there. Nota diuersitatem. (m) So a man may prescribe to haue Seperalem piscariam in such a water, and the owner of the soyle shall not fish there, but if hee clayme to haue Communiam piscariæ, or Liberam piscariam, the owner of the soyle shall fish there, and all this hath (h) Fleta vbi supra. (i) 18.E.3.fo.43. (k) 15 E.2.Prescript.51. 12.H.8 fo.2. * Pasch. 26.Eliz. in the Kings Bench, inter White & Shirland in Com. Oxon. Vid. Sect.1.& 2. (l) Vid. 3.E.3.29,30. 4.E.3.7. 46.E.3.23. 15.E.2.Prescript.51. (m) 20.H.6.4. 10.H.7.24. Temps E.1. Assise 422.

(*) *Inter Chinery & Fiſhen in le Common Banke in repleuin & Mich.19.& 20.Eliz. inter Vinland & White in Com. Oxon. Et inter Faſton & Cranmede eodem termino in Eſſex.*

bœne reſolued. (*) And therefore it is neceſſary for euery man by learned aduice to pleade according to the truth of his caſe for Parols font plea.

(n) A man ſeiſed of land whereunto common is appendant, and is diſſeiſed, the Diſſeiſee cannot vſe the common vntill he entreth into the land whereunto it is appendant. (o) But if a man be diſſeiſed of a Mannor whereunto an Aduowſon is appendant, hee may preſent vnto the Aduowſon before he enters into the Mannor, and the reaſon of this diuerſitie is becauſe in the caſe of the common it ſhould be a preiudice to the Tenant of the ſoile. For if the Diſſeiſee might doe it the Diſſeiſor alſo might put on his Cattle, which ſhould be a double charge to the Tenant, but not ſo of the Aduowſon.

(n) *19.H.6.33.*
(o) *Vide Sect.541.*

Sect. 185.

Bract.lib.1.cap.6.
Britt.fol.78.
Fleta lib.1 cap.3.43.E.3.4.b.
19 E.2.tit.vill.34.
18.E.4.29.
(p) *19.H.6.32.26.Aſſ.62.*
37.Aſſ.17.
11.H.4.16. in Appeale.

¶ This is intended in ſome action brought againſt him that made ſuch confeſſion, (p) or where hee is brought into Court by courſe of Law, for if he commeth into the Court extraiudicially and not by any due courſe of Law, ſuch confeſſion is without warrant of Law and bindeth not the partie, becauſe the Court had no warrant to take it. But if a Præcipe be brought againſt one he may confeſſe himſelfe villeine to an eſtranger, and that he holds the Land in villenage of him, and this is good and ſhall bind him. And if in that caſe the demandant reply, that hee the day of his Writ purchaſed was a free man, and thereupon iſſue is taken, and hee is tried to bee free yet he ſhall remayne villeine to the ſtranger in reſpect of his confeſſion.

¶ Item ſi home voile en Court ò record ſoy conuſter deſtre villein, que ne fuit villein adeuant, tiel eſt villeine en groſſe.

Alſo if a man will acknowledge him ſelfe in a Court of Record to bee a Villeine, who was not a villeine before, ſuch a one is a Villeine in groſſe.

41.E.3.tit.vill.6.

19.H.6.32.b.

If a Writ of Natiuo habend' be brought againſt one, and the Plaintiffe as he ought offereth in his Count to proue the villenage by the Couſins and Kindred of the Defendant, and thereupon produceth the Uncles of the Defendant who vpon examination confeſſe themſelues to be villeines to the Demandant, this confeſſion being entred of Record, doth ſo bind, that albeit they were ſo free before, they and the heires of their bodies are by this confeſſion bond and Villeines for euer, for the Uncles came in by due courſe of Law in an Action depending in Court.

Sect. 186.

F.N.B.161.a.
Regiſt.132.& 277.
Britton.fol.20.
Bract.lib.3.tract.2.ca.12.13
Fleta lib.1.cap.28.
3.H.5.tit. vtlawrie Statham.

¶ *Nieſe.* Or Naife is in Latine naturalis, ſeu natiua, becauſe for the moſt part Neifs are bond by Natiuitie.

¶ *Feme que eſt vtlage eſt dit waiue.*

Waiue, Wauiata and not vtlegata or exlex, for that women are not ſworne in Leets, or Tornes, as men which be of the age of 12. yeares or more be, and therefore men

¶ Item home que eſt villein eſt appelle villein, & feme que eſt villein eſt appelle nyefe: Si come home que eſt vtlage eſt dit vtlage, & feme que eſt vtlage eſt dit waiue.

Alſo a man which is a villein is called a Villeine, and a woman which is Villein, is called a Neife. As a man which is outlawed, is called outlawed: and a woman which is outlawed, is called Waiued.

Regiſt.orig.132.

may be called vtlegati, id eſt, extra legem poſiti, but women are Waiuiatæ, id eſt, derelictæ, left out or not regarded, becauſe they were not ſworne to the Law, wherein it is to be noted that of ancient time a man was not ſaid to bee within the Law, that was not ſworne to the Law, which is intended of the Oath of Allegiance in the Leet.

And the Outlawrie of a woman is legally called Waiuiaria mulieris.

Sect. 187.

¶ Item ſi vn Villein, prent franke feme a feme, & adiſſue enter eux, liſſues ſerront Villeines. Mes ſi nieſe prent franke home a ſa baron, lour iſſues ſerr franke.

* Et ceſt contrarie a le ley ciuill, car la eſt dit, Partus ſequitur ventrem. *

ALſo if a Villeine taketh a freewoman to wife, and haue iſſue betweene them, the iſſues ſhall be Villeines. But if a Nieſe taketh a freeman to her husband, their iſſue ſhall be free.

* This is contrarie to the Ciuill Law, for there it is ſaid, *Partus ſequitur ventrem.* *

¶ CIrculus totum alimentum à ſtipite capit poma tamen edit ſua. The ſcience takes all his nouriſhment from the ſtocke, and yet it produceth his own fruit.

(q) Si quis de ſeruo patre natus ſit & matre libera pro ſeruo reddatur occiſus in ea parte, quia ſemper à patre, non à matre generationis ordo texitur, ſi pater ſit liber & mater ancilla pro libero reddatur occiſus. (r) Lex Angliæ nunquam matris ſed ſemper patris conditionem imitari partum iudicat.

Fortescue cap.42. Glanuill.lib.5.cap.6 Hill.29.E.1. coram Rege Eboium in Theſaur.

(q) *Lib.rub.cap.77.*

(r) *Forteſcue vbiſupra.*

(ſ) The husband and wife are all one perſon in Law, and the Nieſe marrying a freeman is infranchiſed during the couerture, and therefore by the Common Law of England, the iſſue is free.

(ſ) *Herewith agreeth Britton fol.78.b.*

(t) Si mulier ſerua copulata ſit libero, &c. quod partus habebit hæreditatem, & mater nullam dotem, quia mortuo viro ſuo libero redit in priſtinum ſtatum ſeruitutis niſi hæres ei dotem fecerit de gratia. And when a bondman marrieth a free woman, they are all one perſon in Law, and Duæ animæ in carne vna, and vxor ſubiecta eſt viro, & ſub poteſtate viri.

(t) *Bract.lib.4.fol.298.b. Idem lib.1.ca.6. Mirror.cap.2.§.18.*

(u) Obſeruatur in Com' Cornubiæ de tali conſuetudine, quæ talis eſt quod ſi liber homo ducat natiuam aliquam in vxorem ad liberum tenementum & liberum thorum, ſi ex ea duæ procreantur filiæ, vna erit libera & altera villana, quia ibi partiti ſunt pueri inter liberum patrem & Dominus vxoris villanæ.

(u) *Bract.lib.4.fol.271.*

(x) Qui vero procreantur ex natiua vnius, & natiuo alterius, proportionabiliter inter Dominos ſunt diuidendi.

(x) *Glanuill.lib.5.cap.6.*

¶ *Et ceo eſt contrarie al ley ciuil.* For true it is that by that Law Partus ſequitur ventrem, aſwell where a free man takes a bond woman to wife, as where a bond man takes a free woman to wife. In the firſt caſe the iſſue is by the Ciuill Law bond, and in the other free, both which Caſes are contrarie to the Law of England: but this is no part of Littleton, and therefore we in this manner paſſe it ouer.

Forteſcue ca.42.

Section. 188.

¶ Item nul baſtard poit eſtre villein, ſi non que il voile ſoy conuſter eſtre villeine en court de record, car il eſt en ley quaſi nullius filius, pur ceo que il ne poit enheriter a nulluy.

ALſo no baſtard may be a villeine, vnleſſe hee will acknowledge himſelfe to bee a villeine in a Court of Record, for he is in law, *quaſi nullius filius*, becauſe he cannot be heire to any.

¶ NVllius (a) *filius.*
Cui pater eſt populus, pater eſt ſibi nullus, & omnis,
Cui pater eſt populus, non habet ille patrem.

(a) *Vide Sect.199. 13.E.1.tit.villen.36.*

(b) Some hold that the Baſtard of a nieſe ſhall bee a villeine. (c) And others hold that if a villeine hath a Baſtard by a woman, and after marieth the woman, that this Baſtard is a villeine, but the law is contrarie in both caſes, for in both caſes, the iſſue by the Common Law is a Baſtard, and conſequently, quaſi nullius filius, as Littleton here ſaith. (d) Though a Baſtard be a reputed ſonne, yet is he not ſuch a ſonne in conſideration whereof an vſe can bee raiſed for the reaſon that Littleton here yeelds, becauſe in iudgement of Law he is Nullius filius. (e) And for

(b) *Bract.lib.1.fol.5.a. Fletalib.1.cap.3. Britton.fol.78.*
(c) *39.E.3.34. 43.E.3.4. Britton.vbiſupra.*
(d) *23.Eliz. Dier.374.*
(e) *13.Eliz. Dier.296.*

14.*Eliz.Dier.313.* 18.*Eliz.Dier.345.*

for the ſame reaſon where the Statute of 32.H.8. of Wills ſpeaketh of Children, baſtard children are not within that Statute, and the baſtard of a woman is no child within that Statute where the mother conueys Lands vnto him.

(f) *Trin.18.E.1.Rot.61. Bedf. coram Rege.*

(f) It was found by verdict that Henrie the ſonne of Beatrice which was the wife of Robert Radwell deceaſed, was borne per vndecim dies poſt vltimum tempus legitimum mulieribus conſtitutum. And thereupon it was adiudged, Quod dictus Henricus dici non debet filius prædicti Roberti ſecundum legem & conſuetudinem Angliæ conſtitut'. Now Legitimum tempus in that caſe appointed by Law at the furtheſt is nine moneths, or foortie weekes, but ſhee may be deliuered before that time, which iudgement I thought good to mention. And this agreeth with that in Eſdras. Vade & interroga prægnantem, ſi quando impleuerit nouem menſes ſuos ad huc poterit matrix eius retinere partum in ſemetipſa? & dixi, non poteſt Domine.

4.Eſdras 4.41. Vide Tancrell. nouas reperta, pag.485.&c.

Sect. 189.

(g) *Bract.lib.4.fol.196. Britton cap.49.fol.125.*

¶ *Heſcun Villeine eſt able & franke de ſuer,&c.* (g) In an Action brought by a villeine. Verſus non Dominum, non valebit ei exceptio, quia eſt ſeruus alienus ex quo nihil ad ipſum virum liber ſit an ſervus.

(h) 14.*E.4.6.b.* 15.*E.4.31.* 20.*E.3.tit.Villein* 10. 38.*E.3.21.*

(h) And it is to bee obobſerued, that hee that hath but a particular eſtate in a villeine, as tenant for life or for yeares ſhall diſable the villeine if he brings an action againſt him, but the Leſſor ſhall not (as it is ſaid) diſable him,

(i) *Fleta lib.2.cap.4.*

(i) Examinatio villenagij non tenet, niſi ex ore veri Domini fuerit pronunciata.

¶ *Appeale.* Appellum commeth of the French word Appeller, that ſignifieth to accuſe, or to appeach. In Appeach.

(k) *Britt cap.22.fol.38. Bracton. lib.1.fol.6.*

(k) In Appeale is an accuſation of one vpon another with a purpoſe to attaint him of felonie by words ordained for it.

(l) 18.*E.3.32.* 11.*H.4.93.* 1.*H.4.6.* 29.*H.6.tit. Coron* 17.

¶ *De mort* (l) for a villeine ſhall not haue an appeale of robberie againſt his Lord, for that he may lawfully take the goods of the villeine as his owne.

(m) *Fleta li.1.ca.5.1.H.4.6*

(m) And if in an Appeale of death it be found for the Plaintiffe, he is enfranchiſed for euer. Hinc enim eſt quod eo ipſo ſunt huiuſmodi Domini ſeruos ſuos amiſſuri cum de iniurijs fuerint conuicti. And there is no diuerſitie herein whether he be a villeine regardant, or ingroſſe although ſome haue ſaid the contrarie.

¶ **Iteꝫ cheſcun villein eſt able & franke de ſuer touts mãners dactions enuers cheſcun perſon, forſpris enuers ſon Seignior a que il eſt villein. Et vncore en certein choſes il poit auer action enuers ſon Seignior. Car il poit auer enuers ſon Seignior vn action dappeal ď mort ſon pere, ou dauters de ſes auncesters que heire il eſt.**

Alſo euery Villein is able and free to ſue all manner of Actions againſt euery perſon, except againſt his Lord to whom he is villeine: and yet in certain things he may haue againſt his Lord an Action, for hee may haue againſt his Lord an action of appeale for the death of his father, or of his other Anceſtors whoſe heire he is.

Section 190.

(n) *Mirror.ca.1.§.12. Cap.3.de rape. & cap.4.de homicide.*

¶ *Rape.* (n) raptus is when a man hath carnall knowledge of a woman by force and againſt her will.

¶ *Appeale de rape.*

¶ **Auxi vn Niefe que eſt rauie per ſa ſeignior, poit auer vn appeale de rape enuers luy.**

Alſo a Niefe that is rauiſhed by her Lord, may haue an Appeale of Rape againſt him.

(*) *W.1.ca.13. W.2.ca.35. 6.R.2.ca.6. 11.H.4.cap.13. 1.E.4.cap.1.*

(*) By the generall puruiew of the Statutes, that giue the Appeale of Rape, the Niefe ſhall haue an Appeale of Rape againſt the Lord.

(o) *29.H.6.tit.Coron.17. Bract.lib.3.fol.147.*

(o) And it ſeemeth by the ancient Authors of the Law, that this ſo hainous an offence was ſeuerely puniſhed by loſſe of eyes and priuie members, but of old time it was felony which you may reade at large in the ſecond part of the Inſtitutes W.1.cap.13.

(p) And

(p) And this word Rape which our Author here vseth is so appropriated by Law to this case, as without this word (Rapuit) it cannot be expressed by any Periphrasis or circumlocution, for Carnaliter cognovit eam or the like will not serue. (p) 9.E.4.26. Mirror, ca.1.§.13.

Section 191.

¶ Auxy si vn villein fait executor a vn auter, & le Sr̃ del villeine fuit en dette a le testator en vn certeine summe dargent que nest my paie, en ceo case le villeine come executor de le testator auera action de det en nuers son seignior, pur ceo q̃ il ne recouera le debt a son vse demesne, mes al vse le testator.

ALso if a villeine be made executor to another, and the Lord of the villeine was indebted to the testator in a certaine summe of money which is not paid, In this case the villeine as executor of the testator shall haue an action of debt against his Lord, because hee shall not recouer the debt to his own vse, but to the vse of the testator.

¶ Of this matter sufficient hath bene spoken in this chapter before. The villeine shall haue an action as Executor against his Lord, and it is no plea for the Lord, to say that the Plaintife is his villeine, for hee shall not be enfranchised by the vser of this action, because hee hath it by a gift in Law to the vse of the Testator and not to his owne vse. 21.E.4.50.a.

Sect. 192.

ITem le Sr̃ ne poit prender hors del possession de tiel villein q̃ est executor les biens le mort, & sil face, le villeine cõe executor auera action de trespasse de meſm̃s les bñs illint prises enuers son Sr̃, & recouera damages al vse le testator. Mes en touts tielx cases, il couiẽt que la Sr̃ que est defendant en tielx actions face protestation, q̃ le plaintife est son villein, ou auterment le villeine serra enfranchise, co-

ALso the Lord may not take out of the possession of such villeine who is Executor of the goods of the deceased, and if he doth, the villeine as executor shall haue an action for the same goods so taken against his Lord, and shall recouer damages to the vse of the testator. But in all such cases, it behoueth that the Lord which is defendant in such actions maketh protestation that the plaintife is his villein, or otherwise the villeine shall bee infran-

¶ *LE Seignior ne poet prender hors del possession, &c.* Of this also sufficient hath bene said before.

¶ *Et recouera damages al vse del testator.* (q) Note damages recouered by the Executor in an action of trespasse shall bee assets, and yet they were neuer in the testator. And so it is in other like cases as by our bookes it appeareth. (q) 21.E.4.4.b. 11.H.6.35.b. 3.H.6.2. 2.H.4.21. 1.H.4.6.

(r) If an Executor hath a villeine for yeares, and the villeine purchases lands in fee the Executor entreth, he shall haue the whole fee simple, but because he had the villein in auter droit, viz. as Executor to the vse of the dead it shall be assets in his hands. Note a diuersitie betweene the quantitie of the estate and the qualitie of it, for the Law respecteth not the quantity of the estate, for not only (r) Dodr. & Stud. Brooke tit. Villenage, 70.

(s) Tenant

(f) *L.*5.*E.*4.61.

(t) 21.*H.*6.37.

(f) Tenant in taile and Tenant for life of a villeine shall haue the perquisite of the villeine in fee, but (t) Tenant for yeares and Tenant at will also shall haue it in fee.

ment que le matter soit troue p̄ le Sñr, & encounter l' villein, come est dit.

chised although the matter bee found for the Lord, & against the villeine as it is said.

(u) 41.*E.*21.

(w) 18.*E.*3.29.

But the Law respecteth the qualitie, for in what right he hath the villeine, in the same right shall he haue the perquisite, as in the case of the Executor aboue said, and in the case of the Bishop (u) that hath the villeine in right of his Church, he shall haue the perquisite in the same right.

(w) So if a man hath a villeine in the right of his wife, he shall haue the perquisite also in her right. But if the purchase be after issue had, then the Baron shal haue the perquisite to him and his heires, because by the issue hee is intituled to bee Tenant by the Curtesie in his owne right.

*Vi. Sect.*193.
(x) *Pl. Com.*276.*b. In Greisbrokes case.*

¶ *Protestation.* (x) Protestatio is an exclusion of a conclusion, that a partie to an Action may by pleading incurre, or it is a safegard to the partie which keepeth him from being concluded by the plea he is to make, if the issue be found for him: but in this case without a protestation, albeit the issue be found for the Lord, the villeine shall be enfranchised, as it appeareth hereafter in this Section.

Sect. 193.

*Britt. fol.*79.125.*b.*126.*a.*

¶ *Eo ferra trie en le le Countie, &c.* Be tried, that is as it is intended by the verdict of xii. men, that is called in Law a triall triatio.

(a) 7.*E.*3.50. 26.*E.*3.73. 38.*E.*3.34. 40.*E.*3.36. 43.*E.*3.4.31. 44.*E.*3.36. 47.*E.*3.26. 22.*H.*6.52. 35.*H.*6.12. 39.*H.*6.24. *Vide Sect.*534.

(a) In this case the Law doth fauour the villeine in the issue, for otherwise by the rule of Law in like cases hee ought to answer to the speciall matter, viz. to the regardancy, but in fauour of liberty hee may reply that hee is free and of free estate, and consequently this issue concerning the person shall bee tried where the writ is brought.

(b) 2.*Mar. Dier.*112.

(b) The like law it is, if issue bee ioyned vpon the Idcocy of the Plaintife or Defendant it shall bee tried where the writ is brought because it concerneth the person.

¶ *In fauorem libertatis.* It is commonly said that three things be fauoured in Law, Life, Liberty, Dower.

(c) *Fortescue, ca.*41.

(c) Impius & crudelis iudicandus est qui libertati non fauet: Angliæ iura in omni casu libertati dant favorem.

Tryall is to finde out by due examination the truth of the point in issue or question betweene the parties, where-

¶ Item si villeine suist vn actiō de trespasse ou vn auter action enuers son Sñr en vn Countie, & le Sñr dit q̄ il ne serra respondus, pur ceo q̄ il est son villein regardant a son manor en auter County, & le Plaintife dit que il est franke & de franke estate, & nemy villeine, ceo serra trie en le Countie lou le Plaintife auoit conceiue son action, & nemy en l' county lou le manor est, & ceo est in fauorem libertatis, & pur cel cause vn estatute fuit fait an.9.R.2.cap.2. le tenor de quel ensuist en tiel forme. Item pur la ou pluisors villeins, & Neifes, sibien des graundes Seignors

ALso if a villeine sueth an action of trespasse or any other action against his Lord in one Countie, and the Lord saith that he shall not bee answered because hee is his villeine regardant to his mannor in another County, & the plaintife saith that hee is free, and of a free estate, and not a villein, this shall bee tried in the Countie where the Plaintife hath conceiued his action, and not in the County where the mannor is, and this is in fauour of liberty. And for this cause a statute was made *anno* 9.*R.*2.*ca.*2. the tenor whereof followeth in this forme. Also for that where many villeins & neifs,

ors,come des auters gentes, sibñ espirituals come temporals senfuent, deins cities,villes, & lieux enfranchise, come en la citie de Londres, & auters semblables, & feignont diuers suits enuers lour Sñrs,a cause de eux fait franks per le respõs de lour Sñrs: Accord est & assentus, q̃ les seignions, ne auters, ne soyent my forbarres de lour Villeines per cause de lour respons en ley. Per force de quel estatute, si aleun villeine voylloit suer aleun maner de action a son vse demesne en aleun Countie, ou il est fort a trier enuers son Seignior l' Sñr poyt eslyer de pleader que le plaintife est son villeine,ou de faire protestation que il est son villein, & de pleder son auter matter en barre. Et si ils sont a issue, & lissue soit troue pur le Sñr, donqz l' villein est villeine come il fuit deuant per force de mesme lestatute. Mes si le issue soit troue pur le villeine, donque le villeine est franke,pur ceo que le aswell of great Lords as of other men aswell of spirituall and temporall flye and goe into Cities, Townes and places franchised as into the Citie of London and other like places, and feyne diuers suites against their Lords becaufe they would make themselues free by the answer of their Lords. It is accorded and assented, that Lords nor others shall not be forebarred of their villeins by reason of their answer in Law. By force of which statute if any villeine will sue any manner of action to his owne vse in any County where it is hard to trie against his Lord, the Lord may choose whether he wil plead that the plaintife is his villeine,or make protestation that hee is his villeine, and plead his other matter in barre. And if they be at issue, and the issue be found for the Lord, then the villeine is a villeine as hee was before by force of the same statute. But if the issue bee found for the villeine, then the villeine is free, becaufe that the Lord tooke upon iudgement may bee giuen. And as the question betweene the parties is twofold, so is the triall thereof: for either it is questio iuris, *Vid.Sect.234.* (and that shall be tried by the Iudges either vpon a Demurrer,speciall verdict or exception, for Cuilibet in sua arte perito est credendum: & quod quisque norit in hoc se exerceat, and it is commonly and truly said, Ad questionem iuris non respondent iuratores;) or it is quæstio facti. And the triall of the fact is in diuers sorts whereof a light touch is giuen before, Sect. 102. of these a triall by xii. *Vid.Sect.102.* men (here intended by Littleton) is the most frequent and common; And some few rules of Law, are necessary here to be remembred (for the better vnderstanding of the bookes of Law hereafter) where and from what place,viz. De quo vicenet', out of what neighbourhood the Jury shall come, a necessary point to bee knowne,for if there bee a mistryall, (that is) if the Jury commeth out of a wrong place, or returned by a wrong officer and giue a verdict, iudgement ought not to bee giuen vpon such a verdict. (d) Wherein the most generall rule is, that euery tryall shall be out of that Towne, Parish, or Hamlet, or place knowne out of the towne,&c. within which the Record, within which the matter of fact issuable is alledged,which is most certaine and nearest thereunto, the Inhabitants whereof may haue the better and more certaine knowledge of the fact: as if the fact be alledged in quadam platea vocat' Kingstreet in ciuitate Westm. in com' Midd. in this case the Issue cannot come out of Platea, because it is neither Towne, Parish, Hamlet,nor place out of the neighbourhood whereof a Jury may come by Law;but in this case it shall not come out of Westminster but out of the Parish of St. Margaret,because that is the most certaine. But therein

Vid.Sect.234.more of this matter.

(d) 3.E.3.73. 20.H.6.30. 7.H.4.27. 9.H.5.8. 8.H.6.34. 7.H.6.27. 17.E.3.56. 43.E.3.5. 47.E.3.6. 34.H 6.1.

therein alſo it is to bee noted, that if it had beene alledged in Kingſtreet in the parish of St. Margaret in the County of Middleſex, then ſhould it haue come out of Kingſtreet, for then ſhould Kingſtreet haue beeń eſteemed in law a towne:

Seignior ne priſt al commencement pur ſon plee que le villein fuit ſon villeine, mes ceo priſt per protestation, &c.

not at the beginning for his Plee that the villeine was his villeine, but tooke this by proteſtation. &c.

(e) 4.E.3.30. 8.E.3.68. 39.H.6.13. *Brooke pleading* 61.
(e) for whenſoeuer a place is alledged generally in pleading (without ſome addition to declare the contrary as in this caſe it is) it ſhall be taken for a Towne. (f) And albeit Parochia generally alledged is a place incertaine, and may, (as we ſee by experience) include diuers Townes, yet if a matter be alledged in Parochia, it ſhall be intended in Law that it containeth no more Townes then one, vnleſſe the party doth ſhew the contrary. (g) But when a parish is alledged within a City, there without queſtion the Viſne ſhall come out of the parish, for that is more certaine then the City.

(f) 1.E.4.41. 5.E.4.20. 22.E.4.2. 35 H.6.30. 22.H.6.47. *lib.1.162. Digges caſe. lib.11 fo.25. lib.6.fo.14.*
(g) 1.E.3.8. 7 H.6.38.
(h) 22.E.4. *tit. viſne* F.27. 6.H.7.3 b 11.H.2.7.22.b. 9.E.4 3.a. 2.E.4.26. 39.H 6. *treſp.* 93. 4.E.3.30.

(h) If a treſpaſſe be alledged in D, and nul tiel ville is pleaded, the Jury ſhall come out De corpore comitatus, but if it be alledged in S. and D. and nul tiel ville de D. is pleaded, the Jury ſhall come out de Viceneto de S. for that is the more certaine. So if a matter be alledged within a Mannor, the Jury ſhall come de Viceneto manerii, but if the Mannor bee alledged within a towne, it ſhall come out of the towne, becauſe that is moſt certaine, for the Mannor may extend into diuers townes. And all theſe points were reſolued by all the Judges of England vpon conference betweene them in the Caſe of Iohn Arundel Eſquire indited for the death of William Parker. *

* *Lib.6 fo.14. Arundels caſe.*
(i) 45.E.2.5.a. 46.E.3.6. & 7. *Gernons caſe.* 18.E.3.58. 11.H.4.56.b.57. 17.E.3.36.b 39. *Aſſ.* 10. 38. *Aſſ.* 30. 35. *Aſſ.* 7.

(i) In a reall action where the Demandant demands land in one County, as heire to his father, and alledge his birth in another County, if it bee denied, that he is heire, it ſhall not be tryed where the birth was alledged, but where the land lyeth, for there the Law preſumes it ſhal be beſt knowne who is heire. But if the Demandant make himſelfe heire to a woman, for that is the furer and more certaine ſide and the mother is certaine, when perhaps the father is incertaine, and therefore there it ſhall be tried, where the birth is alledged, becauſe they haue more certaine conuſance then where the land lyeth. And ſo it is where generally baſtardy is alledged, the tryall ſhall be in like caſe Mutatis mutandis. (k) If a man pleade the Kings Letters patents, and the other partie pleade Non conceſſit, it ſhall not be tryed, where the Letters patents beare Date, for they cannot be denyed, but where the land lyeth.

(k) *Mub.31. & 32. Fliſ. Rot.365. in the Kings bench inter Edan & Frankyne adiudge. 3. Mar. Dier.129. 18. Eliz. Dier.353. 17. Eliz. Dier.342.*

Euery tryall muſt come out of the neighbourhood of a Caſtle, Mannor, Towne or Hamlet, or place knowne out of a Caſtle, Mannor, Towne or Hamlet, as ſome foreſts and the like, as before and by the Authorityes thereupon quoted appeareth.

Euery plea concerning the perſon of the Plaintife, &c. ſhall be tried where the writ is brought as it appeareth before.

When the matter alledged extendeth into a place at the Common Law and a place within a Franchiſe, it ſhall be tryed at the Common Law.

(l) In an action againſt two, the one pleads to the writ, the other to the action, the plea to the Writ ſhall be firſt tryed, for if that be found, all the whole Writ ſhall abate, and make an end of the buſineſſe.

(l) 8.E.4.24. 9.H.6.46.47. 21.H.6.4. 18. *Aſſ.*7. 30.E.3.16.17. 7.E.4.31. 27.H.8.30. 11.H.4.68.
(m) 15.E.4.25.b 9.H.6.46 26.E.3. 7.E.4.31. 39.E.3.16.17.

(m) In a plea perſonall againſt diuers Defendants, the one Defendant pleades in barre to parcell, or which extendeth only to him that pleadeth it, & the other pleades a plea which goeth to the whole, the plea that goeth to the whole, (that is) to both Defendants ſhall be firſt tried, and of this opinion was Littleton in our bookes, for the tryall of that goeth to the whole, and the other Defendant ſhall haue aduantage thereof, for in a perſonall action the diſcharge of one is the diſcharge of both. As for example, if one of the Defendants in treſpaſſe pleade a releaſe to himſelfe, (which in Law extends to both) and the other pleades not guiltie (which extends but to himſelfe) or if one pleade a plea which excuſes himſelfe only, and the other pleads another plea, which goeth to the whole, the plea which goeth to the whole ſhall bee firſt tried, for if that be found it maketh an end of all, and the other defendant ſhall take aduantage hereof, becauſe the diſcharge of one is the diſcharge of both; but in a plea reall it is otherwiſe, for euery Tenant may loſe his part of the land; (n) as if a Præcipe be brought as heire to his father againſt two, and one pleade a plea which extendeth but to himſelfe, and the other pleads a plea which extends to both as baſtardie in the Demandant, & it is found for him, yet the other iſſue ſhall be tryed, for he ſhall not take aduantage of the plea of the other, becauſe one ioynt-tenant may loſe his part by his miſplea. (o) But where an iſſue is ioyned for part, and a Demurrer for the reſidue, the Court may direct the tryall of the iſſue, or iudge the Demurrer firſt at their pleaſure.

(n) 9.H.6.46. 39.E.3.16.17.

(o) *Lib.10.fo.54. and the bookes there cited.*
(p) *Mich.21.et 22. Eliz. Dier 367. Lib.5 fo.36.b. Faſtbams caſe* 39.E.3.2.b. 44.E.3.6.11 H.6.13. *Lib.5. Jo.40. Dormers Caſe.*

(p) If a Venire fac. be awarded to the Coroners where it ought to be to the Shiriffe or the Viſne commeth out of a wrong place, yet if it be Per aſſenſum partium, and ſo entred of Record, it

it ſhall ſtand, for Omnis conſenſus tollit errorem. And thus much of theſe excellent points of learning: and if you deſire to know the inſtitution and right uſe of this tryall by 12. men, and of the antiquitie thereof, and more of this matter, reade the 234. Section hereafter which is worthy of your obſeruation. *Vid.Sect.*234.

¶ *Eſtatute.* Or ſtatute, **This commeth of the Latyn word** Statutum, which is taken for an Act of Parliament made by the King, the Lords and Commons, and is deuided into two branches generall and ſpeciall. This ſtatute here mentioned is a generall ſtatute, and is darkely and obſcurely penned, *Vid.*25.*E.*3.*ca.*18. *F N B.*77.*c.* 26.*E.*3.73.

¶ *Et ſils ſont a iſſue.* (q) Iſſue, exitus, **a ſingle, certaine, and materiall point** iſſuing out of the allegations or pleas of the Plaintife and Defendant conſiſting regularly vpon an affirmatiue and negatiue to be tried by twelue men, And it is twofold, a ſpeciall iſſue, as here in the caſe of Littleton, or generall, as in treſpaſſe, not guilty: in aſſiſe, nul tort, nul diſſeiſin, &c. And as an iſſue naturall commeth of two ſeuerall perſons, ſo an iſſue legall iſſueth out of two ſeuerall allegations of aduers parties. (q) *Vid.Sect.*414.7.*H.*6.43. 9.*E.*4.36. 36.*H.*6.15. 5.*E.*4.26. 11.*H.*4.79.

And to make our bookes more eaſie to be vnderſtood concerning this point, it is good to ſet downe ſome neceſſary rules (amongſt many other) concerning ioyning of iſſues An iſſue being taken generally referreth to the Count, and not to the Writ: As in an Account the Writ chargeth him generally to be his receiuer, the Count chargeth him ſpecially to be his receiuer by the hands of T. the Defendant pleadeth that he was neuer his receiuer in manner and forme, &c. this ſhall referre to the count, ſo as he cannot be charged but by the receipt by the hands of T. 7.*E.*3.34.

(r) A ſpeciall iſſue muſt be taken in one certaine materiall point which may bee beſt vnderſtood, and beſt tryed.

(ſ) An iſſue ſhall not be taken vpon a negatiue pregnant, which implyeth another ſufficient matter, but vpon that which is ſingle and ſimple, as Ne dona pas per le fait, imply a gift by parol, therefore the iſſue muſt be Ne dona pas modo & forma.

(t) An Iſſue ioyned vpon an Abſque hoc, &c ought to haue an affirmatiue after it: two affirmatiues ſhall not make an iſſue, vnleſſe it be leſt the iſſue ſhould not be tried.

(u) Some iſſues bee good vpon matter affirmatiue and negatiue, albeit the affirmatiue and negatiue be not in preciſe words, as in debt for rent vpon a leaſe for yeares, the Defendant pleades that the Plaintif had nothing at the time of the Leaſe made, the Plaintif repleyeth that he was ſeiſed in fee, &c. this is a good iſſue.

(w) Where the iſſue is ioyned of the part of the Defendant, the entry is Et de hoc ponit ſe ſuper patriam, but if it be of the part of the Plaintife, the entrie is Et hoc petit quod inquiratur per patriam.

(x) There be ſome negatiue pleas, that bee iſſues of themſelues, whereunto the Demandant, or Plaintife cannot reply, no more then to a generall iſſue which is Et prædictus A ſimiliter. As if the Tenant doe vouche, and the Demandant counterplead that the Vouchee or any of his Anceſtors had any thing, &c. whereof he might make a Feoffment, hee ſhall conclude, Et hoc petit quod inquiratur per patriam, & prædictus tenens ſimiliter. So in a Fine pleaded by the Tenant, &c. the Demandant may ſay, Quod partes finis nihil habuerunt, & hoc petit quod inquiratur per patriam & prædictus tenens ſimiliter. And ſo in a Writ of Dower, the Tenant plead Vnques ſeiſie que dower, he ſhall conclude, Et de hoc ponit ſe ſuper patriam, & pred', petens ſimiliter, and ſo in many other caſes, and of this opinion was Littleton in our bookes. (y) A man leaueth his wife enſeint with a childe, iſſue ſhall not be taken that ſhe was not enſeint by her husband on the day of his death, for Filiatio non poteſt probari, but the iſſue muſt bee whither ſhe was enſeint the day of his death.

(r) 20.*E.*3.*Iſſue* 31.22.*Ed.* 4.28. 8.*E.*3.8. 9.*H.*6.18. 38.*E.*3.33.
(ſ) 21.*H.*6.9*b.* 16 *E.*4 5. 24.*E.*3.32.33.75 31.*E.*3. *Iſſue* 17. 13.*E.*3.*Iſſ.* 27. 21.*E.*3.49. 30.*E.*3.8. 10.*E.*3.32. 22.*E.*3.13. 18.*E.*3.*Iſſue* 35. 5.*H.*7.8. 31.*Aſſ.*25. 2.*E.*4.4.8. 2.*H.*4.23. 38.*H.*6.22. 40.*E.*3.5. 5.*E* 3.24.
(t) 18.*El.Dyer* 253. 22.*Hen.*6.19. 32.*H.*6.23 2.*R.*3. 6.*H.*7.5. 11.*H.*4.79
(u) 2.*H.*7 4. 5.*H.*7.12. 26. 11.*H.*4 83. 6 *E.*4.6.*b.* 26.*H* 8.*Dyer* 6. *in Formedon.* 28.*H.*8.*Dyer* 31 18 *Hen.*6. 8.9. 15.*E.*4.32.33.*H.*6.23. 7.*H.*6.27. 43.*Aſſ.*49 *E.*4. 36. *Pl.Com.*172.*a.* 36.*H.*6. 15.
(w) 26.*H.*8.3. 18.*El.Dyer* 353.
(x) 22.*H.*6.57.59. 33.*H.*6. 21. 3.*H.*7.9. 12.*E.*4 13. 17.*E.*3.53. 77,78. 22.*E.*3. 16 17.24.*E.*3.50.40 *E.*3.19
(y) 41.*E.*3.11 6.

(z) A proteſtation auayleth not the partie that taketh it, if the iſſue be found againſt him, and therefore if the iſſue be found for the villeine, he is infranchiſed for euer. And yet in ſome ſpeciall caſe albeit the iſſue be found againſt him that maketh the proteſtation, yet he ſhall take benefit of his proteſtation, (*) as if a man entreth into warrantie, and taketh by proteſtation the value of the land, albeit the plea be found againſt him, yet the proteſtation ſhall ſerue him for the value.

(z) 10.*E.*4.*Proteſt.*5. 10.*E.*4.12. 32.*Aſſ.*9. 30.*E.*3.14. 9.*H.*6.59. *Vid.Sect.*192. * 30.*E.*3.14.

Section 194

¶ Item le ſeñr ne poet mayhemer ſon villeine. Car ſil maihema ſon villein,

Alſo the Lord may not mayme his villeine. For if hee mayme his villeine,

¶ *Mayhemer*, (a) or Mehaigner, A French word of which commeth Mayhim, mahemium (id eſt) membri mutilatio, and

(a) *Stamf.li.*1.*ca.*41. *Glanuil.lib.*14.*ca.*7. *Bract.lib.*3. *fol.*144,145. *Brit.cap.*25. *fol.*48,49. *Flet.li.*1.*ca.*38.

*Mirror.cap.*1.§.9. and membrum eſt pars corporis habens deſtinatam operationem in corpore. Mayhemium vero dici poterit vbi aliquis in aliqua parte ſui corporis effectus ſit inutilis ad pugnandum. And the Law hath ſo appropriated this word Mayhem, which our Author here vſeth, to this offence, as mayhemauit cannot be expreſſed by any other word, as mutilauit, truncauit, or detruncauit, or the like.

*Vide Sect.*1.

¶ *Il ſerra indite*, or rather endite, and ſo is the originall, for it commeth of the French word enditer, and ſignifieth in Law an accuſation found by an Enqueſt of 12. or more vpon their Oath, and the accuſation is called Indictamentum. And as the Appeale is euer the ſuite of the partie, ſo the enditement is alwayes the ſuit of the King, and as it were his declaration. (b) Some deriue it from the Greeke word ἐνδεικνυμι to accuſe.

(b) *Lamb.Iuſt. of Peac.*

Il ſerra de ceo endite a le ſuit le Roy, & ſil ſoit de ceo attaint, il ſerra pur ceo vn grieuous fine & ranſome al Roy. Mes il ſemble que villeine nauera pas per le ley vn appeal de Mayhem enuſs ſon Sñr, Car en appeale de Mayheme home recouera forſqz damꝰ, & ſi le villeine en ceo cas recoũa damꝰ enuers ſon ſeignioꝛ, & ent auoit execution, le Sñr poit prender ceo que le villeine auoit en execution de le villiene, & iſſint le recouerie voide, &c.

he ſhall of that be indicted at the Kings ſuit. And if hee be of that attainted, he ſhall for that make grieuous Fine and ranſome to the King. But it ſeemeth that the Villeine ſhall not haue by the Law any Appeale of Mayhem againſt his Lord, for in Appeale of Mayhem a man ſhal recouer but his dammages. And if the Villeine in that caſe recouer dammages againſt his Lord, and hath thereof execution, the Lord may take that the Villeine hath in execution from the Villeine, and ſo the recouery is void, &c.

(c) *Vide* 1.*H.*4.6.*b.*

(c) *Nauera &c. Appeale de mayhem.* Becauſe in that Appeale he ſhall recouer but damages, which the Lord after execution might take againe, and ſo the iudgement mutile and illuſory, and Sapiens incipit à fine. And the Law neuer giueth an action where the end of it can bring no profit or benefit to the Plaintife. But here it is to be obſerued that albeit the partie grieued can haue no action for the Mayhem, yet at the Kings ſuite hee ſhall be puniſhed therefore, for the reaſon hereafter expreſſed in this Section. (d) And in ancient time there were Appeales de plagis & de impriſonamento, but they are out of vſe and turned to actions of Treſpaſſe.

(d) *Fleta lib.*1.*cap.*40. *Britt.cap.*25. *Bract.*145. *Mirror cap.*3.

¶ *Fine*, finis. Here fine ſignifieth a pecuniarie puniſhment for an offence, or a contempt committed againſt the King, and regularly to it impriſonment appertayneth. And it is called finis becauſe it is an end for that offence. (e) And in this caſe a man is ſaid Facere finem de tranſgreſſione, &c. cum Rege, to make an end, or fine with the King for ſuch a tranſgreſſion. It is alſo taken for a ſumme giuen by the tenant to the Lord for concord, and an end to bee made. (f) It is alſo taken for the higheſt and beſt aſſurance of Lands, &c.

(e) *Regiſt.Iudic.*25. *Lib.*8.*fol.*59. *Beechers caſe.*

(f) *Vide Sect.*74.174.441.

Here it is good to ſee what a fine differeth from an amerciament. (g) Amerciament in Latine is called miſericordia, for that it ought to be aſſeſſed mercifully, and this ought to bee moderated by affeerement of his equals, or elſe a Writ De moderata miſericordia, doth lie: and thereof Glanuill ſaith thus. (h) Eſt autem miſericordia Domini Regis qua quis per iuramentum legalium hominum de viceneto eatenus amerciandus eſt, ne aliquid de ſuo honorabili contenemento amittat.

(g) *Lib.*8.*fol.*59. *Beechers Caſe. F.N.B.*76.

(h) *Glanuill.lib.*9.*cap.*11. *Magna Charta cap.*14. *Fleta lib.*2.*cap.*43.*&* 60.*& lib.*1.*cap.*43. *Bract.lib.*3 *fol.*116.

(i) The cauſe of an amerciament in plea reall, perſonall or mixt (where the King is to haue no fine) is for that the Tenant or Defendant ought to render the demand (as hee is commanded by the Kings Writ) the firſt day: Which if he do, he ſhall not be amerced (ſo as for the delay that the Tenant or Defendant doth vſe he ſhall be amerced. (k) And albeit the amerciament cannot be impoſed, nor the King fully intitled thereunto vntill iudgement be giuen, becauſe by the iudgement the wrong is diſcerned, yet a pardon before iudgement, after iudgement giuen, ſhall diſcharge the partie, becauſe the originall cauſe, viz. the delay, &c. is pardoned. (l) What then if a Præcipe be brought againſt an Infant, and hanging the plea, he commeth of full age?

(i) 22.*E.*3.1.*&* 2. 14.*E.*3.*amerciam.*16. 8.*R.*2.*ibid.*26.*&c.*

(k) *Pl.Com.*401. *Coles caſe.* 37.*H.*6.21. *Lib.*5.*fol.*49. *Vaughans caſe.*

(l) *Vaughans caſe vbi ſupra. Beechers caſe vbi ſupra.*

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he ſhall be amerced for the delay after his full age. So likewiſe if the Demandant or Plantiffe bee Nonſuit or Iudgement giuen againſt him, hee ſhall bee likewiſe amerced pro falſo clamore.

(m) And for the payment of this amerciament the Demandant or Plantiffe, &c. ſhall find pledges, and thoſe Demandants or Plantiffes, that ſhall find no pledges, (as the King, the Queene, an Infant, &c.) ſhall not be amerced. And therefore when ſuch are Demandant or Plantiffe, the Writ ſhall not ſay, Si Rex, &c. fecerit te ſecurum de clamore ſuo proſequendo.

(n) If a Writ doe abate by the Act of the Demandant or Plantiffe, or for matter of forme, the Demandant or Plantiffe ſhall be amerced, but if it abate by the Act of God, as by the death of one where there is two or the like, there ſhall be no amerciament. And to an amerciament, impriſonment belongeth not, as it doth to a fine or ranſome. If you deſire to reade more of fines and amerciaments. Vide lib.8.fol.38.39. &c. Greſlyes caſe. & lib.11. fol 43.44. Godfreyes caſe.

(o) It is to be knowne that Wit, Wita, is an old Saxon word, and ſignifieth an amerciament, as Fledwite an amerciament for flæing or being a fugitiue, and ſo is Flemiſwite, Bledwite an amerciament for drawing of bloud. Ferdwite concerning warfare, and ſo Letherwite, Childwite, Wardwite and the like. Sometime it ſignifieth forfeiture, ſometime freedome, or acquitall.

(p) And Bote is alſo an ancient Saxon word, and ſometime ſignifieth amerciament, or compenſation, as Theifbote Manbote, or freedome from the ſame, as Brigbote, Caſtlebote, Burghbote.

Wera or Were (q) ſometime ſignifieth amerciament or compenſation, but properly Wera Anglice idem eſt in Saxonis lingua vel pretium vitæ hominis appretiatum. Which & the like words you ſhall often reade in ancient Charters.

(m) *F.N.B.31.f.47.C. & 101.a Brit.lib.4 fol.254. 17.E.3 75. 18.E.3.2. Britt.amerciam 53. 43.Aſſ.45.&c.*

(n) *Techers caſe lib.8.f.60.b.*

(o) *Fleta lib.1.cap.43. Stat.de expoſit.verbi.um.*

(p) *Lamb.explication of Saxon words. Leges Inæ.cap.19.*

(q) *Lamb.ubi ſupra & Fleta lib.1.cap.43.*

¶ *Ranſome.* (r) Redemptio is here taken for a grand ſumme of money for redeeming of a great Delinquent from ſome heynous crime, who is to bee captiuate in priſon vntill he payeth it, ſome hold it to amount to his whole eſtate, and others hold that ranſome is a treble fine. (ſ) But in Legall vnderſtanding a fine and ranſome are all one, for vpon the Statute of Merlebridge cap 3 vpon theſe words, Non ideo puniatur Dominus per Redemptionem. (t) The Tenant ſhall not haue (where the Lord diſtreyneth within his fee where nothing is behind) an Action of Treſpaſſe, quare vi & armis againſt his Lord, for therein the Lord ſhould be puniſhed by redemption, that is by fine, and in that action the fine is very ſmall. And this is manifeſt by many Authorities in all ſucceſſion of ages: and this appeareth by our Author in this place, for he ſaith, Il ſerra pur ceo vn grieuous fine & ranſome. Where fine and ranſome muſt of neceſſitie in his opinion be taken for all one: for if the fine and ranſome were diuers, then ſhould the partie, that mayhemed the Villeine pay two ſummes, one for a fine, and another for a ranſome, which neuer was done. And aptly a redemption and a fine is taken to bee all one, for by the payment of the fine hee redeemeth himſelfe from impriſonment, that attendeth the fine, and then there is an end of the buſineſſe.

(r) *Dier.6.Eliz.232.*

(ſ) *See the ſecond part of the Inſtitutes Merleb.cap.3.*

(t) *5.H.7.10. 48.E.3.5.6. 41.E.3.26. 44.E.3.13. 2.H.4.4. 11.H.4.78. 1.H.6.6. 9 H.7.14. 8.E.4. 15.10.E.4.7. 20.E.4.3. 21.E.4.3. Mich.17 & 18. Eliz. Beuels caſe lib.4. fol.11. & lib.9. fol.76. Combs caſe.*

It ſignifieth properly a ſumme of a money paid for the redemption of a captiue, and is compounded of re and emo, that is to redeeme or buy againe. And it is to be knowne, that (u) by the ancient law of England, if the Defendant in an Appeale of Mayhem had bin found guiltie, the iudgement againſt the Defendant had beene, that hee ſhould loſe the like member, that the Plantiffe loſt by his meanes; as if the Plantiffe had loſt an hand, the Defendant alſo ſhould loſe one, & ſic de cæteris: In reſpect whereof the Writ ſaid, (w) Felonicæ mayhemauit, for that the Defendant ſhould loſe a member.

(u) *42.Aſſ.9. Mirror cap.4. & ea.5.§.18. Britton cap.25 fol.48. Bract.lib.3 f.l.144. 145. Fleta lib.1.cap.38.*

(w) *Bracton.vbiſu pra. Britton cap.3.fol 77.b.*

Alwayes at the Common Law, when the Defendant ſhould loſe life or member, the Writ ſaid Felonice, &c. And now albeit the Law be changed (for at this day, the Plantiffe ſhall, as our Author ſaith, recouer but damages) yet the Writ of Appeale ſaith ſtill Felonice.

Note the life and members of euery ſubiect are vnder the ſafegard and protection of the King, for as Bracton (x) ſaith, Vita & membra ſunt in poteſtate Regis. And therewith agreeth a notable Record, Paſch.19.E.1. coram Rege Rot.36. Northt. vita & membra ſunt in manu Regis, to the end that they may ſerue the King and their Countrie when occaſion ſhall be offered. Nay, the Lord of the Villeine for the cauſe aforeſaid cannot mayheme the Villeine, but the King ſhall puniſh him for maymhing of his ſubiect (for that hereby hee hath diſabled him to doe the King Seruice) by fine, ranſome, and impriſonment vntill the fine & ranſome bee paid. So as there is a manifeſt diuerſitie betweene a ranſome and an amerciament. For ranſome is euer when the law inflicteth a corporall puniſhment by impriſonment, (& ſo is alſo a fine) but otherwiſe it is of an amerciament as hath bin ſaid. And (y) Ancients haue ſaid that Ranſome neſt forſque redemption de paine corporell per fine des deniers. This offence of mayhem is vnder all felonies deſeruing death, and aboue all other inferior offences, ſo as it may be truly ſaid of it, that it is, Inter crimina maiora minimum, & inter minora maximum. And in my Circuit in Anno 11. Iacobi Regis in the Countie of Leiceſter one Wright a young ſtrong and luſtie

(x) *Bract.lib.1.fol.6. Paſch.19.E.1.coram Rege Rot.36.Northt.*

(y) *Mirror.cap.5.§.1.& 3.*

Rogue to make himſelfe impotent thereby to haue the more colour to begge or to bee relieued without putting himſelfe to any labour, cauſed his companion to ſtrike off his left hand, and both of them were indited, fined, and ranſomed therefore, and that by the opinion of the reſt of the Iuſtices for the cauſe aforeſaid.

¶ *Voyde, &c.* Here by (&c.) is implyed a maxime in Law, Quod inutilis labor & ſine fructu non eſt effectus legis. And againe, Non licet, quod dil, end.o licet. And Sapiens incipit à fine, and Lex non præcipit inutilia. (z) Therefore the Law forbiddeth ſuch recoueries whoſe ends are vaine, chargeable and vnprofitable.

(z) *Vide Sect.* 273. & 578.

Sect. 195.

¶ D*Emaundant*, petens, Is hee which is Actor in a reall action, becauſe hee demandeth Lands, &c. And Plaintif, queriens in actions perſonals and mixt, quia quæritur de iniuria, &c. Tenant, tenens in reall actions, and defendant, defendens in actions perſonall and mixt.

¶ *Defence.* Commeth of the word defendo, ſo called of the manner of the pleading, viz. prædict' A.B. defendit vim & iniuriam, &c.

For example in a perſonall action brought by A. . againſt C. D. the defence is, & prædictus C. D defendit vim & iniuriam quando, &c. & damna, & quicquid quod ipſe defendere debet, &c.

In this defence there bee three parts to bee conſidered; First, when he defendeth the wrong and the force, this hath a double effect, viz. to make himſelfe partie to the matter, and this is the reaſon, that the Defendant in this and the like actions can plead no plea at all before he makes himſelfe partie by this part of the defence, as it appeareth here by Littleton, that (a) if the Defendant will plead in diſabilitie of the perſon of the Plaintiffe he muſt firſt make himſelfe partie by this firſt part of the defence. Neither can he plead to the iuriſdiction of the Court without this part of the defence. Secondly, (b) By the defence of the Damages, he affirmeth that the Plaintiffe is able to ſue, and (vpon iuſt cauſe) to recouer Damages. Thirdly, And by the laſt part, viz. and all that which he ought to defend, when and where he ought, he affirmeth the iuriſdiction of the Court; Et ſic de ſimilibus. And of ſuch neceſſitie is it for the Tenant or Defendant to make a lawfull defence, as (c) albeit he appeareth and pleades a ſufficiens barre without making defence, yet iudgement ſhall be giuen againſt him.

(d) If Villenage be pleaded by the Lord in an Action reall, mixt or perſonall, and it is found that he is no Villaine, the bringing of a Writ of Error is no enfranchiſement, becauſe thereby he is to defeat the former iudgement, and if in the meane time, the Plaintiffe or Demandant bring an action againſt the Lord, he need make no proteſtation, ſo long as the Record remaynes in force, for at that time he is free, but the Lord ſhall be reſtored to all by a Writ of Error.

¶ Item ſi vn Villein ſoit demandant ẽ action real, ou plaintife en action perſonal, ẽuers ſon ſñr, ſi le ſñr voile plede en diſabilitie de ſon pſon, il ne poit faire pleine defence, mes il defendera forſq; tout a force a demandera iudgement ſil ſerra reſpondus, a monſtre ſon matter maintenant, coñt il eſt ſon villein, a dõera iudgment ſil ſerra reſpondue.

ALſo if a Villeine bee demandant in an action real, or plaintiffe in an action perſonall againſt his Lord, if the Lord will plead in diſabilitie of his perſon, he may not make plaine defence, but he ſhall defend but the wrong and the force, and demand the iudgment if he ſhall be anſwered, and ſhew his matter by and by how he is villeine, and demand iudgement if he ſhall be anſwered.

3. Lev. 182. North vs Hoyle. 1. Salk. 217. Farrer vs Miller.

(a) 40.E.3.36. 14.H.6.18 35.H.6.12. 1.E.4.15.

(b) 29.E.3.23. 8.H.6.3.

(c) 36.H.6. *iudgement* 58.

(d) 18.E.4.6. & 7.

Section 196.

¶ V*N eſt lou Villeine ſuiſt action &c.* Littleton here

(e) *Bract. lib.* 5. *fol.* 421. *Britton. cap.* 49. *fol.* 125. *Mirror. cap.* 2. §. 18.

¶ Item 6. maners de homes y ſont queux, ils ſuont ac-

ALſo there are ſixe mãner of mẽ who if they ſue, iudgement

tion

tion, iudgement poit eſtre demaund ſils ſerrõt reſpondus, &c. Un eſt, lou villeine ſuiſt action enuers ſon Seignior, come en le cas auantdit.

may bee demanded, if they ſhall bee anſwered, &c. One is where a Villeine ſueth an Action againſt his Lord, as in the caſe aforeſaid.

rehearſeth .6. kind of diſabilities of the perſon, diſabling him to ſue any action reall, perſonall or mixt. 13.H.4.Suerty,12.agarden ſhall diſable.

¶ *Sils ſerrõt reſpondus.* **This is the legall concluſion of the plea, when the plea is in diſabilitie of the perſon. And of the verbe reſpondere came reſpon-**

ſalis often vſed in the ancient Authors of the Law.(f)Reſponſalis was he, that was appointed by the Tenant or Defendant, in caſe of extremitie and neceſſitie to alleage the cauſe of the parties abſence, and to certifie the Court vpon what triall, he will put himſelfe, viz. the Combate or the Countrie. So as his power was more then the Eſſoinor which caſteth an Eſſoigne only to excuſe the abſence of the partie, as an eſtranger which caſteth a protection, doth. For by the Common Law, the Plaintife or Defendant, Demaundant or Tenant could not appeare by Attornie without the Kings ſpeciall Warrant by Writ or Letters Patents, but ought to follow his Suite in his owne proper perſon (by reaſon whereof there were but few Suites) (g) Abuſion eſt a reteiner attorny ſans breue de la Chancerie. And therefore Bracton ſaith truly (h) Attornatus hæc omnia facere poteſt (that is, plead all manner of pleas) Eſt igitur magna differentia inter Attornatum & Reſponſalem. So as the ſtatutes that giue the making of Attorneys, haue worne out Reſponſales. Now what manner of men Attorneys ought to be, or rather what they ought not to be, heare what Antiquity hath ſaid,(i) Attorneyes poient eſtre touts ceux aux queux ley voile ſuffer, fems ne point eſte Attorneyes, ne enſans, ne ſerfs, ne nul que eſt en gard ou auterment faut de foy, ne nul criminous, ne nul eſſoigne, ne nul que neſt a le foy le Roy, ne nul que ne poet eſte Counter, &c.

(f) *Bract. lib.4.fo.212.b. & lib 5.fo.349. Fleta,lib 6.ca 11. Glanuill lib.11.ca.1. Britton ca.126. Vid W.1.ca.43. F.N.B.25.C.Regiſt.9.*

(g) *Mirr.ca.5.§.*

(h) *Bract.in, vbi ſupra.*

(i) *Mirror,ca.2.§.21.*

Section 197.

¶ Et il.eſt lou vn home eſt vtlage ſur action d̃ det, ou Treſpas, ou ſur auẽt act, ou Indictment, le tenant ou defendant poit monſtre tout le matter de record, & lutlagarie, & demaunde iudgement ſil ſerẽ reſpondue, pur ceo que il eſt hors de la ley de ſuẽ aſcun action durant le temps que il ſoit vtlage.

THe 2. is, where a man is outlawed vpon an Action of debt or treſpaſſe, or vpon any other action or indictment, the Tenant, or the Defendant may ſhew all the matter of Record and the outlawrie, and demand iudgement if he ſhall bee anſwered, becauſe he is out of the Law to ſue an action during the time that he is outlawed.

¶ *Et* 2. *eſt* (k) *lou vn home eſt vtlage, &c.* **But theſe generall words receiue a diſtinction,** viz. (l) **if an Executor or an Adminiſtrator ſueth any action, Utlary in the Plaintife ſhall not diſable him, becauſe the ſuite is** In auter droit, **that is in the right of the Teſtator, and not in his owne right. And for the ſame reaſon,** (m) **a Mayor and Comminalty ſhall haue an action, though the Mayor bee outlawed.** (n) **In a Writ of Error to reuerſe an Utlary, Utlary in that ſuite, or at any ſtrangers ſuite ſhall not diſable the Plaintife, becauſe if he in that action ſhould be diſabled, if he were, Outlawed at**

(k) *Bracton lib.5.fo.421. Britton ca.22.fo.39. Mirror,ca.1.de Exceptions a provors ca.4.& faults puniſhable.*

(l) *21.E.4.49.b. 21.H.6.30.b. 14.H.6.15.*

(m) *12.E.4.fo.12.*

(n) *7.H.4.40.*

(o) *23.H.8.ca.3,2.H.7.7.*

(p) *Mirror,cap.3.acc. 12.E.4.16. 33.H.6.ca.2.*

(q) *Bract lib.3.fo.125. 3.H.5. Vlagary.11. 38.E.3.5.*

(r) *Britton.fo.39.*

(ſ) *20 E.2.Corone 232. 19.Aſſ.p.10. 3.H.6.15.b. 37.H.6.23.5.H.7. 6.Eliz.Dier 228.F.N.B.244 Stanf.pl.coron.105.*

ſeuerall mens ſuites, he ſhould neuer reuers any of them. (o) In an Attaint outlary in the Plaintife cannot be pleaded in diſability of the perſon (p) Outlary in Cheſter or Durham ſhal not diſable the Plaintife in any Court at Weſtminſter, &c. (q) Minor vero & qui infra ætatem 12. annorum fuerit, vtlagari non poteſt, nec extra legem poni, quia ante talem ætatem, non eſt ſub lege aliqua nec in decenna. (r) He that is abiured the realme may be diſabled, for that hee is extra legem, and yet he is not properly outlawed.

¶ *Monſtre tout le matter de record.* **Here note two things, firſt by** this word (Monſtre) that (ſ) when any man pleads an Utlary in diſability of the perſon, that hee

he muſt ſhew forth the Record of the Outlawrie, maintenant ſub pede ſigilli, (becauſe the Plea is but dilatorie) vnleſſe the Record be in the ſame Court. But if he plead an Outlawrie in barre, if it be denied, he ſhall haue a day to bring it in.

(t) 28. *Aſſ.* 49. 12. *E.* 3. *Vtlagaris* 3. *M.* 4. & 5. *El.* *Dyer* 222. 38. *E.* 3. 13.

Secondly, (t) before the Defendant can diſable the Plaintife, the Outlawrie muſt appeare of Record, and the Iudgement after the quinto exactus giuen by the Coroners in the Countie Court, is not ſufficient, vntill the Writ of Exigent be returned, and the Outlawrie appeare of Record: which is manifeſt by Littletons owne words, (viz.) Matter de Record, whereof ſee more hereafter, Sect. 503.

It is to be obſerued, That there be two kind of appearances before the Quinto exactus, to auoyd the Outlawrie, viz. an Apparance in deed, that is, to render himſelfe, &c. And the other is by an apparance in Law, (u) that is, by purchaſing a Superſedeas out of the Court where the Record is, which is an apparance of Record: and therefore though it bee not deliuered to the Sheriffe before the quinto exactus, yet it ſhall auoyd the Outlawrie, and ſo are the Bookes that ſpeake hereof to be intended.

(u) *Tr.* 44. *El. in Com. Banc. inter Mere & Dolburie.* 33. *H.* 6. 1. 11. *H.* 4. 34. *Dyer* 3. *El.* 192. 5. *El.* 223. 4. *H.* 4. *le* 1. *caſe.* 8. *H.* 4. *f.* 7. 37. *H.* 6 17. 33. *E.* 3. *Ent.* 77. 21. *H.* 6. 20.

(w) If a man be outlawed at the ſuit of one man, all men ſhall take aduantage of this perſonall diſabilitie. And ſo it is in caſe of Alienage, and of Excommengement: but otherwiſe it is in caſe of Villenage, for that diſabilitie is onely giuen to the Lord.

(w) 33. *H.* 6. 19. *b.* &c.

¶ *Duraunt le temps que il eſt vtlage.* (x) If the Defendant plead an Outlawrie in the Plaintife, in diſabilitie of his perſon, and the Plaintife after that Plea pleaded, purchaſe a Charter of Pardon, becauſe the Charter hath reſtored him to the Law, the Defendant ſhall anſwer. So note, the diſabilitie abateth not the Writ, but diſinableth the Plaintife, vntill he obtaineth a Charter of Pardon, and ſo it appeareth here by Littleton.

(x) 44. *E.* 3. 27.

¶ *Iudgement ſil ſerra reſpondue.* (y) If the ground or cauſe of the Action be forfeited by the Outlawrie, then may the Outlawrie be pleaded in barre of the Action, as in an Action of Debt, Detinue, &c. But in reall Actions, or in perſonall, where dammages be incertaine, (as in Treſpaſſe of Batterie, of Goods, of breaking his Cloſe, and the like) and are not forfeited by the Outlawrie, there Outlawrie muſt be pleaded in diſability of the perſon.

(y) 9. *El.* *Dyer* 262. 7. *H.* 4. 4. *b.* *Stanf. Pl. Coron.* 188. *Lib.* 5. *fo.* 109. *in Foxleyes caſe.* 28. *E.* 3. 92. 29. *Aſſ. p.* 47. 63. 30. *H.* 6. 5.

(z) And it is to be obſerued, That in the raign of King Ælfred, and vntill, and a good while after the Conqueſt, no man could haue beene outlawed but for Felonie, the puniſhment whereof was death: but now the Law is changed, as it appeareth by that which hath beene ſayd; and hereby you ſhall vnderſtand old Bookes and Records which ſay, That an outlawed man had Caput Lupinum, becauſe he might be put to death by any man, as a Wolfe that hatefull beaſt might. (*) Vtlagatus & waniata capita gerunt Lupina, quæ ab omnibus impunè poterunt amputari, merito enim ſine Lege perire debent, qui ſecundum legem viuere recuſant. And another ſaith, (a) Vtlage pur felonie teigne leu pur loup, & eſt criable Woolfeſhered, pur ceo que loupe eſt beaſt hay de touts gents, & de ceo en auant liſt al aſcun de le occire ou foer del loup dont cuſtome ſoloit eſte de Porter les teſtes al chiefe lieu del countie, ou de la Franchiſe, & ſoloit leu auoire dun marke del Countie pur cheſcun teſte de vtlage & de loupe. And this agreeth with the Law before the Conqueſt, (b) Vtlagatus lupinum gerit caput, quod Anglicè, Woolfeshead dicitur, & hæc eſt lex communis & generalis de omnibus vtlagatis. (c) But in the beginning of the raigne of King Edward the third, it was reſolued by the Iudges, for auoyding of inhumanitie, and of effuſion of Chriſtian bloud, That it ſhould not bee lawfull for any man but the Sheriffe onely, (hauing lawfull Warrant therefore) to put to death any man outlawed, though it were for Felonie, and if he did, he ſhould vndergoe ſuch puniſhments and paines of death, as if he had killed any other man, and ſo from thenceforth the Law continued vntill this day. (Nota, Woolfeshead, and Wulferfod is all one)* And after in Bractons time, and ſomewhat before, Proceſſe of Outlawrie was ordained to lie in all Actions that were Quare vi & armis, which Bracton calleth Dilicta, for there the King ſhall haue a Fyne. But ſince, by diuers Statutes, Proceſſe of Outlawrie doth lie in Account, Debt, Detinue, Annuitie, Couenant, Action ſur le Statute de 5. Rich. 2. Action ſur le Caſe, and in diuers other Common or Ciuile Actions. But now let vs heare what Littleton will ſay vnto vs.

(*) *Flet. li.* 1. *ca.* 27. *Bract. li.* 5. *fo.* 421. *Brit. fo.* 20. *b.*

(a) *Mir. ca.* 4. §. *defaults puniſhable.*

(b) *Lamb. fol.* 128.

(c) 2. *Aſſ. P.* 3. 2. *E.* 3. *tit. Coron.* 148.

* *Bract. li.* 5. *fo.* 421. 8. *H.* 6. 9. *b.* 40. *E.* 3. 5. 35. *H.* 6. 6. 40. *E.* 3. 2.

Sect. 198.

¶ *Alien.* (a) Alienigena is deriued from the Latyne word Alienus, and according

(a) *Bract. li.* 5. *fo.* 415. 427. *Mir. ca.* 1. §. 3. *ca.* 5. §. 1. & *ca.* 3. *except. a prouers.* *Flet. li.* 6. *ca.* 47. *Brit. fo.* 29. 13. *E.* 3. *Brē.* 677. 25. *Ed.* 3. *de Natiuis tra mare.* 31. *E.* 3. *Confuage* 5. 42. *E.* 3. 2. 9. *E.* 4. 7.

C. *E* 3. eſt, vn Alien que eſt nee hors de la ligeance noſtre

THe third is, an Alien which is born out of the ligeance of

noſtre Seignior le Roy, ſi tiel alien voile ſuer vn Action reall ou perſonall, le Tenant ou Defendant poit dire que il fuit nee en tiel pais, que eſt hors ó la ligeanc̃e le Roy, & demaund iudgement ſi il ſerra reſpondue.

our ſoueraigne Lord the King, if ſuch alien wil ſue an Action reall or perſonal, the Tenãt or Defendãt may ſay, That hee was borne in ſuch a Countie which is out of the Kings Allegeance, and aſke Iudgement, if he ſhall be anſwered.

to the Etymologie of the word, it ſignifieth one borne in a ſtrange Countrie, vnder the obedience of a ſtrange Prince or Countrie, (And therefore Bracton ſaith, That this exception, Propter defectum Nationis, ſhould rather be, Propter defectum Subiectionis) or as Littleton ſaith, (which is the ſureſt) Out of the liegeance of the King. Note, here Littleton ſaith not, Hors del Realme, but Hors de liegeance; for he may be borne out of the Realme of

11.H.4.26. 14.H.4.19,20. 3.H.6.55. 22.H.6.38. Stanf.Pl.Cor.197.a. Lib.7.fo.1. Calus caſe. Pl.Com.368. per Sanders. Vid.Sid.1.439,440,441.

England, yet within the liegeance. And he that is borne within the Kings Liegeance is called ſometime a Denizen, quaſi deins nee, borne within, and thereupon in Latyne called Indigena, the Kings Liegeman, for Ligeus is euer taken for a naturall borne Subiect. But many times in Acts of Parliament, Denizen is taken for an Alien borne, that is infranchiſed or denizated by Letters Patents, whereby the King doth grant vnto him, (b) Quod ille in omnibus tractetur, reputetur, habeatur, teneatur, & gubernetur, tanquam ligeus noſter, infra dictum Regnum noſtrum Angliæ oriundus, & non aliter, nec alio modo. But the King may make a particular Denization: (c) As he may grant to an Alien, Quod in quibuſdam Curijs ſuis Angliæ audiatur vt Anglus, & quod non repellatur per illam exceptionem quod ſit alienigena & natus in partibus tranſmarinis, to enable him to ſue onely. The ſeuerall ſences of which word muſt be gathered, ex antecedentibus, adiunctis, & conſequentibus, and they that take him in that ſence, deriue the word from Donaiſon (i.) Donatio, becauſe his frœdome is giuen vnto him by the King.

(b) 9.E.4.f.8. Pl.Com.130 b.

(c) Rot Parl.21.E.1. Elias de Daubeny.

There is another kind, and that is an Alien naturalized, and that muſt be by Act of Parliament. And this Alien naturalized to all intents and purpoſes, is as a naturall borne ſubiect, and differeth much from denization by Letters Patents, for if he had iſſue in England before his denization, that iſſue is not inheritable to his father: but if his father be naturalized by Parliament, ſuch iſſue ſhall inherit. So if an iſſue of an Engliſhman be borne beyond Sea, if the iſſue be naturalized by Act of Parliament, he ſhall inherit his fathers lands; but if hee be made Denizen by Letters Patents, he ſhall not, and many other differences there bee betweene them.

¶ *Ligeance*, à Ligando, **Being the higheſt and greateſt obligation of dutie and obedience that can be. Liegeance is the true and faithfull obedience of a Liege man or Subiect, to his Liege Lord or Soueraigne.** Ligeantia eſt vinculum fidei, ligeantia eſt legis eſſentia.

Vid. Calvins caſe, vbi ſupra.

Ligeantia domino Regi debita eſt dnplex

- *Perpetua.*
  - 1 Originaria, ſiue naturalis, ſiue nata, (d) and this is alwayes abſolute and incident inſeperable, nemo patriam in qua natus eſt exuere, nec ligeantiæ debitum eiurare poſſit.
  - 2 Data, aut per denizationem, aut per naturalizationem (vt ſupradictum eſt) & iſta ligeantia per denizationem poteſt eſſe ſub conditione.
- *Temporanea, aut*
  - Localis, quia quilebet alienigena qui in hoc Regno ſub protectione Regis degit, Domino Regi ligeantiã debet. And if he be indicted of high Treaſon, the Indictment ſhall ſay, (e) Contra Ligeantiæ ſuæ debitum, & ideo dicitur temporanea & localis, quia non durat niſi quouſque infra Regnum moratur.
  - Limitata, As when one is made Denizen for life or in taile, (f) but one cannot be naturalized either with limitation for life, or in taile, or vpon condition: for that is againſt the abſoluteneſſe, puritie, and indeiſibilitie of naturall Allegeance.

(d) 13.El.Dyer f.300.b. Doctor Stories caſe.

(e) 3.& 4.P.& M.Di.144 Li.7.fo.6.& c. Calvins caſe.

(f) 9.E.4.7. Calvins caſe vbi ſupra. 13.E.3.brẽ.264. 20.E.3. Annuitie 24. 17.E.3. 21. 40.E.3. 10. 27. Aſſ 48. 14.H.4.37. 22.E.4.44. 21.H.7.7. Stanf Prer. 54. Leſſat. de Carliſle. 35.E.1.

* An Abbot, Prior, or Priors Alien, ſhall haue Actions reall, perſonall, or mixt, for any thing concerning the poſſeſſions or goods of his Monaſterie here in England, though he bee an Alien borne out of the Kings Liegeance, becauſe he brings it not in his owne right, but in

the right of his Monaſtery, and not in his naturall but in his politique capacitie.

(h) Bracton, 426. 427, 430. 8.E.3. 5 1. 5.E.2. Ateſt. 8. 13 E.3. Bre. 677. 22.E.3.14.20. 21.E.3. Coſinage, 5. 42.E.3.2. 13.E.4.9. 11.H.4.26. 9.E.4.7. 19.E.4.7. 20.E.4 6 13.E.4.9.10. 32.H.6.23. 38.H.8 Br. Deniſen. 10. 1.E.6. Nonhab. Br. 13. & 62. Vid. 4.H.3. Dower 179. 6.E.3.263. 31.H.6.ca.4. Liure de Entries in eiect. 7. 6.H.8. Dier. 2. 6.H.7.15. * 29.E.3. Br. Denizen, 15.

¶ *Reall ou perſonall.* (h) **In this caſe the Law doth diſtinguiſh** betweene an Alien that is a ſubiect to one that is an enemy to the King, and one that is ſubiect to one that is in league with the King, and true it is that an Alien enemie, ſhall maintaine neither reall nor perſonall action Donec terræ fuer' communes, that is vntill both Nations bee in peace, but an Alien that is in league ſhall maintaine perſonall actions, for an Alien may trade and traffique, buy and ſell, and therefore of neceſſity he muſt be of ability to haue perſonall actions, but he cannot maintaine either reall or mixt actions. An Alien that is condemned in an information ſhall haue a Writ of error to reliene himſelfe, Et ſic de ſimilibus.

* If an Alien be made a Prior or Abbot, the plea of Alien nee ſhall not diſable him to bring any reall or mixt action concerning his houſe, becauſe he is in auter droit, as before is ſaid

Vid. Staunf. Pl. Cor. 197. a.

¶ *Hors del ligeance noſtre ſeignior le Roy.* **Here** Littleton **doth not ſay,** out of the Realme or beyond the Sea, (as he doth Sect, 439. 440. 441. 677.) But out of the Ligeance; for (as hath beene ſaid before) a man may be borne out of the Realme, viz. of England, as in Ireland, Jerſey, and Gerney, &c. and yet ſeeing hee is not borne out of the Ligeance of the King, as Littleton here ſpeaketh he is no Alien. But hereof there is ſo much, and ſo plentifully ſpoken in our bookes, and eſpecially in the caſe of Caluyn vbi ſupra, as this ſhall ſuffice.

(i) Liure de Entries Alien, 1.

¶ *Et demaund iudgement ſil ſerra reſpondue.* **So as the Tenant or** Defendant ſhall neither plead Alien nee to the Writ or to the action, but in diſability of the perſon, as in caſe of villenage and outlawrie before. (i) And Littleton is to bee intended of an Alien in league, for if hee be an Alien enemy the Defendant may conclude to the Action.

Section 199.

For Statutes. Vid. 35.E.1. Stat. de Carlile. 25.E.3.ca.22. 25.E.3. ſtatut. de proviſors. 27.E.3.e.1 38.E.4.ca.3. 2.R.2.ca.12. 3.R.2.ca.3. 12.R.2.ca.5. 16.R.2. ca 5. 2.H.4.ca.3. & 4.6.H.4.ca 1. 24.H.8. ca.12. 25.H.8.ca.19.20. 26.H.8.ca.16. 1.Eliz.ca.1. 5.Eliz.ca.1. 13.Eliz. ca.1. 2.8. 27.Eliz.ca.2. 39.Eliz.ca.18.

For Preſidents. Vid. Mich. 29.E.3. coram Rege in Theſaur. Paſch 44.E.3 Ibid. Melbornes Caſe. Mich. 38.H.6. ibid. the caſe of Richard Beauchamp and others. Hill, 25.H.8. Coram Rege. The Caſe of Nicke Biſhop of Norwich. Trin. 36.H.8. Rot. 9. Coram Rege, The Caſe of the Biſhop of Bangor. Mich. 26. & 27 Eliz. Coram Rege, Perrot againſt D. Beaunce and others. Booke of Entries, fo. 429. & 430 & ibid. Mich. 9.H.7. fo. 23.

¶ *Præmunire.* **Some** hold an opinion that the Writ is called a Præmunire, becauſe it doth forteſtifie Iuriſdictionem jurium regiorum Coronæ ſuæ of the Kingly Lawes of the Crown againſt forreine iuriſdiction, and againſt the vſurpers vpon them, as by diuers Acts of Parliaments appeare. But in truth it is ſo called of a word in the Writ; for the words of the Writ bee Præmunire facias præfatum A.B. &c. quod tunc ſit coram nobis, &c. where Præmunire is vſed for præmonere, and ſo doe diuers interpreters of the Ciuill and Cannon Law vſe it, for they are præmuniti that are præmoniti. By the ſtatutes before quoted in the margent you ſhall perceiue what ſtatutes were made before Littleton wrote, and what haue beene ordained ſince to make offences in danger of a Præmunire.

Books Caſes. 21.E.3.40.b. 28.H.6.6. 9.E.4.2. 35.E.3.7.24.H.8. tit. Præmunire, 16.10.H.4.12. 27.E.3.84. 6.H.7.14. 44.E.3.36.

¶ *Hors del protection le roy.* **The iudge**ment in a Præmunire is that the Defendant ſhalbe from thence forth out of the Kings protection, and his lands and tenements, goods and chattels forfeited

¶ L'E 4. eſt, vn hõe q̃ p iudg. done enuers luy ſur vn briefe de Præmunire facias, &c. eſt hors de protection le Roy, ſi il ſuiſt alcun action, & le Tenant ou le def. mẽa tout le record enuers luy, il poit demaund iudgement ſil ſerra reſpondu, car la ley le Roy, & les bẽs le Roy, ſont les choſes per queux home eſt protect & aide, & iſſint durant l'temps que home en tiel cas eſt hors de la protection le Roy, il eſt hors de eſtre aide ou ptect per le ley le Roy, ou per bẽ le Roy.

THE 4. is, a man who by iudgement giuen againſt him vpon a writ of *Præmunire facias, &c.* is out of the Kings protection, if hee ſue any action, and the tenant or defendant ſhew all the Record againſt him, hee may aske iudgement if hee ſhall be anſwered, for the Law & the Kings writs be the things by which a man is protected and holpen, and ſo during the time that a man in ſuch caſe is out of the Kings protection, hee is out of helpe and protection by the Kings Law, or by the Kings writ.

forfeited to the King, & that his body ſhall remaine in priſon at the Kings pleaſure. So odious was this offence of Præmunire, that a man that was attainted of the ſame might haue bin ſlain by any man without danger of Law, becauſe (k) it was prouided by Law, that a man might doe to him as to the Kings enemy, and any man may lawfully kill an enemie. But Quœne Elizabeth and her Parliament * liking not the extreame and inhumane rigor of the Law in that point did prounde that it ſhould not be lawfull for any perſon to ſlay any perſon in any mãner attainted in or vpon any Præmunire, &c. Tenant in taile is attainted in a præmunire, he ſhall forfeit the land but during his life, for albeit the ſtatute of 16.R.2.ca.5 enacteth, that in that caſe their lands and tenements, goods and chattells ſhall be forfeit to the King, that muſt bee vnderſtood of ſuch an eſtate as he may lawfully forfeite, and that is during his owne life. And theſe generall words doe not take away the force of the ſtatute De donis conditionalibus, but he ſhall forfeite all his Fee ſimple lands, ſtates for life, goods and chattells, and ſo was it reſolued in Trudgius caſe.

11.H.7. tit. Præmunire, F.5. 17.H.7. Iuſtice Spilmans in Turberuil es caſe. Kelwey. fo.195. Doct. & Stud. Lib.2.cap.32. Brooke, tit. Præmunire, 21. Temps. E.6. Biſſ epbarloes caſe. (k) 24.H.8. Brook: Coron 196 * 5.Eliz.ca.1.

Hill, 21. Eliz. Trygins caſe reſolued per les Iuſtices. 7.H.4.20. Simons Beuerleys caſe.

¶ *Car la ley le Roy & les briefes le Roy, &c.* There bee three things as here it appeareth wherby euery ſubiect is protected, viz. Rex, Lex, & Reſcripta regis, the King, the Law and the Kings Writs. The Law is the rule, but it is mute; The King iudgeth by his Iudges, and they are the ſpeaking Law, Lex loquens. The proceſſe and the execution which is the life of the Law conſiſteth in the Kings Writs. So as he that is out of the protection of the King cannot be aided or protected by the Kings Law, or the Kings Writ, Rex tuetur legem, & lex tuetur jus. (l) Beſides men attainted in a Præmunire, euery perſon that is attainted of high treaſon, petit treaſon, or felony is diſabled to bring any action for hee is * Extra legem poſitus, and is accounted in Law Ciuiliter mortuus.

(l) 4.E.4.8. 1.E.4.1.b. 30.E.3.4. 8.Eliz. Dier. 245. * Mich. 9.E.3 coram rege, Rot 84. Warw.

It is to be vnderſtood that there is a generall protection of the King, whereof Littleton here ſpeaketh, and this extends generally to all the Kings loyall ſubiects, Denizens and Aliens within the Realme, whoſe offences haue not made them vncapable of it as before it appeareth, And there is a particular protection by Writ, which is one of the Kings Writs that Littleton here ſpeaketh of. This particular protection is of two ſorts, one to giue a man an immunity or freedome from actions or ſuites; the ſecond for the ſafety of his perſon ſeruants and goods, lands and tenements whereof he is lawfully poſſeſſed from violence, vnlawfull moleſtation or wrong. The firſt is of right and by Law, the ſecond are all of grace (ſauing one) for the generall protection implyeth as much. Of the firſt ſort ſome are Cum clauſula (volumus) ſo called becauſe the Writ hath this word (volumus) in it, viz. Volumus quod interim ſit quietus de omnibus placitis & quærelis, &c. And the other a protection Cum clauſula (nolumus) ſo called for the like reaſon. Of protections Cum clauſula (volumus) for ſtaying of pleas and ſuites there be foure kindes, viz. Quia profecturus (ſo called by reaſon they are part of the words of the Writ) 2. Quia moraturus (ſo named for diſtinction for the like cauſe) 3. Quia indebitatus nobis exiſtit of the matter. 4. When any ſent into the Kings ſeruice in warre is impriſoned beyond ſea. The former are for ſtaying of actions and ſuites in generall. The third is for ſtaying of ſuites of the ſuiters for debts & duties due by the Kings debtor to them. Of the fourth you ſhall reade hereafter in this place. For the former two, theſe nine things are to be obſerued. Firſt, for what cauſe they are to be granted. 2. for what perſons they are allowable. 3. A threefold time is to be conſidered, viz. the time of the purchaſe of them, the time of the continuance of them, and the time when they ſhall be caſt. 4. In what place the ſeruice is to be perforced. 5. In what actions theſe protections are allowable. 6 Vnder what ſeale and to whom they are directed. 7. Who is to allow, or diſallow of them. 8. By whom they are to be caſt and in what manner. 9. How vpon iuſt cauſe they may be repealed or diſallowed. I muſt but point at theſe matters to make the ſtudious reader capable of them and referre him to the bookes and other Authorities at large being excellent points of learning. As to the firſt, it is of two natures, the one concerne ſeruices of war as the Kings ſouldier, &c. the other wiſedome and counſell, as the Kings Ambaſſador or Meſſenger Pro negotijs regni, both theſe being for the publique good of the Realme, priuate mens actions and ſuites muſt be ſuſpended for a conuenient time; for, Iura publica anteferanda priuatis, and againe, jura publica ex priuatis promiſcue decidi non debent. (a) And the cauſe of granting of the protection muſt be expreſſed in the protection, to the end it may appeare to the Court that it is granted Pro negotijs regni & pro bono publico, (b) or as ſome others ſay, Pur le common profit del realme. And Britton ſaith Noſtre ſeruice, ſicome eſtre en noſtre force, & le defence de nous & de noſtre people, &c. * A man in execution in ſalua cuſtodia ſhall not be deliuered by a Protection.

Protec- { Generall. Elion { Particular.
Of the Generall, vid. lib.7. Calvyns caſe per totum.

(a) 39.H.6.39. 3.H.8. tit. Protection. 2. 13.R.2. ca.16.
(b) Mirror cap.3.§. Briton, fo.281. Fleta lib.6. cap.7.8. &c. Bracton * 5 Marie Dier, 162.

(c) To the ſecond theſe Protections are not allowable only for men of full age, but for men within age, and for women, as neceſſary attendants vpon the Campe, and that in three caſes, Quia lotrix, ſeu nutrix, ſeu obſtetrix.

(c) 19.H.6.51. 30.E.3.21 F.N.B.28.l.11.E.3. Rot par 3.part for the Counteſſe of Warw.

(d) Corporations aggregate of many are not capable of theſe two protections either Profecturæ, or Moraturæ becauſe the Corporation it ſelfe is inuiſible, and reſteth only in

(d) 30.E.3,1.21.E.4.36. 21.E.3.27.

consideration of Lawe. (c) Protection for the Husband shall serue also for the wife.

(f) Albeit the Vouchee, Tenant by reseeit, prier in aide or garnish be no parties to the Writ, yet before they appeare a Protection may be cast for them, because when the Demandant grants the Vouchor or receit in iudgement of Law they are made priuie, but if the Demandant counterplead the Vouchor or reseeit, then vntill it be adiudged for them, and so priuie in Law, a Protection cannot be cast for them. And so it is of the garnishee, a protection may be cast for him at the day of the retorne of the Scire fac: (g) No Protection can bee cast for the Demandant or Plaintife, because the Tenant or Defendant cannot sue a resommons, or a re-attachment, but the Plaintife only that sued out the sommons or Attachment, &c. must sue also the resommons or re-attachment. And so it is of an Actor in nature of a Plaintife, &c. as the Garnishee after appearance, and an auowant, and the like. (h) An officer of the Kings reseeit or any other officer in any Court of Record, whose attendance is necessary for the Kings seruice or administration of Iustice being sued, cannot haue a Protection cast for him.

(i) In euery action or plea reall or mixt against two (where a Protection doth lye) a protection cast for the one doth put the plea without day for all. So it is in debt, detinue and account. But in trespasse, or any Action in nature of trespasse, which is in law seuerall where euery one may answer without the other, there a Protection cast for the one shall serue for him only, vnlesse they ioyne in pleading, or if they plead seuerall pleas, and one Venire facias is awarded against all, there a Protection cast for one, shall put the plea without day for all, and therefore in former times, the Plaintife vsed to sue out seuerall Venire fac' in those cases for feare of a protection, &c.

(k) As to the threefold time. First, a Protection profecturæ regularly must not be purchased hanging the plea, but this layeth when he goeth in the Kings seruice in a Voyage royall, and that is twofold, either touching warre, and that only is when the King himselfe or his Lieutenant, that is prorex goeth, or when any goeth in the Kings Imbassage Pro negotio regni, or for the marriage of the Kings daughter or the like, this also is called a Voyage royall. But a protection Moratur may be purchased, and cast pendente placito.

(l) Regularly a protection cannot be cast, but when the partie hath a day in Court, and when if he made default, it should saue his default: therefore when Execution is to be granted against body, lands or goods, no protection can be cast because the Defendant hath no day in Court. If a protection be cast at the Nisi prius for one, if before the day in banke it be repealed by Innotescimus, yet because it was once well cast, it shall saue his default, but if the protection be disallowed, either for variance, or that it lay not in the action or the like, there it shall turne to a default.

If a man hath a protection, and notwithstanding pleade a plea, yet at another day of continuance, after that a protection may be cast, so at a day after an Exigent, but after appearance he cannot cast a protection in that terme vntill a new continuance be taken.

(n) Thirdly, No protection either Profecture or Morature, shall indure longer, then a yeare and a day next after the teste or date of it. And so it is of an Essoigne de seruice le Roy. If a protection beare teste 7. die Ianuarij And haue allowance pro vno anno, the resummons, re-attachement or regarnishment may be sued 8. Ianuarij the next yeare, and yet that is the last day of the yeare.

And where Britton treating of an Essoigne beyond the Græcian Sea in a Pilgrimage, &c. saith thus, (o) Aseun gent nequident se purchasent nous letters de protection patents durable a vn an ou a 2. ou a 3. ans, & ialameyns font attorneys generals, ausi per nous letters patents: & ceux font bien & sagement, car nul grand Seignior ne chiualier de nostre realme ne doit prender chemyn sauns nostre conge, car issint poet le realme remainer disgarny de fort gente.

Three things are hereupon to be obserued, First, that this was a protection of grace, whereof more shall be said hereafter. Secondly, that it was for safetie of the great men of the realme, and that they should make generall Attornies, so as no actions, or suits should be therby stayed. Thirdly, (by the way) that great men could not passe out of the Realme without the Kings licence. (p) A protection granted to one, &c. vntill he returned from Scotland, was disallowed for the incertaintie of the time.

(q) To the fourth, the protection as well Morature as Profecture must bee regularly to some place out of the Realme of England, and that must be to some certaine place, as super salua custodia Caliciæ, &c. and not to Carlisle or Wales, which are within the Realme, or to the like. But it may be to Ireland or Scotland, because they are distinct Kingdomes, or to Callice, Aquitaine, or the like, but a protection, Quia moratur super altum mare will not serue, not only, because (as some thinke) that mare non moratur, but for the incertaintie of the place, and for that a great part of the Sea is within the Realme of England.

(r) To the fifth. In some Actions, Protections shal not be allowed by the Common Law, and in some actions they are ousted by Act of Parliment, Actions at the Common Law, as all Actions that touch the Crowne as Appeales of Felonie, and appeales of Mayhem. (s) So where

(e) 35.H.6.3.43.E.3.23. 48.E.3.7. 4.H.5. protection. 107.
(l) 45.E.3.protect.37.3.H.6 18 30.8.H.6.16.9.H.6.36. 40 E.3.18.32 E.3.protect. 54.21.E.3.14.H.4.16. 45.E.3.tit.protect.40. 14.E.3.protect.66.
(g) 24.E.3.26.47.E.3.5. 5 H.5.5 38.E.3.1.F.N.B. 28.g.10.R.2.protect.106. 22.H.6.28 9.H.6.36. 43.E. 3.36.17.E.3.24.25.E.3.43 24.E.3.26.13.E.3.protection.71.14.E.3.ibid.65.63. 20.E.3.ibid.84.
(h) 7.H 4.3.a.
(i) 19.E.3.protect.80.81. 32.E 3.ibid.55.16.E.2.Fitz. 77.13.E.3.ibid.70.41 E.3. ibid.95.41.E.3.32.42 E.3 9. 5.H.5.7.3.H.4.15.2.R.2. protect.45.43.E.3.ibid 31. 2.H.6.22.21.H.6.41. 38.E. 3.12.7.H 6.21.33.E.3.protect.116.4.H.4.4. 29.E.3. 41.45.E.3.24.28.11.E.4.7. F.N.B.28.k.
(k) 3.H.6.protect.2.39.H. 6.39.44.E.3.12.13 R.2.ca. 16. 3.H.4.16.11.H.4.7. 7.E.4.17.18.H.6.1. 17.H.6.protect 56.
10.E.3.54.13.E.3.amerciament 18.Lib.7.fol.7.8.Calvins case.13.R.2.cap 16.
(l) 4.H.6 22.17.E.3.76. 33.E.3.tit.protect.115. 34.E.3.ibid.124.27.E.3.79 29.E.3.protect.85.88.. 2.E. 4.15.19.E.3.protect.82.79. 13.E.3.ibid.72.9.E.3.21. 3.H.6.55.4.H.6.22. 11.H. 6.14.14.H.6.22.21.H.6.10 27.H.6.4.28.H.6.1.35.H.6 58.44.E.3.2.16.48.E.3.8. 7.H.4.5.14.H.4.23. 27.E.3.78.
(m) 22.E.3 4.16.E.3, protect.47. 44.E.3 16..3E.3 amerciament.18. 34.E.3. Protection.123.
(n) 39.H.6. 39.F.N.B. fol.28. Fleta.lib.6.cap.8. Temps E 1.grand cape 26.
(o) Britt fo.282.283.& 280. Fleta lib.6.ca.8.accord.

(p) 1.E.3.25.
(q) Lib.7.fol.8. Calvins case. 7.E.4.29. F.N.B.38.c.g.h. 9.H.4.14.19.H.6.35. 38.H.6.3. 32.H.6. 3.R.2. Rot.Parliam.nu.21. 22.E.4 protect.18. 8.R.2.ibid.125. 11.H.4 57. Regist.indic.14. 36.H.6.tit.protect.27. 6.R. 2.ibid.14.Regist.orig.88.sepe.
(r) Bract.lib.5.139.140. Britton.181. Fleta lib.6.cap. 7.8.&c. 14.E.2.protect.109 34.E.3.ibid.122. 19.E.3. ibid.8. 33.E.3.ibid. 99. 21.E.3.13.
(s) 10.H.6. protect.105.

where the King is ſole partie no protection is to be allowed in like manner in à decies tantum, where the King and the ſubiect are Plaintifes, but in late Acts of Parliament Protections in perſonall actions are expreſly ouſted. A Protection may be caſt againſt the Quæne the Conſort of the King.

In a Writ of Dower vnde nihil habet, no Protection is allowable, becauſe the Demaundant hath nothing to liue vpon. Otherwiſe it is in a Writ of right of Dower. Likewiſe in a Quare impedit, or aſſiſe of Darreine preſentment a Protection lieth not, for the eminent danger of the laps. Neither lieth a Protection in an Aſſiſe of Nouel diſſeiſin, becauſe it is feſtinum remedium, to reſtore the Diſſeiſee to his freehoid, whereof he is wrongfully and without iudgement diſſeiſed. (u) In a quare non admiſit, a Protection is not allowable becauſe it is grounded vpon the quare impedit, and the like in a Certificate vpon an aſſiſe for the like reaſon, and ſic de ſimilibus. A Protection, quia profecturus, is not allowable (as hath beene ſaid) in any Action commenced before the date of the Protection, vnleſſe it bee in a Voyage Royall. (w) An Infant is vouched, and at the Pluries venire fac, a Protection was caſt for the Infant, and diſallowed, becauſe his age muſt be adiudged by the inſpection of the Court.

(x) By Act of Parliament no protection ſhall be allowed in an attaint. (But at the Common Law a Protection for one of the petite Jurie had put the plea without day for all) nor in an Action againſt a Gaoler for an eſcape, nor for victuals taken or bought vpon the voyage or ſeruice, nor in Pleas of Treſpaſſe, or other contract made or perpetrated after the date of the ſame Protection.

(y) In a Writ of Error brought by an Infant vpon a fine leuied, the Plaintife ſued a Scire facias againſt the Conuſee, for whom a Protection was caſt, and the Court examined the age of the Plaintife, and by inſpection adiudged him within age, and recorded the ſame, and then allowed the Protection, and this can bee no miſchiefe to the Plaintife, whereupon it followeth, that albeit the Plaintife dieth afterwards before the fine be reuerſed, yet after his age adiudged and recorded) his heire ſhall in that caſe reuerſe the fine for the nonage of his Anceſtor. (a) And ſo it was reſolued in the caſe of Kekewiche in a Writ of Error brought by him by the opinion of the whole Court of the Kings Bench, otherwiſe it is, if the Plaintife dyeth before his age inſpected.

(b) Note in iudiciall Writs, which are in nature of Actions, where the partie hath day to appeare and plead, there a Protection doth lie, as in Writs of Scire facias vpon Recoueries, Fines, Iudgements, &c. albeit by the Statute of W.2. Eſſoignes and other delayes be ouſted in Writs of Scire facias, yet a Protection doth lie in the ſame. So it is in a Quid Iuris clamat and the like. But in Writs of Execution, as habere facias ſeiſinam, Elegit, Execution vpon a Statute, Capias ad ſatisfaciendum, Fieri facias and the like, there no Protection can bee caſt for the Defendant, becauſe he hath no day in Court, and the Protection extendeth only ad placita & querelas, and muſt be allowed by the Court, which cannot bee but vpon a day of appearance.

(c) In a Writ of Diſceit brought againſt him that obtained and caſt a Protection vpon an vntrue ſurmiſe in delay of the Plaintife, that Protection is allowable. In an Action brought vpon the Statute of Labourers a Protection doth lie, & ſic de ſimilibus.

(d) To the ſixth, no Writ of Protection can be allowed, vnleſſe it bee vnder the great Seale, (*) and it is directed generally.

(e) To the ſeuenth, the Courts of Juſtice where the Protection is caſt, are to allow, or diſallow of the ſame, bee they Courts of Record or not of Record, and not the Sheriffe, or any other Officer or Miniſter.

(f) To the eighth, the Protection may be caſt either by any ſtranger, or by the partie himſelfe, an Infant, Feme Couert, a Monke or any other may caſt a Protection for the Tenant or Defendant: and this difference there is when a ſtranger caſteth it, and when the Tenant or Defendant caſteth it himſelfe. (g) For the Defendant or Tenant caſting it, hee muſt ſhew cauſe wherefore he ought to take aduantage of the Protection, but an eſtranger, need not ſhew any cauſe, but that the Tenant or Defendant is here by Protection.

(h) As to the ninth, A Protection may be auoyded three manner of wayes: Firſt, vpon the caſting of it before it be allowed. Secondly, by repeale thereof after it bee allowed: by diſallowing of it many wayes, as for that it lyeth not in that Action, or that he hath no day to caſt it, or for materiall variance betweene the Protection and the Record, or that it is not vnder the great Seale, or the like. (i) Thirdly, After it be allowed by Innoteſcimus, as if any tarrie in the Countrie without going to the ſeruice for which hee was retained, ouer a conuenient time after that he had any Protection, or repaire from the ſame ſeruice, vpon information thereof to the Lord Chancellor, he ſhal repeale the Protection in that caſe by an Innoteſcimus. But a Protection ſhall not be auoyded by an auerment of the partie in that caſe, becauſe the Record of the Protection muſt be auoyded by matter of as high nature.

(c) 39.H.6.39. 43.E.3.6. & 32.27.H.6.1 F.N.B.28. 17.E.3.23. *lib.4. fol.35. Beaumonts caſe. Bract. lib.5. fol.* 139.140.

(u) 13.E.3. *tit. protection.* 52 12.E.3. *ibid.*69. 31.E.3. *ibid.*112.

(w) 19.E.2. *protect.*111. 32.E.3. *ibid.*54.

(x) 23.H.8. *cap.*3. 34.E.1. *protection* 38.7.H.4. *cap.*4. 1.R.2. *cap.*8.

(y) 21.E.3.24.31.E.3. *protect.*97. *l.*5.E.4.50.35.H.6. 43.46. 8.E.4.8. 17.E.3.22. 13.E.3 *protect.*73.

(a) *Paſch.*12.*Ia. Regis, in the Kings Bench.*

(b) 13.E.3. *protect.*72. *Fleta. lib.*2 *cap.*12. 40.E 3.18. 48.E.3.18.19. 37.H.6.32. 21.E.1.19.15.H.7.8 47.E.3 5.17.E.3.68.14.E.3. *protect.*64.W.2. *cap.*45.

(c) 20.E.3. *protect.*83.

(d) 35.H.6.2. *Artic. ſuper Cart.*6.46.E.3. *petition* 19.

(*) *Lib.*2 *fol.*17. *Lanes caſe. Lib.*8 *fol.*68. *Trallops caſe.* 20.H.6.25. 2.E.4.4. 38.H.6.23.

(e) 43.E.3. *protect.*96.

(f) 21.E.4.18.

(g) 38.H.6.23.

(h) 44.E.3.12.47.E.3.6.

(i) 13.R.2. *ca.*16.11.H.4.70 7.H.6.22.22.H.6.50. 30.H.6.3. 19.H.6.35. 21.E.4.20. 1.H.6.6.42.E.3 9.44.E.3 2.39.E.3.4.5. 20.E.3. *protect.*86. 34.E.3. *ibid.*118.

(k) 44.E 3.4.18.47.E.3.6. 34.E 3.treet.119. 28.H.6. 3. 34.H.6.22. 30.H.6.3. 32.H.6.4.

(k) There is a clause in the Protection to this effect. Præsentibus minime valituris, si contingat ipsum, &c. à custodia castri prædicti recedere. Or si contingat iter illud non arripere, vel infra illum terminum à partibus transmarinis redire. Whereupon there be two conclusions to be obserued.

First, That though the Protection be allowed by the Court for a yeare, yet if it be repealed by an Innotescimus, that the resommons or Re-attachment shall be granted vpon the Repeale within the yeare, for the Protection that was allowed had the said clause in it. And of that opinion be our latter Bookes, and the repeale by Innotescimus should serue for little purpose, if the Law should not be taken so.

Secondly, That albeit hee that had the Protection either Morature or Profecture, returne into England, and haply be arrested and in Prison, yet if he came ouer to prouide Munition, Habilliments of warre, victuals or other necessaries, it is no breach of the said conditionall clause, nor against the Act of 13 Richard.2. for that in iudgement of Law comming for such things as are of necessitie for the maintenance of the warre, moratur, according to the intention of the Protection and Statute aforesaid. And thus much of the two first Protections, Cum clausula volumus, Profecture and Morature.

(l) Registrum.281.b. F.N.B.28.b. 33.H.8.ca.29.in the præamble 41.E.3.tit.execution.38 18.E.3.ibid.56 27.E 3.8.b. 4.E.4.16. 3.Eliz Dier.197. Ror.Pat.27.E.3.part.1.m.2 (m) 25.E.3.cap.19.

(l) As to the third Protection Cum clausula volumus, the King by his Prerogatiue regularly is to be preferred in payment of his dutie or debt by his Debtor before any subiect, although the Kings Debt or dutie be the latter, and the reason hereof is, for that Thesaurus Regis est fundamentum belli & firmamentum pacis. And thereupon the Law gaue the King remedie by writ of Protection to protect his Debtor, that hee should not bee sued or attached vntill he paid the Kings debt, but hereof grew some inconuenience, for to delay other men of their suits, the Kings Debts were the more slowly paid. And for remedie thereof (m) it is enacted by the Statute of 25 E.3. that the other Creditors may haue their actions against the Kings Debtor, and to proceed to Iudgement, but not to Execution vnlesse hee will take vpon him to pay the Kings Debt, and then he shall haue Execution against the Kings Debtor for both the two Debts.

(n) 41.E.3.15. 17.E.3.73. 29.E.3.13. 4.E.4.16.

This kind of Protection hath (as it appeareth) no certaine time limited in it. But in some cases the subiect shall be satisfied before the King, (n) for regularly whensoeuer the King is intitled to any fine or dutie by the suite of the partie the partie shall bee first satisfied, as in a Decies tantum. And so if in an Action of Debt, the Defendant denie his Deed, and it is found against him he shall pay a fine to the King, but the Plaintife shall be first satisfied, and so in all other like case. And so it is in Bills preferred by subiects in the Starchamber there costs and dammages (if any be) shall be answered before the Kings fine as it is daily in experience.

(o) Regist. sape. F.N.B.28.C. (p) Vide lib.7.fol.8.9. Calvins case.

The fourth Protection, Cum clausula volumus, is when a man sent into the Kings Seruice beyond Sea is imprisoned there, so as neither Protection, Profecture, or Morature, will serue him, and this hath no certaine time limited in it, (o) whereof you shall reade at large in the Register and F N B.

(p) Now are we at length come to Protections, Cum clausula Nolumus, All which hauing one are of grace, and as hath beene said are employed vnder the generall Protection, for as Fitzherbert sayth euery loyall subiect is in the Kings Protection. Of these Protections of grace, you shall not reade much in our yeare Bookes, because they staied no Actions or Suites (q) of the diuers formes, of these you shall reade at large in the Register, and F. N. B. which were too long and needlesse to be here recited.

(q) Register.280 &c. F.N.B.29.A.B.C.D.E. F.G.H. Register.280. Statut de 14.E.3. F.N.B.30.A.

The Protection cum clausula nolumus, that is of right is that euery spirituall person may sue a Protection for him and his goods, and for the fermors of their lands and their goods, that they shall not be taken by the Kings Purueyor, nor their carriages or chattels taken by other Ministers of the King, which Writ doth recite the Statute of 14.E.3.

Of these Protections I cannot say any thing of mine owne experience, for albeit Queene Elizabeth mayntayned many warres, yet she granted few or no Protections, and her reason was, that he was no fit subiect to be imployed in her seruice, that was subiect to other mens actions, lest she might be thought to delay Iustice.

Section 200.

Entre & professe en Religion.

¶ Et. est, vn home q̄ est enter & professe en religion: Si tiel suist

THe fifth is, where a man is entred and professed in Religion, if

ſuiſt vn action, le tenant ou defendant poit monſtrer, que tiel eſt enter en religion en tiel lieu, en lozder de Saint Benet, & la eſt moigne profeſſe, ou en lozder des Friers preachers, ou minozs, & la eſt frere profeſſe, & iſſint des auters ozders de religion, &c. & demaundera iudgement ſil ſerra reſpondue. Et la cauſe eſt, pur ceo que quant vn home entra en religion, & eſt profeſſe, il eſt mozt en ley, & ſon fits ou auter couſin maintenant luy enheritera auxybien ſicõe il fuit mozt en fait. Et quant il entra en Religion il poit faire ſon teſtament, & ſes executozs, les queux executozs aueront vn action de det due a luy deuant lentre en Religion, ou auter action que executozs poient auer ſicome il fuit mozt en fait. Et ſil ne fait ſes executozs quant il entra en religion, donques Lozdinarie poit committ ladminiſtration de ſes biens a auters homes, ſicome il fuit mozt en fait.

ſuch a one ſue an action, the Tenant or Defendant may ſhew that ſuch a one is entred into Religion in ſuch a place, into the Order of Saint *Benet*, and is there a Monke profeſſed, or in the Order of Friers, Minors and Preachers, & is there a brother profeſſed, and ſo of other Orders of Religion, &c. and aske iudgement if hee ſhall bee anſwered, and the cauſe is this, that when a man entreth into Religion, and is profeſſed, hee is dead in the Law, and his Sonne or next Couſin incontinent ſhall inherit him, as well as though hee were dead indeed, and when he entreth into Religion, hee may make his Teſtament and his Executours, and they may haue an action of debt due to him before his entry into Religion, or any other action that Executors may haue, as if he were dead indeed. And if that hee make no Executours when he entreth into Religion, then the Ordinarie may commit the Adminiſtration of his goods to other, as if he were dead in deed.

(a) It is to be obſerued that a mã doth enter into Religion at his firſt coming, and liueth vnder obedience, but hee is not profeſſed till a peare be paſt, or ſome time of probation. And he is ſaid to be profeſſed when he hath taken the habit of Religion, & vowed three things, Obedience, Wilfull Pouertie & perpetuall Chaſtitie. And therefore our Author ſaith here enter & profeſſe.

(a) *Br. tit. lib. 5. fo* 415. 421. *Britt. ca.* 22 *fo.* 39. *Fleta, lib.* 6. *ca.* 41. 5. *E.* 2. *t. t. nonabil.* 26. 3. *H.* 6. 24. 1. *E.* 3. 9. 7. *H* 4. 2. *Doctor & Stud.* 141. 21. *R.* 2. *iudgement*, 263. 11. *R.* 2. *ibid.* 107.

¶ *En Lorders des Freres Preachers, ou* (b) *Minors.* It appeareth in our Bookes that of Friers there were foure Orders. viz. Minors, Auguſtins, Preachers and Carmelites, and the Franciſcani, Capuchini, and Obſeruantes are included vnder the title of Minors, and they were called Obſeruants, becauſe they bee not Conuentuall or ioyned together in a Brotherhood, but liue ſeparately, and bound themſelues to obſerue more ſtrictly the rights of their Order. (c) Cum quis ſemel ſe religioni contulerit renuntiat omnibus quæ ſeculi ſunt, habita diſtinctione, vtrum habitum probationis ſuſceperit, vel habitum profeſſionis.

(b) 4. *H.* 4. *ca.* 17. 25. *H.* 8. *ca.* 12.

(c) *Bracton, fo.* 421. *b.*

¶ *Il eſt mort en ley.* Ciuiliter mortuus, or mortuus ſeculo. (d) There is a death in deede, and there is a ciuill death or a death in Law, Mors civilis and mors naturalis, as here it appeareth, and therefore to ouſt all ſcruples, Leaſes for life are euer made during the naturall life, &c. If the father enter into Religion, then ſhall his ſonne and heire haue an aſſiſe of Mordanceſter and the writ ſhall ſay, (e) Si W. pater, &c. die quo obijt habitum religionis aſſumpſit, in quo habitu profeſſus fuit vt dicitur.

(d) *Bracton, fo.* 301. 426. *Britton fo.* 226. 250. 251. *Fleta, lib.* 6. *ca.* 41.
(e) *F. N. B.* 196. 5. *E.* 4. 3.

¶ *Auxibien*

¶ *Auxibien come il fuit mort en fait.* **But yet to three purposes,** profession, that is, the ciuile death, hath not the effect of a naturall death.

First, This ciuile death shall neuer derogate from his owne grant, nor be any meane to auoyd it. And therefore if Tenant in Taile maketh a feoffement in fee, and entreth into Religion, his issue shal haue no Formedon during his life, because that should be in derogation of his own Grant, and be a meane to auoyde the same.

(f) 32.E.1.*Dower* 176. 31.E.3.*Collusion* 29. 33.E.3.*Entre conge.* 52. 21.E.4.24.

(f) Secondly, It shall neuer giue her auaile, without whole consent hee could not haue entred into Religion, and therefore his wife after his ciuile death shall not bee endowed, vntill his naturall death. But if the wife, after her husband hath entred into Religion, alien the Land which is her owne right, and after her husband is deraigned, the husband may enter and auoid the alienation.

Thirdly, It shall not worke any wrong or preiudice to a stranger that hath a former right, and therefore if the Disseisor entreth into Religion, and is professed, so as the land discends to his heire, yet this discent shall not tolle the entrie of the Disseisee.

(g) 5.E.4.3.a. (h) 18.H.6.33. *per Forteſc.*

(g) A woman cannot be professed a Nunne during the life of her husband: but some doe hold a diuersitie, (h) that ante carnalem copulam, the husband or wife may enter into Religion without any consent, but post carnalem copulam neither of them can without consent of other.

(i) 31.E.3.*Collusion* 29. (k) 34.E.3.*Garranty* 71. *Vid. the Chapter of Warrantie, Sect.*

(i) But if a man holdeth lands by Knights seruice, and is professed in Religion, his heyre within age, he shall be in ward. (k) If I be disseised, and my brother releases with warranty, and is professed in Religion, and the warrantie discendeth vpon me, this warrantie shall binde me, because I am his heire, and such Inheritance as my brother had shall discend vpon mee.

(l) 21.R.2.*Iud.* 263.

(l) And if one Joyntenant be professed in Religion, the land shall enure to the other. If a man or a woman be professed in Religion in Normandie, or in any other forreine part, such a profession shall not disable them to bring any Action in England, because it wanteth triall, but they must be professed in some house of Religion within this Realme, for that may be tried by the Certificate of the Ordinarie, so as of forreine professions the Common Law taketh no knowledge.

(m) 10.E.3.511. 14.E.3. *Executors* 87.5.H.7.25. 21.H.6.30. 3.H.6.24.

(m) And yet in some case one that is professed in Religion within the Realme shall haue an Action, as if he be made an Executor, or if he be an Administrator, he shal maintaine an Action not in his owne right, but in right of the Dead.

(n) 44.E.3.9.*Nonabilitie* 3. 14.H.8.16.

(n) If a Monke be made a Bishop, or a Parson, or a Vicar, he shall haue an Action concerning his Bishopricke, Parsonage, or Vicarage, & sic de similibus.

(o) 2.H.4.7. 8.H.5.6. 7.E.4.30. 44.E.3.4. 20.E.3.*Vill.* 10. & *Nonabilitie* 9. 49.E.3.4.

(o) And if a Monke be Farmer of the King, yeelding a rent, he shall haue an Action concerning that Farme. And albeit Littleton speaketh generally of one that is professed in Religion, yet must it not be vnderstood of the Soueraigne or Head of the religious house, as of the Abbot, Prior, or the like, (*) for albeit they be professed in Religion, yet by the policie of the Law, they are persons able to purchase, and to implead, and to be impleaded, to sue, and to be sued for any thing that concernes the house of Religion, for otherwise the house might be preiudiced, and other men also of their lawfull Actions. And this is the antient Law of England, as it appeareth in these words,

(*) *Bract.fo.*415, 416, 429. *Mir.c.*2.§.14. 14.H.4.37.b. 5.H.7.26. *Vid.Sect.*296. 14.E.4.36.

(p) *Mir.vb.supra.*

(p) Des biens des gents de Religion appent laction al Chiefe en son nosme pur loy & son Couent. But what if a Monke, &c. were beaten, wounded, or imprisoned, &c. Doth the Law giue no remedie therefore? Yes verily,

(q) 22.*Ass.*87. 21.E.3.41, 42. 22.E.3.2.37.H.6.8. 32.H.6.36. *Bract.l.*5.*f.*416, 429. 13.E.3.*Brē.*261.22. *Ed.*3.2. 38.H.6.7.b. 24.E.3.34.b.45. 7.R.2.*Nonabilitie* 3,9.

(q) for in that case the Abbot and the Monke shall ioyne in an Action against the wrong doer, and if the writ be, Ad damnum ipsius Prioris, the writ is good; and if it be ad damnum ipsorum, it is good also. Also if a Monke be by conspiracie falsely and maliciously indicted of Felonie and Robberie, and afterwards is lawfully acquited, his Soueraigne and he shall ioyne in a writ of conspiracie and the like. And where Littleton speaketh of a man that is professed in Religion, the same Law is of a Nunne, sanctimonialis mutatis mutandis.

(r) 4.H.3.*Br.*766.

(r) A wife is disabled to sue without her husband, as much as a Monke is without his Soueraigne, and yet we read in bookes, that in some cases a wife hath had abilitie to sue and be sued without her husband:

(s) 2.H.4.*f.*7.a.

(s) For the wife of Sir Robert Belknap, one of the Iustices of the Court of Common Pleas, who was exiled or banished beyond sea, did sue a writ in her owne name, without her husband, he being alue; whereof one sayd, Ecce modo mirum, Quod fœmina fert Breue Regis non nominando virum coniunctim robore Legis.

(t) 10.E.3.53.

(t) King Edward the third brought a Quare impedit against the Ladie of Maltrauers, and shee pleaded that she was Couert of Baron; whereunto it was replyed for the King, that her husband the Lord Maltrauers, was put in exile for a certaine cause, and she was ruled to answer.

(u) 1.H.4.1.b.

(u) King Henrie the fourth brought a writ of Ward against Sibel B. who pleaded that she was Couert Baron, &c. Whereunto it was replied for the King, that her husband for a crime that he had committed against the King and the Peeres, was relegate or exiled into Gascoigne, there to remaine vntill he obtained the Kings grace: And Gascoigne chiefe Iustice, Ex assensu sociorum, awarded, that she should answer.

Sir Th Egerton Lord Chancellor, in his argument which he published apart by himselfe in Cal-

Calvins caſe De Poſt-Natis, demanded what former Preſident there was for the warrant of the Ladie Belknaps caſe in 2 H.4.7. which occaſioned me to ſearch, and vpon ſearch I found that the like Iudgement had bin giuen before at the Parliament holden in Cro Epiph', An. 19. Edw. 1. where the caſe was, That Thomas of Weyland being abiured the Realme for Felonie, in the yeare before, Margerie de Moſe his wife, and Richard ſonne of the ſayd Thomas, exhibited their petition of Right into the Parliament, for the Mannor of Sobbu, wherein her husband had but an eſtate for life ioyntly with her, & the inheritance in Richard the ſonne by Fine. The Earle of Gloucester, Lord of the Fee, (who claiming the land by Eſcheat, had taken the poſſeſſion thereof) alleged, Quod non fuit iuri conſonum quod aliqua fœmina intraret in aliquas terras viuente marito ſuo, eo quod præfatus Thomas abiurauit Regnum & adhuc viuit, & aſſeri, tidem Comes nunquam huiuſmodi caſum accidiſſe & inde petit poſt multas allegationes quod poſſit prædictum manerium tenere vt eſchaetam ſuam, ſuper quo per ipſum Dominum regem præceptum fuit, quod tam Iuſtic' ſui de vtroque Banco quam cæteri de Regno ſuo tam milites quam Seruientes in legibus & conſuetudinibus Angliæ experti mandarentur, quod eſſent coram Rege & eius Conſilio, &c. ad certiorandum ipſum Regem qualiter & quomodo in caſu iſto fuerit procedendum, & qualiter temporibus præteritis & anteceſſorum ſuorum in caſibus conſimilibus fieri conſueuit, & interim ſcrutantur Recorda de conſimilibus, vbi recitantur duo vel tres conſimiles caſus. Et quia licet prius non videbatur aliquibus iuri conſonum fuiſſe quod vxor in vita viri ſecundum ſanctam Eccleſiam, qualitercunque deliquiſſet quoad forum Regiũ, non poſſet nec deberet a viro ſuo ſeperari, & ſic quicquid foret in poſſeſſione vxoris, conuerteretur in poteſtatem viri ſui, & hoc manifeſte imminueret contra conſuetudinem Regni. Et etiam quia quidam dubitabant quod de poſſeſſionibus & bonis vxoris vir poſſit aliqualiter ſuſtentari. Tamen coram Conſilio Domini Regis vocatis Theſaurar' & Baronibus & Iuſticiarijs de vtroque Banco concordatum eſt, quod prædicta Margeria rehabeat ta em ſeiſinam, &c ſecundum purportum finis prædict. &c. patet etiam conſimile exemplum tempore Henrici patris regis.

Tr. in Parliamento 19.E.1.

Note the antient triall of difficult matters in Law.

The great authoritie of Iudiciall Records and Preſidents.

A ſolemne reſolution of the Law in two points.

I haue cited this ſolemne reſolution the more at large, becauſe there be many excellent things to be obſerued in it: ſo as by that which hath beene ſayd, it plainly appeareth, that this opinion concerning the habilitie of the wife of a man abiured or baniſhed, was not firſt hatched by the Iudges in Henrie the fourths time. And here is to be obſerued, that an abiuration, that is a deportation for euer into a forreine Land, like to Profeſſion, (whereof our Author ſpeaketh here) is a ciuile death, & that is the reaſon that the wife may bring an action, or may be impleaded during the naturall life of her husband. And ſo it is, if by Act of Parliament the husband be attainted of Treaſon or Felonie, and ſauing his life, is baniſhed for euer, as Belknap, &c. was, this is a ciuile death, and the wife may ſue as a Feme ſole. And hereby you may vnderſtand your Bookes which treat of this matter. But if the husband by Act of Parliament, haue iudgement to be exiled but for a time, which ſome call a Relegation, that is no ciuile death. And in 8.E.2. an Abiuration is called a diuorce betweene the husband and wife. Sed opus eſt interprete, for by Law no Subiect can be exiled or baniſhed his Countrie, whereby he ſhall perdere patriam, but by authoritie of Parliament, or in caſe of Abiuration, and that muſt be vpon an ordinarie proceeding of Law, as it was in this caſe of Weyland.

8.E.2 Coron.425.

So reſoluued in Parliament, vpon the making of the Statute of 35.Ed.ca 1.

Exilium Hugonis de Spencer patru & filii tempore E.2.

31.E.1.Cus in vita 31.

Another example we haue in our Bookes to this effect: If the husband had alienedthe Land of his wife, and after had committed felonie and beene abiured the Realme, the wife ſhall haue a Cui in vita in his life time, agreeable with the ſayd reſolution in Parliament, for that the abiuration was a ciuile death.

See in the Regiſter, a woman was baniſhed out of the Towne of Calice for adulterie, by the Law or cuſtome of that place, and there appeareth Carta pardonationis pro muliere bannita. Sed nos non habemus talem conſuetudinem.

Regiſt.fo.312.b.

(a) But by the Common Law, the wife of the King of England is an exempt perſon from the King, and is capable of lands or tenements of the gift of the King, as no other Feme couert is, and may ſue and be ſued without the King, for the Wiſedome of the Common Law would not haue the King (whoſe continuall care and ſtudie is for the publique, & circa ardua Regni) to be troubled and diſquieted for ſuch priuate and petties cauſes: ſo as the wife of the King of England is of abilitie and capacitie to grant and to take, to ſue and be ſued as a Feme ſole by the Common Law.

(a) *Vide in my Preface to the ſixt booke, This was Law before the Conqueſt*

10.E.3.27.b.508. 30.E.3.5. 18.E.3.1. 22 E.3.21. 49.E.3.4. 49.Aſſ.8. 11.H.4.67. 14.Ed.3.Voucher 100. 20.E.3.Nouabil.9. 31.E.3.Quar.Imp.146. 3.H.7.14.19. H.6.2. 28 H.6.13. 7.H.7.7.a. 26.H.6 Title R.324. Flet.l.2.ca.63.in Fine. Pl.Com.231. Stanf Prer.10.b.

(b) And ſuch a Queene hath many prerogatiues, as ſhe ſhall find no pledges, for ſuch is her dignitie, as ſhe ſhall not be amerced.

(b) *8.E.3.2.33.E.1.Briefs 916. F.N.B.101.a.*

The Queene nor the Kings ſonne are reſtrained by the Statute of 1.H 4. cap.6. concerning grants by the King.

(c) In a Quare impedit brought by her, ſome ſay that Plenartie is no plea, no more than in the caſe of the King.

(c) *18.E.3.32.24.E.3.35. 74.*

(d) If any Bailife of the Queenes bring an Action concerning the Hundred, he ſhall ſay, In contemptum Domini Regis & Reginæ.

(d) *32 E.3.Brif.346. 9.E.3.33.*

The Quene ſhall pay no Tolle.

(e) *F.N.B.* 235.*A.*

(e) If the Tenant of the Quene alien a certaine part of his tenancie to one, and another part to another, the Quene may diſtraine in any one part for the whole as the King may doe; but other Lords ſhall diſtreyne but for the rate, and therefore where the Quene ſo diſtreyneth, there lyeth a Writ De onerando pro rata portione.

(f) *F.N.B.* 1.*F.*

(f) The Writ of right ſhall not be directed to the Quene no more then to the King, but to her Bailife, otherwiſe it is when any other is Lord.

(g) 14 *E.*3.*Voucher*, 110. 21.*E.*3.53. 22.*E.*3.3.*b.* 17.*E.*3.65. 10.*E.*3.17. 5.*E.*3.4. 15.*E.*3. *Aide del Roy* 66. 10.*E.*3.18. 26.*H.*6. *Aide le Roy* 24.

(g) In caſe of aide prier of the Quene, it is Domina regina inconſulta, and the cauſe of the aide prier ſhall not be Counterpleaded no more than in the Kings caſe. And ſee where the aide ſhalbe granted of the King and Quene, and where of the Quene only, and ſhe of the King.

(h) 21.*E.*3.13. 34.*E.*3. *Protect.* 122. 11.*H.*4.67.*b.*

(h) But a Protection ſhall be allowed againſt the Quene, but not againſt the King, neither ſhall the Quene be ſued by petition but by a Præcipe.

(i) 30.*E.*3.5.

(i) The Quene is not bound by the ſtatute of Merlebridge for driuing a Diſtreſſe into another County.

(k) *Leſtat. de* 25.*E.*3. *de Proditionibus.*

(k) If any doe compaſſe the death of the Quene, and declare it by any ouert fact, the very intent is treaſon, as in the caſe of the King.

(l) *Rot. Parliam.* 8.*H.*6.*nu.*9.

(l) No man may marry the Quene Dowager without the Kings licence. But let vs now returne to Littleton.

¶ *Il poet faire ſon teſtament & ſes executors, &c.* (m) If A. be bound to the Abbot of D. A. is profeſſed a Monke in the ſame Abby and after is made Abbot thereof, he ſhall haue an action of debt againſt his owne Executors.

(m) 4.*E* 4.25. 6.*E.*4.4. 45.*E.*3.10.*a.* 18.*E.*4.19. 22.*H.*6.5. 5.*H.*7.25.*b.*

¶ *Donques lordinary poet commit adminiſtration, &c. ſicome il fuit mort en fait.* (n) Note the ſtatute of 31.E.3.ca.11. that giueth actions to the Adminiſtrators ſpeaketh of a man that dies inteſtate, which by the Authority of Littleton extendeth aſwell to a ciuill death as to a naturall.

(n) *Pl. Com.* 280. 281. *Grimbrookes caſe.*

Sect. 201.

¶ *Excommenge, excommunicatus, excommunicatio.* (a) Sicut quis poterit habere lepram in corpore, ita & in anima. Excommunicato interdicitur omnis actus legitimus, ita quod agere non poteſt nec aliquem conuenire, licet ipſe ab alijs poſſit conueniri.

(a) *Bracton, lib.*5.*ſo.*415. 426.427. *Fleta lib.*6.*ca.*44. *Britton, ca.*49.*fo.*125.

Excommunicatio eſt nihil aliud quam cenſura a Canone vel judice Eccleſiaſtico prolata & inflicta priuans legitima communione Sacramentorũ, & quandaque hominum. * It is deuided into the greater and the leſſer. Minor eſt per quam quis à Sacramentorum participatione conſcientia vel ſententia arceatur. Maior eſt quæ non ſolum à Sacramentorum verum etiam fidelium communione excludit, & ab omni actu legitimo ſeparat & dividit, but either of them both diſableth the party.

* *F.N.B.*64.*F.*

(b) *Bracton*, 426.*b.acc.*

(b) Cum excommunicato autem nec orare nec loqui nec palam, nec abſcondite, nec veſci, licet excepris quibuſdam perſonis. But euery Excom-

¶ Et vi. eſt, lou vn home eſt excommenge per la ley de ſaint Eſglíſe, & il ſuiſt vn action real ou perſonal, le tenant ou defend. poit plede que celuy que ſuiſt eſt excommenge, & ỏ ceo conient mẽe lett de Leueſqꝫ ſouth ſon ſeale, teſmoignant lexcommengemẽt, & demaunder a iudgemẽt ſil ſerra reſpondue, &c. Mes en ceſt cas ſi le demandant ou plaintife ceo ne poit dedire, le bẽe nabatera my, mes le iudgement ſerra, que le tenant ou defendant aleẽ quite ſans

THe vi. is, where a man is excõmunicated by the law of holy Church, & he ſueth an action reall or perſonall, the tenant or defendant may pleade that he that ſueth is excõmunicated & of this it behoues him to ſhew the Biſhops letters vnder his ſeale, witneſſing the excõmunication & ask iudgement if he ſhal be anſwered, &c. but in this caſe if the demandãt or plaintife cannot deny it, the writ ſhall not abate, but the iudgement ſhall be, that the tenant or defendant ſhall goe quite without day, for

iour,

tour, pur ceo q̄ quant le demandant ou plaintife ad purchase les letters de absolution, & ceux sont monstres a le court, il poit aū vn resommons, ou reattachment sur son originall, solonque la nature de son bre. Mes en les auters v. cases le bre abatera, &c. si le matter mē ne poit estre dedit.

this, that when the demandant or plaintife hath purchased his letters of absolution, and shewed them to the Court, he may haue a resummons or a reattachment vpon his originall, after the nature of his writ, &c. But in the other cases the writ shall abate, &c. if the matter shewed may not bee gainsaid.

munication disabieth not the partie. (c) If Bailifes and Commons or any other Corporation aggregate of many bring an Action, Excommingement in the Bailifes shall not disable them, for that they sue and answer by Attorney, otherwise it is of a sole Corporation. But if Executors or Administrators be excommunicated, they may bee disabled, because they which conuerse with a person excommunicate are excommunicate also. (d) If a Bishop be defendant an excommunication by the same Bishop against the Plaintife shal not disable him, and it shall be intended for the same cause, if another be not shewed.

(c) 30.E.3.15. 42.E.3.13. 21.H.6.30. 21.E.4.49.

(d) *See Artic.Cleri.ca.7.* 5.E.3.8. 8.E.3 70. 9.H.7.21. 10.H.7.8.&.9. 18.E.3.58. 28.E.3 97. 16.E.3.Excom.5. 20.E.3.*ibid.*9. 3.H.4.3.

¶ *Letter del euesque desouth son seale.* (e) None can certifie excommengement but only the Bishop, vnlesse the Bishop be beyond sea or in remote, or one that hath ordinary iurisdiction, and is immediate Officer to the Kings Courts. As the Archdeacon of Richm or the Deane and Chapter in time of vacation. (f) But in ancient time euery Officiall or Commissary might testifie Excommengement in the Kings Court, and for the mischiefe that ensued thereupon it was ordained by Parliament, that none should testifie Excommengement but the Bishop only.

(e) *Bracton lib.5.fo.425.b.* 12 E.4.15. 20.H.6.17. 20.E.3 Excommengement 20. 33.E.3.*ibid.*29. 44.E.3. 1 *id* 23. 11.H.4.14. F.N.B.64.65.239. 7.E.4.14. 8.H.6.3. Regist.67.

(f) 11.H.4.62.*in Debt.*

(g) If a Bishop certifie, that another Bishop hath certified him that the partie which is his Diocesan is Excommunicated, this Certificat vpon anothers report is not sufficient. (h) If the Bishop of Rome, or any other hauing forreine Authority doth excommunicate any subiect of this Realme, and certifieth so much vnder his seale of Leade, this shall not disable the party. For the Common Law disalowes all Acts done in disability of any subiect of this Realme by any forraine power out of the Realme, as things not authentique whereof the Iudges should giue alloWance. (i) If the Bishop certifieth the Excommunication vnder seale, albeit he dyeth, yet the Certificate shall serue (k) Si quis innodatus fuerit per excommunicationes diuersas pro diuersis delictis, & proferi litteras absolutionis de vna sententia non erit absolutus quousque de omnibus alijs absoluatur.

(g) 33.E.3.Excom.29. F.N.B.65.

(h) 16 E.3 Excom.4. 31.E.3.*ibid.*4.&6. 30.Ass.19. E.N.B.64. 4.H.7.15. 12.E.4.15. 14.H.4.14.

(i) 14.E.3.Excom.8. 8.E.2.*ibid.*26.

(k) *Hill.14.E.3. Coram Rege, London in Thesaur.*

¶ *Euesque.* Episcopus, a Bishop is regularly the Kings immediate Officer to the Kings Court of Iustice in causes Ecclesiasticall, And all the Bishoprickes in England are of the Kings foundation, and the King is Patron of them all, (l) and at the first they were donatiue, and so it appeares by our bookes, and by Acts of Parliament and by History, and that was Per traditionem anuli & pastoralis bacculi. i. the crosier. And King Henry the first, being perswaded by the Bishop of Rome to make them electiue by their Chapter or Couent refused it. (m) But King Iohn by his Charter acknowledging the custome and right of the Crowne in former times, yet granted De communi consensu Baronum, that they should be eligible, which after was confirmed by diuers Acts of Parliament, And afterward the manner and order alWell of election of Archbishops and Bishops, as of the Confirmation of the election, and Consecration (n) is enacted and expressed in the statute of 25.H.8. But by the statutes of 31.H.8. and 1.E.6. they were made donatiue by the Kings Letters patents, both which statutes are repealed, and the statute of 25.H.8. doth yet remaine in full force and effect.

(l) 17.E.3.fo.40. 25.E.3. cap.de Prouiss. 25 H.8. ca.20.lib.3.fo.73.le case de Deane & Chapter de Norwich *Matt.Par.pag.*62. *Ibid.Sect.*133.134.

(m) *Rot.Patent.*15.*Ianuary* 17.*Regis Iohannis.* *Matt.Par.pag* 252.

(n) 35.E.1.*Lestat.de Carliste.* 25.E.3.*Lestatus de Prouiss.* 13.R.2.ca.2. 25.H.8.ca.20.

And where Littleton saith, that the Bishop vnder his seale must testifie, &c. it is to bee knoWne, (o) that none but the Kings Courts of record, as the Court of Common pleas, the Kings bench, Iustices of Gaole deliuery, and the like can Write to the Bishop to certifie bastardy, mulierte, loyaltie of Matrimony and the like Ecclesiasticall matter: for it is a rule in Law, That none but the King can Write to the Bishop to certifie, and therefore no inferiour Court, as London, Norwich, Yorke, or any other Incorporation can Write to the Bishop, but (p) in those cases the plea must be remoued into the Court of Common pleas, and that Court must Write to the Bishop, and then remaund the Record againe. And this was done in respect of the honour and reuerence which the Law gaue to the Bishop being an Ecclesiasticall Iudge

(o) 2.E.3. *Corone*, 160. 8.E.3.59. 24.E.3.33. 44.E.3.28. 8.R.2. *Consuetud*, 88.

(p) 41.E.3 42.E.3.fo.9. 18.E.3.61. 14.H.4.25. 3.H.4.12. Regist.7.a. F.N.B.6.E.

and a Lord of Parliament, by reaſon of the Baronie which euery Biſhop hath. And this was the reaſon (a) a Quare Impedit did lye of a Church in Wales in the County next adioyning, for that the Lordſhips Marchers could not write to the Biſhop, (b) neither ſhall conuſance be granted in a Quare Impedit, becauſe the inferiour Court cannot write to the Biſhop. And herewith agreeth Antiquitie. (c) Nullus alius preter regem poteſt epiſcopo demandare inquiſitionem faciendam. (d) And another ſpeaking of lopaltie of marriage, Nec alius quàm rex ſuper hoc demandaret epiſcopo, quod inde inquireret, epiſcopus alterius mandatum quam regis non tenetur obtemperare; and therewith agreeth Britton alſo.

(a) 8.E.3.59.36.H.6.31. tit. Quar.Imp. Brooke 109. 35.H.6.30. 11.H.6.3. 14.E.3.33.
(b) 15.E.3.Conuſans 41. Iuriſdict.24. 40.E.3.2. Vide Sect.134.
(c) Bract lib.3.106.
(d) Fleta lib.5.cap.24. Britton. fol.248.b.

¶ *Le Briefe nabatera, &c.* Abater **is a French word, and ſignifieth** Deſtruere or Proſtruere **to deſtroy or proſtrate. And** Abatement de briefe **is a proſtration or ouerthrowing of the writ.**

(*) Bract.lib.5.fol.425. 11.R.2.Excom.25.13.E.4.8 3.Aſſp.12.

¶ * *Alera quite ſauns iour, &c.* **That is to goe quiet without any** continuance to any certaine day, and therefore the Defendant is not bound to any certaine attendance, vntill the party purchaſeth his Letters of abſolution, and the reattachment or reſommons be ſued, the entrie of which award is Ideo loquela prædicta remaneat ſine die quouſque, &c.

Vide Sect.631.

¶ *Iour.* Dies (e) **in legall vnderſtanding is the day of appearance,** of the parties or continuance of the plea. And you ſhall vnderſtand that firſt in reall actions there are, dies communes, common dayes, whereof you ſhall reade in diuers ancient Statutes.

(e) 51.H.3.cap.1.&2. Marlebr.ca.12.32.H.8.ca.21

(f) Articul.ſuper Cart.ca.15 28.E.1.
(g) 8.H.6.20.30.H.6.35. 8.Eliz.Dier.252.

(f) Alſo in all Sommons vpon the originall there muſt bee fifteene dayes after the Sommons before the appearance. (g) But if the originall be returned tarde and Sommons alias goeth forth, there muſt bee nine Returnes betweene the Teſte and the returne. And ſo in other iudiciall proceſſe in reall actions, ſauing if Conuſans bee demanded to bee holden within his Mannor, there proceſſe ſhall be awarded from three weekes to three weekes.

(q) Mirror.cap.2.§.19. Bract.lib.5.fol.334.& lib.4. fol.255. Britton.fol.279.b. Fleta.lib.6.cap.6.12.E.4.15.
(*) 11.H.6.23.15.E.3. iour.22. 21.E.3.29.15.Aſſ. Britton. fol.10.b.

And before the Statute of Articuli ſuper cartas, in all Sommons and Attachements in plea of Land there ſhall be contained the tearme of fifteene dayes. (q) And it appeareth aſwell by the Statute, as by the ancient Authors of the Law who wrote before the Statute, that this was the ancient Common Law: and the reaſon of theſe long dayes giuen in reall actions was (the recouery being ſo dangerous) that the Tenant might the better prouide him both of anſwere and of proofes, (*) but by conſent they may take other then common dayes.

And it is not amiſſe to note what the ancient Law was in proceeding againſt a man for his life And therefore heare what Britton ſaith, Sur le preſentment de ceſt felony (vnder which hee includeth alſo Treaſon) voilons nous (for he wrote in the Kings name) que treſtous ceux que ent ſeir' endites, face le Viſcont haſtiment prender, & ſafement lour corps en priſon garder & que ilz ſont menes deuant nous, ou deuant nous Iuſtices: & pur ceo que nulluy ne ſoit diſgarnis de lour reſpons, voilons que ceux que iſſint ſoient priſe que ilz eynt temps de purueyer lour reſpons 15. iours an meyns ſilz le prient, & en dementiers ſoient ſafement gardes: (r) Vide Forteſcue of this matter. And ſee the Mirror that in ſome caſes the partie conuicted hath fortie dayes, or at leaſt thirtie dayes to ſhew ſome matter to diſturbe (that is to arreſt) Iudgement, which now I know is gone in deſuetudinem and great expedition is now made in pleas of the Crowne concerning the life of man. Sed de morte hominis nulla eſt cunctatio longa.

(r) Forteſcue in libro de laudibus legum Anglia. Mirror.ca.4.§. Sept choſes diſturbent iudgement mortels.

(ſ) And the vſe of the Kings Bench at this day is, that if the offence be committed in another Countie then where the Bench ſits, and the Inditement be remoued by Certiorari, there muſt be fifteene dayes betweene euery proceſſe and the returne thereof, but if it be committed in the ſame Countie where the Bench ſit they may proceed de die in diem, but ſo they will doe rarely: but let vs returne againe to the Common Pleas.

(ſ) Lib.9.118.b. Zanchers caſe.

(a) Artic.ſuper cart.vbiſupra. F.N.B.177.c.11. Aſſ 30. 12.Aſſ.4.22.Aſſ.79. 3.H.6. Aſſiſe 2.9.E.4.5.4.27.E.3. 1.2.R.2.cap.vltime.
(*) F.N.B.177.D.7.Aſſ. 7.14.Aſſ.4.24.E 3.31. 39.E.3.20 9.E.4.18. 12.E. 4.15.8.H.5.Error.87.

Secondly, There is a day called dies ſpecialis, (a) as in an Aſſiſe in the Kings Bench or Common Pleas, the Attachement need not be 15. dayes before the appearance. Otherwiſe it is before Iuſtices aſſigned, but generally in Aſſizes, the Iudges may giue a ſpeciall day at their pleaſure, and are not bound to the common dayes, (*) and theſe dayes they may giue aſwell out of terme as within. So vpon an imparlance the Court may giue any ſpeciall or particular day, but that muſt be in the tearme time, and likewiſe in a Scire facias, vpon a fine or a recouery in a recouery in a reall action, becauſe it is a writ of Execution, and ſo it is in a per que ſeruitia and the like and in all iudiciall writs, in proceſſe againſt an Infant to iudge of his age, or where the husband praieth in aid of his wife, or in a pone at the ſuite of the Defendant there need not bee fifteene dayes. Alſo after Demurrer in Law the Court may giue what day they will. (b) And it is worthy the noting, that if in an Aſſiſe the parties be adiorned to Weſtm. vſque 15. Paſche, there they be not demaundable till the fourth day, but if it be adiorned vſque diem Lunæ, or Diem Martis, there the parties are demaundable on that day.

12.E 4.15.

(b) 41.E.3.Iour.16. 8.E.4. 4.1.H.6.4.27.Aſſ.33.

Thirdly, (c) There is a day of grace, dies gratiæ, or a day of courteſie, the name doth ſhew of what kind it is, and regularly this day is granted by the Court, at the Prayer of the Demaundans

(c) 3.E.2.auowrie.188. 13.E.3.iour.26.22.E.3.20. 1.E.3.4.lib.9.fol.49. Counter de Salops caſe, 33.H.6.42.

maundant or Plantife in whose delay it is, and neuer at the prayer of Tenant or Defendant. But it is worthy of obseruation (d) that a day of grace is neuer granted where the King is partie by Aide prayer of the Tenant or Defendant, nor where any Lord of Parliament or Peere of the Realme is Tenant or Defendant. (e) And sometime the day that is 4. die post is called dies gratiæ, for the very day of returne is the day in Law, and to that day the Iudgement hath relation, but no default shall be recorded till the fourth day be past, vnlesse it be in a writ of right, where the Law alloweth no day, but only the day of returne. This day is sometime called dies amoris, and sometime a dies datus, but it were too long to enumerate all. This shall be sufficient to giue the Reader a taste to vnderstand the residue concerning this matter.

(d) 14.E.3 iour.24.15.E.3. ibid.21.22.E.3 9 27.E.3.88

(e) 22.E.4.iour.39.18.E.3. ibid.20.38.E.3.20. 9.Ass.31 21.E.3.13.41.E.3.ibid.16. 33.H.6.42.34.H.6.27. 10.Eliz.Dier.269. 39.H.6. 29.24.E.3.28.24.E.3.breue 556.Bract.lib.5.fol.367.

(f) There is also a day of appearance in Court by the writ, and by the Roll, by writ when the Shiriffe returns the writ. By the Roll, when he hath a day by the Roll, and the Shiriffe returne not the writ, there the Defendant to saue himselfe from corporall paine as by imprisonment, or to preuent the losse of issues, or to saue his freehold or inheritance may appeare by the day he hath by the Roll.

(f) 21.E.3.43.3.H.6.2.a 21.H.6.20.3.E.4.15.6.E.4 7.E.4.15.8.E.4.18.3.H.7.8 10.H.7.11.b.27.H.8.14. Lib.11.40.17.E.3.2. 11.Eliz.Dier.286.

(g) Note, it is said commonly that the day of Nisi prius, and the day in banke is all one day, that is to be vnderstood as to pleading, but not to other purposes.

(g) 21.H.6.10.20. 4.H.6.9.42 E.3.31.

There are dies iuridici (which (h) Britton calleth temps discouenables) and dies non iuridici dies iuridici (except it be in Assises) are only in the tearme. (i) And there be also in the tearme dies non iuridici. As in all the foure tearmes the Sabbath day is not dies iuridicus, for that ought to be consecrated to Diuine Seruice. Also in Michaelmasse Tearme the Feasts of All Saints and of All Soules: in Hillarie Tearme, the Purification of the blessed Virgin Marie; and in Easter Tearme the Feast of the Ascension are not dies iuridici, but set apart by the ancient Iudges and Sages of the Law for Diuine Seruice. For Trinitie Tearme (which sometime had seuen dayes of returne, and was as long as Michaelmasse Tearme is now: but for auoyding of infection in that hot time of the yeare, and that men might not be letted to gather in Harueſt, three returnes (since Littleton wrote) viz. Crastino Sancti Iohannis Baptistæ, Octabis Sancti Iohannis Baptistæ, and 15. Sancti Iohannis Baptistæ, are by the Statute of 32.H.8. cut off and become dies non iuridici) And in those dayes the Feast of Saint Iohn the Baptist was not dies iuridicus. And the said Statute called, Dies Communis in Banco, is in diuers points (since Littleton wrote) altered, as by the said Statute appeareth. And in ancient time respect and reuerence was had by Law to certaine times, as it appeareth (k) by the Statute of W.1. cap.5. which hath a short but an excellent preamble, viz. Et pur ceo que grand charitie serra de faire droit a touts in tout temps, ou mestior serroit: puruieu est per assentment des prelates, que Assises de nouel disseisin, mortdaunceſter, & darreine presentment fuissent prises en le Aduent, en septuagesime, & en Quaresme, auxibien come (le home) prent lenquestes, & ceo pria le Roy, as Eueſques.

(h) Britton.fol.134.a.

(i) Mirror cap.3.§. exception de temps & cap.5.§.1.

32.H.8.cap.21.

(k) W.1 cap.vltimo.

(l) This Statute is expounded in Bookes, which I haue only added, to the end the studious Reader might vnderstand the Bookes that darkly speake of this matter, and be ignorant of nothing, that belongs to the vnderstanding of any part of the Law. Now Aduent is a moneth before the Feast of the Natiuitie of our Sauiour Christ, so called, de Aduentu Domini in carne. Septuagesima beginneth euer on the Sabbath Day, and is the third Sabbath before Shrouesunday, so called because it is the 70. day before the Feast of Easter. Sexagesima is the second Sabbath before Shrouesunday so named, because it is the 60. day before Easter, and so of Quinquagesima, and Quadragesima (m) whereof you shall reade in Acts of Parliament, and ancient Authors. Now as there bee dies iuridici, so there bee horæ conuenientes, whereof the Mirror saith (n) abusion que len tient pleas per dimenches (id est, Sabbaths) ou per auters iours defeudus, ou deuant le soliel leuy, ou nocantre, ou en dishoneſt lieu.

(l) 7.Ass.p.7.14.Ass.5. F.N.B.177 &c. Britton.fol.134.b.

(m) W.1.cap.51.fait anno 3. E.1. Britton.fol.134.cap.53.

(n) Mirror lib.5.§.1.

(o) Furthermore there are (as ancient Authors terme them) dies solaris aut dies lunaris secundum quod Deus diuisit lumen à tenebris, ex quibus duobus diebus efficitur vnus dies qui dicitur artificialis ex die præcedente & nocte subsequente, qui constat ex 24. horis.

(o) Bract.lib.4.fol.264. Britton.fol.209.

But we at this day retayning the same method doe differ in words. For wee say, Dierum alij sunt naturales, alij artificiales, dies naturalis constat ex 24. horis, & continet diem Solarem & noctem, and therefore in Inditements of Burglarie, and the like wee say in nocte eiusdem diei. Iste dies naturalis est spatium in quo Sol progreditur ab Oriente in Occidentem, & ab Occidente iterum in Orientem. Dies artificialis siue Solaris incipit in ortu Solis, & desinit in occasu, and of this day the Law of England takes hold in many cases. Now diuers Nations beginne the day at diuers times. The Iewes, the Chaldeans and Babylonians beginne the day at the rising of the Sunne, the Athenians at the fall, the Vmbri in Italie beginne at midday, the Egyptians and Romans from midnight, and so doth the Law of England in many cases. Of all which you shall reade plentifull matter in our Bookes, and in my Reports which by this short instruction you shall the better vnderstand.

Gen.cap.1.vers.4.5.

(p) There is also Annus minor and maior. The lesser yeare consisteth of 365. dayes and sixe houres, whereby in euery fourth yeare, there is dies excrescens, which makes that yeare to

(p) Bract.lib.5.fol.359. Britton.fol.209.a.

haue in rei veritate 366. dayes, and that is called annus maior. (q) A quarter of a yeare containeth by legall computation 91. dayes, and halfe a yeare containeth 182. dayes for the odde houres in legall computation are reiected, and by (r) the Statute de anno biſſextili it is prouided, Quod computentur dies ille excreſcens & dies proxime præcedens pro vnico die, ſo as in computation that day excreſcent is not accounted. A moneth menſis is regularly accounted in Law 28. dayes, and not according to the Solar moneth, nor according to the Kalender, (ſ) vnleſſe it bee for the account of the laps in a quare impedit. There is menſis Solaris, and menſis Lunaris. Solaris eſt 12. pars anni, viz. ſpatium 30. dierum, horarum 10. & minutorum 30. & Lunaris eſt ſpatium 28. dierum.

(q) 37. *Eliz. Dier.* 345.

(r) 21. *H.*3. *ſtat. de anno biſſextili.*

(ſ) *Lib.*6. *fol.*62. *Cattibyes caſe.*

¶ *Reſommons ou re-attachement.* These are writs that the demaundant or Plaintife after he hath obtained his Letters of abſolution may ſue out to bring the Tenant or Defendant againe into Court to haue day, to make anſwere vnto him. (t) And theſe writs doe lie in all caſes when the plea is diſcontinued or put without day either in this caſe or in caſe when the Demaundant or Tenant hath his age, or for the non venue of the Iuſtices, or in caſe of a Protection or Eſſoine de ſeruice le Roy &c. Of theſe writs there be two ſorts, viz generall and ſpeciall, whereof you may ſee Preſidents, and reade more at large in the caſe of diſcontinuance of Proceſſe in my Reports, and need not here to be inſerted.

(t) *Bract. lib.*5. *fol.*425. *Britton. ca.*74. *lib* 7 *fo.*29.30

¶ *Sur ſon originall.* This is intended of his originall writs, or of that which is in ſtead of an originall writ. But note that in the other fiue caſes the writ ſhall abate, and in the caſe of Excommengement the writ ſhall not abate, but the plea to bee put without day vntill the Plaintife purchaſe his Letters of abſolution, and ſue out his reſommons or re-attachement.

In ancient times more perſons ſeemed to be diſabled then theſe fiue recited by Littleton As firſt he that was a Leaper, and by the writ De leproſo amouendo was propter contagionem morbi prædicti (as the writ ſayth) & propter corporis deformitatem (as others ſay) to be remoued from the ſocietie of men to ſome ſolitary place, and thereupon (u) it is ſaid, Datur etiam exceptio tenenti, ex perſona petentis peremptoria propter morbum petentis incurabilem & corporis deformitatem, vt ſi petens leproſus fuerit, & tam deformis quod aſpectus eius ſuſtineri non poſſit, & ita quod à communione gentium ſit ſeparatus, talis quidem placitare non poteſt, nec hæreditatem petere. (x) And herewith Britton agreeth treating of diſabled men, as men outlawed, abiured the Realme, attainted of Felonie, &c. addeth ne meſel, cuſte de common gents.

(u) *Bract. lib.*5. *fol.*421.

(x) *Britton fol.*39. & 88.

(y) Fleta *lib.*6. *cap.*39. 22. *E.*3. *indorſſ. clauſ.*20. *part. mu.* 14. *F.N.B.*234. *Regiſter.*

(y) And Fleta ſayth, Competit etiam ei exceptio propter lepram manifeſtam vt ſi petens leproſus fuerit & tam deformis quod à communione gentium merito debet ſeparari, talis enim morbus petentem repellit ab agendo.

And if theſe ancient writers be vnderſtood of an appearance in perſon, I thinke their opinions are good Law, for they ought not to ſue nor defend in proper perſon but by Atturny, for they are ſeparated à communione gentium propter contagionem morbi & deformitatem corporis.

Before the Conqueſt this diſeaſe was not knowne in England. For Maſter Camden writting of Burton Lazers in Leiceſterſhire ſayth, (a) Primis Normannorum temporibus collecta per Angliam ſtipe noſocomium hoc conſtructum ferunt, quo tempore lepra (quæ à nonnullis Elephantiaſis) graviſſime vi contagionis per Angliam ſerpſit. And it is called Morbus Elephantiaſis, becauſe the ſkinnes of Leapers are like to Elephants. (b) And the Law of England for the remouing of the Leapers from the ſocietie of men to ſome ſolitarie place is grounded vpon Gods Law.

(a) *Cambden. in Leiceſterſhire. verbo. Burton.*

(b) *Leuit. cap.*13. *verſe* 44. 45. 46. *Numeri cap.*5. *verſe* 1. 2. 4. *Regum. cap.*15.

(c) Also there was a time when Ideots, Madmen, and ſuch as were deafe, and dumbe, naturally were diſabled to ſue, becauſe they wanted reaſon and vnderſtanding, (tales enim non multum diſtant à brutis) but at this day they all may ſue, for the ſuite muſt bee in their name, but it ſhall be followed by others. (d) And note, that when an Ideot doth ſue or defend, he ſhall not appeare by Gardeine or Pourcheine Amy, or Atturney, but he muſt be euer in perſon, (e) but an Infant or a Minor ſhall ſue by Pourcheine Amy, and defend by Gardeine but now let vs heare what Littleton will ſay vnto vs.

(c) *Bract. l.*5. 420. 421. *Britton. fol.*39. *Fleta lib.*6. *cap.*37.
(d) 33. *H.*6. 18. *F.N.B.*27. *G.*
(e) 27. *H.*8. 11. 40. *E.*3. 16. 20. *E.*4. 2. *F.N.B.*27. *H.*

Section 202.

(1) *Haplein* (a) *ſeculer*, Is he that is Infra ſacros ordines, but he is not regular, (that is) liueth not vnder certaine rules,

(1) Temſi vn villein eſt fait vn chapleine ſeculer, vncore ſon ſeignior poit luy reſeer

(1) Alſo if a villeine be made a ſecular Chaplaine, yet his Lord may ſeiſe him as

(a) *Mirror cap.*2. §.18. *Doct. & Stud. fol.*141. 4. *E.*4. 25. *per Danby.* 27. *Aſſ. pl.*49.

ſeiſer cõe ſon villeine, & ſeiſie les biens, &c. Mes il ſemble que ſi le villein enter en Religion, & eſt profeſſe, que le Sñr ne poit luy prender ne ſeiſer, pur ceo que il eſt mort en ley, nient pluis q̃ ſi vn frank hõe prent vn niefe a ſa feme, le Seignior ne poit prender ne ſeiſer la feme de le baron. Mes ſon remedy eſt dauer vn action enuers le baron pur ceo que il prist ſa niefe a feme ſans ſon licence & volunt, &c. Et iſſint poit le Sñr auer action enuers le ſouereign del meſon que prist & admittaſt ſon villein deſtre profeſſe en meſme le meaſon ſans licence & la volunt le Seignior, & recouera ſes damages a la value de le villein. Car celuy que eſt profeſſe Moigne ſerra vn Moigne, & come vn Moign ſerra pris pur terme de ſa vie natural, ſinon que il ſoit deraigne per la ley de ſaint Egliſe. Et il eſt tenus per ſon Religion de garder ſon cloiſter, &c. Et ſi l'Sñr luy puiſſoit prender hors de ſa meaſon, donques

his villeine, and ſeiſe his goods, &c. But it ſeemeth that if the villeine enter into Religion, and is profeſſed that the Lord may not take nor ſeiſe him, becauſe hee is dead in Law, no more then if a free man taketh a neife to his wife the Lord cannot take nor ſeiſe the wife of the husband, but his remedy is to haue an action againſt the husband, for that hee tooke his niefe to wife without his licence and will, &c. And ſo may the Lord haue an action againſt the ſoueraigne of the houſe which takes and admitteth his villeine to bee profeſſed in the ſame houſe, without the licence and leaue of the Lord, and hee ſhall recouer his damages to the value of the villeine. For he which is profeſſed a Monke ſhalbe a Monke, and as a Monke ſhall be taken for terme of his naturall life, vnleſſe hee be deraigned by the law of holy Church. And he is bound by his Religion to keepe his Cloyſter, &c. And if the Lord might take him out of his houſe, nor hath vowed thoſe three things aboue ſpecified.

¶ (b) *Enter en religion & eſt profeſſe.* That is intended (as hath beene ſaid) when hee is regular and profeſt vnder certaine rules, as to become one of the foure orders of Friers (that is to ſay) Freres minors, Auguſtines, Preachers, or Carmelites, or become a Monke, Cannon or Nunne, &c. Qui ad viuendum regulariter ſe aſtringunt, ſiue ſunt Monachi, ſiue Canonici, regulares, ſiue ſanctimoniales. For all theſe are regular and Votaries, and are dead perſons in Law, but ſo are not the ſecular perſons, as Prebends, Parſons, Vicars, &c.

(b) *Britton cap.31.fo.79. Doctor & Students.fo.142.*

4.H.4.ca 17.

And therefore it is holden in our bookes, (c) that if a ſecular Prieſt taketh a wife and hath iſſue and dieth, the iſſue is lawfull and ſhall inherite as heire to his father, &c. for (as it was then holden) the mariage was not voide, but voydable by diuorce, and after the death of either partie no diuorce can bee had.

(c) *22.H.7.39. 19.H.7.tit bailardy.33. 5.E.2 tit.Nonability,26. 47 E.3.Caſewls.*

But if a man marrieth a Nunne, or a Monke marrieth, theſe mariages were holden voide and the iſſues baſtards, becauſe (as it was then holden) the marriage was vtterly voide; for that the Nunne and the Monke (as Littleton here ſaith) were dead perſons in Law. And that is the reaſon yeelded by Littleton, wherefore a villeine being profeſſed in religion cannot bee ſeiſed by the Lord, becauſe hee is dead in Law, and yet his blood or bondage is not thereby altered, but his perſon in reſpect of his profeſſion only priuiledged. (d) In Decretalibus ſtatutum eſt quod nullus epiſcopus ſpurios aut ſeruos donec à dominis ſuis fuerint manumiſſi ad ſacros ordines promouere præſumat. But notwithſtanding his perſon is priuiledged till hee be diſgraded. And ſo it is holden in

(d) *Glanuill,lib.5.ca.5. Britton.fo.79.&.82.*

(e) *Fleta lib.2.cap.44. Britton vbi supra.*

our old bookes. (e) If a villeine be made a Knight for the honour of his degree, his person is priuiledged, and the Lord cannot seize him vntill he be disgraded. Nullam vilem personam natione spuriũ, vel seruilis conditionis ad militiæ strenuitatis ordinem promoueri licebit sed cum à Dominis suis petantur vt natiui ipsis primo degradatis statim ad iudicium procedatur

il ne viueroit cõe vn mort person, ne sion ſon Religion, le quel serroit inconuenient, &c.

then he should not liue as a dead person, nor according to his religion, which should be inconuenient, &c.

(f) *F.N.B.78 b. 30.E.1. tit.Villen. 46.33.E.3.ibid.21 18.E.2.ibid. 30.46.E.3.6. 4.E.4.25.1.H.4.6.13.E 1. Villen.36.18. Ass.10. Doct. & Stud.141. Mirror.cap.2. §.18.acc.*

¶ *Si vn frank home prent vn niefe.* (f) **Some haue holden that by** this marriage the wife shall be free for euer, but the better opinion of our Bookes is, that she shall be priuiledged during the couerture only, vnlesse the Lord himselfe marrieth his Niefe, and then some hold, that she shall be free for euer.

If a Niefe be regardant to a Mannor, and she taketh a freeman to husband by licence of the Lord, and the Lord maketh a feoffment in fee of the Mannor, the husband dieth, the Feoffee shall not haue the Niefe but the Feoffor, for that during the marriage shee was seuered from the Mannor. And so is the Booke 29. Ass. (which is falsly print.d) to be vnderstood.

(g) *16.H.3. super obiit 17. 8.H.3.breue 789.*

(g) If two Copercencrs be of a Villeine, and one of them taketh him to husband, she and her husband shall not haue a super obijt against her Copercener, but after the decease of her husband she shall.

(h) *Vide Britton fol.82. Fortescue cap.43. 46.E.3.6.a.*

¶ (h) *Mes son remedie est dauer vn action vers le Baron, &c.* **Albeit** marriage is lawfull, yet when it worketh a preiudice to a third person, an action in this Case lyeth against the husband to the value of his folle. And albeit hee did not know her to bee a Niefe, yet the action lyeth against him, for hee must take notice thereof at his perill, (i) vnlesse she be out of the seruice of the Lord and vagarant, and then if one not knowing her to bee a Niefe marrieth her, some say that in that case no action lyeth against the husband. (k) And likewise the Lord shall haue an action against those that were the meanes to make the Villeine a Knight.

(i) *7.R.2.tit.barre 240.*

(k) *Britton.fol.82.b.*

31.H.6.cap.5. 12.H.7.ca.7. 11.H.4.5.b.

¶ *Souereigne*, Præcipuus, Chiefe, **as here**, souereigne del meason is the Chiefe of the house.

31.H.8.cap.29.

¶ *Si non que il soit deraigne.* **This word** (deraigne) **commeth of** the French word deraiver, or deraigner, that is to say, to displace or to turne one out of his order, and hereof commeth deraigne ent a displacing, or turning out of his order. So when a Monke is derained, he is degraded and turned out of his Order of Religion, and become a lay man.

40.Ass.27. per Finchden.

¶ *Le quel serra inconuenient.* Ab inconuenienti **is a good argument** in Law, as Littleton often obserueth. And here Littleton concludeth that the Lord cannot take a Monke out of his house, for that it should be inconuenient, which Littleton here sheweth, for diuers reasons, and therefore vnlawfull. And the inconuenience is, that where a man of Religion should liue according to his profession in Religion, by the taking of him out hee should not

¶ *Si le Seignior luy puissoit prender, &c.* **By this it appeareth,** that if a man detayneth a Villaine in his house, the Lord of the Villaine may take him out of the house, for here the impediment wherefore the Lord could not take him out of the house, was for that the Villaine was a Monke professed. And so in case of the Wardship here next following.

Section 203.

¶ *Briefe de rauishment de garde.*

This writ is giuen by the Statute of W.2. cap 35. in verbis conceptis, the wordes of which writ bee that the defendant, Talem hæredem cujus maritagium ad ipsum A.

¶ **EN meisme le maner est, si soit gardeine en chiualrie de corps a de fre dun enfant deins age, si lenfant quant il**

¶ IN the same manner it is, if there be a Gardein in Chiualrie of the bodie & land of an infant within age, if the infant

il vient al age de 14. ans entra en Religion, & eſt profeſſe, le garden nad auter remedie (quant a le garde de le corps) forque bñ de rauiſhment de garð enuers le Soueraigne de le meaſon. Et ſi aſcun eſteant de plein age, que eſt coſin & hñe del enfant enter en l' terre, le gardein nad aſcun remedie quant al garde ð la tre, p̃ ceo q̃ lentrie del hñe lenfant eſt congeable en tiel caſe.

when he comes to the age of 14. yeares entreth into Religion, and is profeſt, the gardein hath no other remedy (as to the wardſhip of the body) but a writ of rauiſhment *de gard* againſt the ſoueraigne of the houſe. And if any being of full age who is coſin and heire of the enfant entreth into the land, the gardein hath no remedy as to the wardſhip of the land, for that the entry of the heire of the infant is lawfull in ſuch caſe.

pertinet, &c, rapuit & abduxit &c. contra pacem. Now Rapere ſignifieth properly to take away by violence and force. And when the Soueraigne tooke and admitted the Ward into his houſe to bee profeſſed, this in iudgement of Law is a Rauiſhment of the Ward, and as it appeareth in our bookes before the ſaid ſtatute, there lay a generall action of treſpaſſe in that caſe. *Lib.9. Doctor Huſſeys caſe. fol.72.*

¶ *Apres lage de* 14. *ans, &c.* Our Author mentioneth this age becauſe it is prohibited by the ſtatute of 4.H.4. that no childe ſhall be receiued into any houſe of religion before that age without conſent of his parents and gardeins, &c. *4 H.4.cap 17.*

¶ *Le gardein nad aſcun remedy, &c.* Here it appeareth that by the profeſſion of the Ward, the Lord loſeth the wardſhip of the land, becauſe he is Civiliter mortuus, a dead man in law and cannot hold any inheritance, neither can the gardein continue the Wardſhip of the land, becauſe by the ciuill death of the Ward the inheritance is diſcended to another. Who is either to be in Ward, or pay reliefe. So as in this caſe the gardein hath Damnum, but it is Abſque iniuria, becauſe he loſeth the Wardſhip of the land by act of Law, viz. the diſcent thereof to another, and therefore the Law giueth to him no remedy in this caſe, neither by any formed Writ, nor by action vpon his caſe, for Littletons words are generall, (he hath not any remedie.)

Sect. 204.

¶ Item, en mults diuers caſes le Sñr poit faire manumiſſion & enfranchiſement a ſon villein. Manumiſſion eſt proprement, quãt le Sñr fait vn fait a ſon villein de luy enfranchiſer Per hoc verbũ (Manumittere) quod idem eſt quod extra manum, vel extra poteſtatem alterius ponere. Et pur ceo q̃ per tiel fait le villein

ALſo in many and diuers caſes the Lord may make manumiſſion and enfranchiſement to his villein. Manumiſſion is properly when the Lord makes a deed to his villeine to enfranchiſe him by this word (*Manumittere*) which is the ſame as to put him out of the hands and power of another. And for that that by

¶ M *Anumiſsion.* (l) Manumittere quod idem eſt quod extra manum vel poteſtatem ponere. (l) *Glanuil lib.5.cap.5. Britton, fol 78.&c.82.97. 110. Fleta lib.3.cap.13. & lib.2.ca.44.*

Quia quamdiu quis in ſeruitute eſt, ſub manu & poteſtate domini ſui eſt.

Qui in poteſtate domini ſui eſt, in manu domini ſui eſſe dicitur, ſed poſtquam Manumiſſus eſt, ab illo libcrabitur, ergo dicitur quaſi extra manum, id eſt, extra poteſtatem domini ſui miſſus. And here is to bee noted (as in many other places is obſerued) what regard Littleton hath to the true Etimologies of words.

¶ (m) *Enfranchiſement.* (Hereby Littleton (m) *Mirr.ca.2.§.18.*

con explaneth Manumission) is deriued from the French word Franchise; that is, Liberty, and in the Common Law it hath diuers significations, sometimes the incorporating of a man to be free of a Company or body politique, as a free man of a Citie, or Burgesse of a burroughe, &c. sometimes to make an Alien a Denizen, and here to manumise a villeine or bond man.

est mis hors de la main & de la poier son Sñr, il est appelle Manumission. Et issint chescun maner de enfranchisement fait a vn villein poit estre dit Manumission.

such deed the villeine is put out of the hands and of the power of his Lord, it is called Manumission. And so euery manner of infranchisement made to a villein, may bee said to be a Manumission.

So as this word (Enfranchisement) is more generall then Manumission, for that is properly applyed to a villeine, and therefore euery Manumission is an infranchisement, but euery Infranchisement is not a Manumission. (n) There be two kindes of Manumissions, one expresse, and the other implied. Expresse, when the villeine by deed in expresse words is manumised and made free, the other implyed by doing some act, that maketh in iudgement of Law the villeine free, albeit there be no expresse words of Manumission or Enfranchisement. (o) If a villeine be manumised, albeit he become ingratefull to the Lord in the highest degree, yet the Manumission remaines good: and herein the Common Law differeth from the Ciuill Law, for, Libertinum ingratum leges ciuiles in pristinam redigunt seruitutem, sed leges Angliæ semel manumissum semper liberum iudicant, gratum & ingratum.

(n) *Mirror, cap. 2. §. 18.*

(o) *Fortescue, ca. 46.*

There be also some cases where the villeine shall be priuiledged from the seisure of the Lord, albeit he be not absolutely manumised or infranchised. Sometimes Ratione loci, (p) as if a villeine remaine in the ancient demeane of the King a yeare and a day without clayme or seisure of the Lord, the Lord cannot haue a Writ of Natiuo habendo or seise him so long as hee remaines and continues there, and the reason of this was in respect of the seruice hee did to the King in plowing and tillage of the demeanes and other labours of husbandry for the Kings benefit. And herewith agreeth old bookes (q) which say that this immunity was sometime granted by common consent to the King for his profit, and for the helpe or ease of his villeines

(p) *39. E. 3. 6. b. F. N. B. 79. a.*

(q) *Glanuil, lib. 5. ca. 5. Fleta lib. 2. ca. 44. Britt. fo. 79 Mirror, ca. 2. §. 18.*

(r) Jf a villeine be a Priest of the Kings Chappell, the Lord cannot seise him in the presence of the King, for the Kings presence is a priuiledge and protection for him. Sometime Ratione professionis, (s) as if a villeine be professed a Monke, or a Neife a Nunne, as hath beene said. (t) Sometime (as some hath said) Ratione dignitatis, as if the villeine be made a Knight, &c. Sometime Ratione matrimonij, as if a Neife marry a free man she is priuiledged during the mariage, but not absolutely enfranchised, for if her husband die she is Neife againe, vnlesse the Lord himselfe marieth the Neife, and then she is enfranchised for euer as hath been said before. And it shall not bee amisse to obserue the wisedome of our Ancients with what solemnity (for more suretie therof) Manumissions were made: Qui seruum suum liberat, in Ecclesia vel mercato vel comitatu vel hundredo coram testibus & palam faciat, & liberas ei vias, & portas conscribit apertas, & lanceam & gladium vel que liberorum arma in manibus ei ponat. Our Author hauing spoken of an expresse manumission, here followes infranchisements in Law.

(r) *27. Ass. p. 49.*

(s) *Glanuil. lib. 5. cap. 5.*

(t) *Britton, vbi supra.*

Lib. Rub. cap. 78.

Section 205.

Cf Or when the Lord enableth the villein to haue an Action against him as for debt or Annuitie, &c. or giueth to the villein a certaine and fixed estate in Lands, Tenements, or hereditaments as a Lease for yeares, this amounteth to an infranchisement not only during the yeare but for euer, (u) and albeit the Lease be made to the villein without Deed yet it is an infranchisement for euer.

CA Auxi si le Sñr fait a son villein vn Obligation de certeine somme dargẽt ou grant a luy per son fait vn annuity, ou lessa a luy per son fait terres ou tenements pur terme des ans, le villein est enfranchise.

Also if the Lord maketh to his villeine an Obligation of a certaine somme of money or granteth to him by his Deed an Anuuity, or lets to him by his Deed lands or tenements for terme of yeares, the villeine is enfranchised.

(u) *50. E. 3. tit. vil. 25. 21. H. 7. 13.*

Sect. 206.

¶ Auxy ſi le Sñr fait vn feoffement a ſon villein daſcun terres ou tenemts per fait ou ſans fait, en fee ſimple, fee taile, ou pur terme de vie, ou ans, & a luy liuera ſeiſin, ceo eſt vn enfranchiſement.

ALſo if the Lord maketh a feoffment to his villeine of any lands or tenements by Deed or without Deed, in fee ſimple, fee taile, or for terme of life or yeares, and deliuereth to him ſeiſin, this is an enfranchiſement.

This is euident and agreeth with our bookes. *Vit.*24.*E.*3.32. 12.*H.*3.*tit.Vill.*42.

Section 207.

¶ Mes ſi le Sñr fait a luy vn leaſe des terres ou tenements, a tener a volunt le Sñr, per fait, ou ſans fait, ceo neſt aſcun enfranchiſemẽt pur ceo q̃ il nad aſcun manner d certainty ne ſuertie de ſon eſtate, mes le Sñr luy poit ouſter quant il voylet.

BVt if the Lord maketh to him a leaſe of lands or tenements, to hold at will of the Lord by deed or without deed, this is no enfranchiſement for that, that hee hath no manner of certaintie or ſuretie of his eſtate, but the Lord may ouſt him when hee will.

¶ *Per fait.* So as a Deed made to a villeine by the Lord is no infranchiſement, when the Deede transferreth no certaine or fixed eſtate, but reuocable at the Lords will. If the Lord releaſe to his villein all his right in Blacke acre, and the villeine is not thereof ſeiſed, this is no infranchiſement becauſe it is voide and can giue no cauſe of action. If the Lord attorneth to his villeine, this is no infranchiſement. 11.*H.*7.

Section 208.

¶ Auxy ſi le Sñr ſuiſt enuers ſon villein vn Præcipe quod reddat, ſil recouer, ou ſoit nonſue apres appearance, ceſt vn manumiſſion, pur ceo q̃ il puiſſoit loyalmẽt enter en la terre ſans tiel ſuit. En meſme le manner eſt, ſil ſuiſt enuers ſon villein vn action d debt ou daccount, ou de couenãt,

ALſo if the Lord ſueth againſt his villein a *Præcipe quod reddat*, if hee recouer or bee nonſuite after appearance, this is a manumiſſion, for that hee might lawfully haue entred into the land without ſuite. In the ſame manner it is, if hee ſue againſt his villeine an action of debt, or account, or of couenant, or of

¶ *Si Seignior ſuiſt enuers ſon villeine vn* Præcipe quod reddat, &c. *ceo eſt vn manumiſsion.* And the principall reaſon hereof is, for that by this ſuite hee enableth the villeine to be a perſon able to render him the land by courſe of law where the Lord without any ſuch ſuite might haue entred. (w) But if Tenant in tayle be of a Mannor whereunto a villein is regardant, and enfeoffeth the villeine of the Mannor and dyeth, the iſſue ſhall haue a formedon againſt the villeine, and after the recouery of the manor he ſhall ſeiſe the villein. (w) 24.*E.*3.*Diſcent.*16. *Vid.Britton* 78.*&* 126.

And the reaſon is for that he could not ſeiſe the Villeine till he had recouered the Mannor which was the principall, and at the time of the writ brought, he was no Villeine.

The Tenant infeoffes the Villeine of the Lord, and an eſtranger vpon coliuſion, in this caſe although the Lord may enter vpon the Villeine for the moytie, yet may hee haue a writ of Ward againſt them both without infranchiſement of the Villeine, for if the Lord ſhould enter vpon the Villeine, then ſhould his Seigniorie be ſuſpended, and then could not he haue a writ of Ward againſt the oother.

The Lord vpon a writ of Couenant brought by the Villeine, leuies a fine to his Villeine of Land which is ancient Demeſne, the Lord of whom the Land is holden reuerſeth the fine in a writ of Deceit, albeit the Authoritie and Juriſdiction of the Court is diſproued, and that the Lord of the Villeine ſhall bee reſtored to the Land giuen by the fine, yet is it an enfranchiſement, for that he anſwered to the writ of Couenant, and the fine was voydable, and not voyde, and therefore being once an enfranchiſement, it cannot bee auoyded by the reuerſing of the fine.

¶ *Soit non ſue (id eſt) non eſt proſecutus breue ſuum*, for by the Law the Plaintife bee firſt Agent at euery continuance, and therefore the Record ſayth, quod petens ſeu querens (naming them) obtulit ſe, who if hee bee called, and make default, then he is ſaid to be Nonſuit, id eſt, non eſt proſecutus, &c.

By Littleton here it appeareth that there is a Nonſuite before appearance at the returne of the writ, or after appearance at ſome day of continuance. (x) The difference

ou de Treſpaſſe, ou de huiuſmodi, ceo eſt vn enfranchiſement, pur ceo que il puiſſoit empriſon le villein, & prender ſes biens ſans tiel ſuit. Mes ſi le ſeignior ſuiſt ſon villeine per appeale de felony, ou il fuit endict de ceo deuant, ceo ne enfranchiſera pas le villein coment que le matter de lappelle ſoit troue encounter le ſeignior, pur ceo que le Seignior ne puiſſoit auer le villein deſtre pendue ſãs tielſuit. Mes ſi le villeine ne fuit endict de meſme le felonie, deuant lappeale ſue enũs luy, & puis eſt acquite de ceſt felonie, iſſint que il recouera dammages enuers ſon ſeignior pur le faux appeal, donques le villeine eſt enfranchiſe, pur la cauſe de le iudgement de dammages a luy deſtre doñ enuers ſon ſeignior. Et pluſors auts caſes & matters y ſont, per queux vn villeine poit eſtre enfranchiſe enuers ſon Seignior, &c. Sed de illis quære.

Treſpaſſe, or of ſuch like, this is an infranchiſement, for that he might impriſon the villeine, and take his goods without ſuch ſuite. But if the Lord ſue his Villeine by appeale of Felonie, where he was indited of the ſame before, this ſhall not enfranchiſe the Villeine, albeit that the matter of appeale bee found againſt the Lord, for that the Lord could not haue the Villeine to bee hanged without ſuch ſuite. But if the Villeine were not indited of the ſame Felonie, before the appeale ſued againſt him, and afterward is acquited of this Felony, ſo as he recouer dammages againſt his Lord for the falſe appeale, then the Villeine is infranchiſed, becauſe of the iudgement of dammages to bee giuen vnto him againſt his Lord. And many other Caſes and matters there bee by which a Villeine may bee enfranchiſed againſt his Lord, &c. But enquire of them.

(x) *Lib.*8.*fo.*58.62. *Becherscaſe.* 3.*H.*6.13. *Brookesit. Nonſuit* 1. 8.*H.*6.7. 50.*E.*3.12.

betweene a Nonſuit and a Retraxit on the part of the Demandant or Plaintife is this. A Nonſuite is euer vpon a demand made when the Demandant or Plaintife ſhould appeare, and hee makes default. A Retraxit is euer when the demandant or Plaintife is preſent in Court (as regularly

gularly he is euer by intendement of Law vntill a day be giuen ouer, vnleſſe it be when a verdict is to be giuen, for then he is demandable.) And this is in two ſorts, one Priuatiue, and the other Poſitiue, Priuatiue, as vpon demand made, that he make default, and depart in deſpite of the Court, and then the entrie is, (y) Et poſtea eodem die deuenit ad barram prædict tenens, & præd' petens tunc ſolenniter exactus non venit, ſed à ſecta ſua prædicta in contemptum Curiæ ſe retraxit, ideo conſideratum eſt, &c. Poſitiue, as when the entrie is; Et ſuper hoc idem querens dicit, quod ipſe non vult vlterius placitum ſuum prædictum proſequi, ſed abinde omnino ſe retraxit, &c. ideo, &c. Another forme thereof is, quod idem querens fatetur ſe (ſeu cognouit ſe) vlterius nolle proſequi verſus prædict. defend. &c. de placito prædicto. (z) A departer in deſpight of the Court is on the part of the Tenant, and is, when the Tenant or Defendant after appearance and being preſent in Court vpon demand makes departure in deſpight of the Court, and then the entrie is, Et prædict' tenens ſeu defendens licet ſolenniter exactus non reuenit, ſed in contemptum Curiæ receſſit & defaltam fecit, ideo, &c. It is called a Retraxit, becauſe that word is the effectuall word vſed in the entrie, as before it appeareth, and it is euer on the part of the Demandant or Plaintife. (a) Another difference betweene a Retraxit and a Nonſuite is, that a Retraxit is a barre of all other Actions of like or inferiour nature: Qui ſemel actionem renunciauit amplius repetere non poteſt. But regularly a Nonſuite is not ſo, but that he may commence an action of like nature, &c. againe. For it may bee, that hee hath miſtaken ſomewhat in that action, or was not prouided of his proofes, or miſtaking the day or the like. But yet for ſome ſpeciall reaſons, Nonſuite in ſome actions is peremptorie.

(y) *Tr.5 H.6.Rot.320. In Com.Banco.*

(z) *F.N.B.78.f.& 108.d. 19.E.2.Viken.31.*

(a) *Lib.8.vbiſupra.*

In a Quare impedit, if the Plaintife bee Nonſuite after appearance, the Defendant ſhall make a title, and haue a Writ to the Biſhop (b) and this is peremptorie to the Plaintife, and is a good barre in another quare impedit, and the reaſon is for that, the Defendant had by iudgement of the Court a Writ to the Biſhop, and the Incumbent that commeth in by that Writ ſhall neuer be remoued, which is a flat barre as to that preſentation, and of this opinion is Littleton in our Bookes. And the ſame Law, and for the ſame reaſon it is in the caſe vpon a diſcontinuance.

(b) *5.E.3.35. 8.H.5. 31.H.6.15. 22.H.6.44,45. 33.H.6.1.55. 19.E.4.9. 21.E.4.2.b.&c.F.N.B.38.k Lib.7.fo.27.b. Sir Hugh Portmans caſe.*

(c) In a Writ De Natiuo habendo, Nonſuit after appearance is peremptorie, for thereby the Villein is infranchiſed. And ſo it is if two be Plaintifes in a Natiuo habendo, if one be nonſuit this is the Nonſuite of both, and no ſommons and ſeuerance doth lie in that caſe, albeit it be a reall action. And this is in fauorem libertatis, for in a Libertate probanda, Nonſuite after appearance is not peremptorie, neither is the Nonſuite of the one, the Nonſuite of both.

(c) *6.E.2.Vil.26. 12.E.2. ibid.28. 19.E.2.ibid.31. F.N.B.78.e. 4.E.2.Nonſuits 29.*

(d) Nonſuite in an appeale of Murder, Rape, Robberie, &c. after appearance is peremptorie, and this is in fauorem vitæ, for if the Defendant be acquited, and take out proceſſe vpon the Statute of W.2. againſt the Abettors, or if he purchaſe his originall Writ, for that cauſe he may be Nonſuite.

(d) *9.H.4.1.12. Stanf. Pl.Cor. 148.a. & 171.c. 22.Aſſ.97. Fitz.Cor.184. 22.E.3.6. 47.E.3.16. 7.H.7.5. 40 E.3. Dam.77. 17.E.2.Coron.386. 3.E.2. Actionſur Leſt.28.*

(e) Nonſuite in an appeale of Mayhem be Nonſuite after appearance it is peremptorie for the Writ ſaith, Felonice maihemauit, and therefore the Nonſuite is peremptorie.

(e) *43.Aſſ.39. 40.Aſſ.1.*

(f) In an Attaint if the Plaintife after appearance be Nonſuite, it is peremptorie, and the reaſon is for the faith that the Law giues to the verdict, and for the terrible and fearefull iudgement that ſhould be giuen againſt the firſt Iurie if they ſhould be conuicted, and therefore vpon the Nonſuite, the Plaintife ſhall be impriſoned, and his pledges amerced. But if the proceſſe in an Attaint be diſcontinued, the Plaintife may haue another Writ of Attaint, becauſe vpon the Nonſuite there is a iudgement giuen but not vpon the diſcontinuance. Note, it is truely ſaid that Exceptio probat regulam, for theſe caſes excepted ſtand vpon their ſpecial and particular reaſons, and fall not within the generall reaſon of the rule. It is a generall rule, that Nonſuite before appearance is not peremptorie in any caſe, for that a ſtranger may purchaſe a Writ in the name of him that hath cauſe of action, as ſhall be ſaid hereafter in this Section.

(f) *32.Aſſ.13.19.Aſſ.13. 20.E.3 ats ins 42.22.E.3.7. F.N.B.108.d.*

(g) In reall or mixt actions the Nonſuite of one Demandant is not the Nonſuite of both, but he that makes default ſhall be ſummoned and ſeuered, but regularly in perſonall actions, the Nonſuite of the one is the Nonſuite of both, vnleſſe it be in certaine particular caſes.

(g) *11.H.6.23.35. F.N.B.35.b. 19.E.3.tit. Seuer.14.3.E.2.Nonſuit 18. 19.E.3.Seuer.16.12.E.3.ib. 38.E.3.9. 29.H.6.45. 38.E.3.35. 41.E.3.Nonſuit 10. 45.E.3.10. 2.H.4.2.*

(h) In perſonall actions brought by Executors there ſhall bee Sommons and ſeuerance becauſe the beſt ſhall be taken for the benefit of the dead. And ſo it is in an action of Treſpaſſe as Executor for goods taken out of their owne poſſeſſion. Like Law in account as Executors by the receit of their owne hands.

(h) *42.E.3.13.48 E.3.14. 28.H.6.3.11.E.2.Seuer.26. 13.E.3.ib.15. 18.E.3.ib.28. 5.E.3.ibid.20. 7.E.3.12.*

(i) In an Audita querela concerning the perſonaltie, the Nonſuite of the one is not the Nonſuite of the other, becauſe it goeth by way of diſcharge and freeing of themſelues, and therefore the default of the one ſhall not hurt the other.

(i) *15.E.3.Seuer.23. Lib.6.fo.25.Ruddocks caſe.*

(k) In a Quid iuris clamat, the Nonſuite of the one is the Nonſuite of both, becauſe the Tenant cannot attorne according to the grant.

(k) *20.E.3.Seuerance 17.*

(l) Some actions follow the nature of thoſe actions whereupon they are grounded as the Writs of Error, Attaint, Scire facias, and the like. If a reall action be brought by ſeuerall Præcipes againſt two or more, if the Demandant bee Nonſuite againſt one, he is Nonſuite againſt

(l) *47.E.3.6.b. 47.Aſſ.3. 29.Aſſ.34.7.H.4.45. 34.H.6.31. 25.H.6.19. 29.E.3.37.Lib.6.vbſupra. 22.H.6.42. 4 E.4.33. 19.E.2.Nonſuit 32. 28.E.3.ibid.32.20.E.3.ib.26 27. 19.E.3.ibid.12. 3.E.3.ibid.17. 38.E.3.9. 20.H.6.45. 44.E.3.16. 19.E.3.Seuerance 26.*

gainſt all, for as to the Demandant it is but one Writ vnder one Teſte. Note, Seuerance is twofold, viz. by Sommons ad ſequendum ſimul, and that is when one of the Demandants or Plaintifes neuer appeared, and by award of the Court of Nonſuit without any ſemmons, and that is after appearance.

(m) The Kings Mateſtie cannot bee Nonſuite, becauſe in iudgement of Law hee is euer preſent in Court, but the Kings Attorney, Qui ſequitur pro Domino Rege, may enter an vlterius non vult proſequi, which hath the effect of a Nonſuite, but in an information by an Informer, qui tam, &c. the Informer may be Nonſuited.

(m) 6.R.2. Nonſuit 13. 25.H 8. Nonſuit Br. 68. 20.H.7.5.

(n) At the Common Law vpon euery continuance or day giuen ouer before iudgement, the Plaintife might haue beene Nonſuited, and therefore before the Statute of 2.H.4 after verdict giuen if the Court gaue a day to be aduiſed, at that day the Plaintife was demandable, and therefore might haue beene Nonſuite, which is now remedied by that Statute.

(n) 2.H.4.ca.7. 3.E.3.21. 47.E.3.1,2. 3.E.4.f 11.

(o) But after Demurrer in Law ioyned, if the Court doth giue a day ouer, at that day the Demandant or Plaintife is demandable, and therefore may be Nonſuite, for that is not holpen by any Statute.

(o) 9.H.5.5. 8.R.2. Nonſuit 34.

(p) And after an award to account, the Plaintife may be Nonſuite, and ſo note a diuerſitie betweene an Interlocutorie award of the Court, and a finall iudgement.

(p) 1.H.7.1. 21.E.3.32. Lib.11.fo.39.41. Metcalfes caſe.

By theſe few inſtructions you ſhall the more eaſily vnderſtand the Bookes of Yearmes and Yeares, and other authorities of Law. And here (to returne to Littleton) it is to bee noted, that albeit the Lord be Nonſuite, yet the infranchiſement of the Villeine doth remayne for that grew by the appearance to the Writ, and cannot be taken away by the Nonſuite ſubſequent. So it is if the Writ doe abate, yet the infranchiſement remaynes.

¶ (q) *Apres apparance*, for otherwiſe a ſtranger may purchaſe a Writ in his name, and therefore Littleton materially added theſe words, after appearance.

(q) 7.H 4.8. 11.H 4.13. 9.E.4.23. 7.H.4.8.a. 7.H.7.6.b. 5.H.7.15.

¶ *Præcipe*. There bee three kind of Præcipes. 1. A Præcipe quod reddat, whereof Littleton here ſpeaketh. 2. A Præcipe quod permittat, and 3. A Præcipe quod faciat, whereof you may reade plentifully in the Regiſter, and Fitzherberts natura breuium, and belongs not properly to this Treatiſe.

¶ *Account*. Of this ſufficient hath beene ſaid before.

Vid. Sect.748. Lib.4.fo.80. Nekescaſe. F.N.B.145.

¶ *Couenant*. Conuentio. Hereof there bee two kinds, viz. a Couenant perſonall, and a Couenant reall: and a Couenant in Deed, and a Couenant in Law.

¶ *Ou il fuit endite de ceo*. (r) For if the Villeine be not firſt indited of it then vpon the acquitall of the Villeine, the Villeine ſhall recouer damuages againſt the Lord by the ſtatute of W.2.(r) quia multi per malitiam, &c. and conſequently ſhall be enfranchiſed. But if the Villeine be formerly indited of the felony, then though the Villeine be acquitted vpon the Appeale, he ſhall recouer no dammages againſt the Lord. For wherefoeuer the Lord giueth to the Villeine a iuſt cauſe of action hee is enfranchiſed. (f) And therefore if the Lord kill his Villeine his ſonne and heire ſhall haue an appeale, and thereby his heire ſhall bee enfranchiſed, becauſe the offence of the Lord gaue to the heire a iuſt cauſe of action againſt the Lord.

(r) W.2.cap.12. 22 Aſſ.p.39. 33.H.6.2. 14.H.7.2. 40.Aſſ.18. 40.E.3.42.

(f) Kelway.134.

Sect. 209.

¶ Que il ad eſtre Cuſtome, &c.

Here ſome may obiect that ſuch a Cuſtome may haue a lawfull beginning for Littleton in the beginning of this Chapter, Sect.174 alloweth that (a) a freeman may take lands of the Lord to bee holden of him, that is to pay a fine for the marriage of his Sonne or Daughter, and therefore (b) ſome haue thought that ſuch a Cuſtome generally within the Manor ſhould bee good. But the

(a) 10.E.3.23. Roger de Wales Caſe. 15.E.3.ayde. 33.

(b) 34.H.6.15.a. per Litt.

¶ Item ſi Seignior dun manor voile preſcriber, que il ad eſtre cuſtome deins ſon manor de temps dont memory ne curt, que chescun Tenant deins meſme le manor, q̄ maria ſa file a aſcun home ſans licence de le ſeignior del manor

Alſo if the Lord of a Mannor will preſcribe that there hath beene a cuſtome within his Mannour, time out of minde of man, that euery Tenant within the ſame Mannor, who marieth his Daughter to any man without licence of the Lord of the

noꝛ, ferra fine, et ont faire fine al Seignior del mannoꝛ pur l' temps eſteant, ceſt preſcription eſt void. Car nul doit faire tiels fines foꝛſq; tantſolemẽt villeins. Car cheſcun franke home poit frankement marier ſa file a que pleiſt a luy & ſa file. Et pur ceo que ceſt preſcription eſt encounter reaſon, tiel preſcripc̃ en voyd.

Mannour, ſhall make fine, and haue made fine to the Lord of the Mannor for the time being, this preſcription is voyd: For none ought to make ſuch fine but onely Villeines. For euery free man may freely marrie his daughter to whom it pleaſeth him and his daughter: and for that this preſcription is againſt reaſon, ſuch preſcription is voyd.

anſwer is, that though it may be ſo in a particular caſe vpon ſuch a ſpeciall reſeruation of ſuch a fine vpon a gift of land, yet to claime ſuch a fine by a generall cuſtome within the Mannoꝛ, is againſt the frædome of a Freeman that is not bound thereunto by particular Tenure. But a cuſtome may be alledged within a Mannoꝛ, (b) That euerie tenant (albeit his perſon bee free) that holdeth in bondage, oꝛ by natiue Tenure, the freehold being in the Loꝛd, ſhall pay to the Loꝛd foꝛ the marriage of his daughter without licence, a Fine: and it is called Marchet, as it were a Chete oꝛ fine foꝛ marriage. And here Littleton ſaith, that none ought to pay ſuch fines but Villeines, (that is) either Villeines of blond, oꝛ freemen holding in Villenage oꝛ baſe Tenure. So note a diuerſitie betweene a freeholder and a free man holding in Villenage: Villeines vſe to pay to their Loꝛds in acknowledgement of their bondage foꝛ their ſeuerall heads, and thereupon it is called Cheuage Cheuagium of the French woꝛd Chiefe, as it were the ſeruice of the head. Of which Bracton ſaith, (c) Chiuagium dicitur recognitio in ſignum ſubiectionis & dominij de capite ſuo. And ſometimes it is written Chiuage, but moꝛe pꝛoperly Chiefage. (d) Cheuagium ſignifieth alſo a great Impoſition foꝛ any ſubiect to take ſummes of money, oꝛ other gifts yearely in name of Cheuage, becauſe they take vpon them to be their chiefe heads oꝛ Leaders.

(b) .43.E.3.5. 14.H.6.15.

(c) Bracton lib.1.cap.10. Britton fol.79.b.

(d) 27.Aſſ.44.

¶ *Pur ceo que ceſt preſcription eſt encounter reaſon ceo eſt voyd.* This contains one of the maximes of the Common Law, viz. that all cuſtomes and pꝛeſcriptions that be againſt reaſon, are voyd.

Sect. 210.

¶ Mes en l' Coũty de Kent, ou fres & tenements ſont tenus en Gauelkind la ou per le cuſtome & vſe ỏ temps dont memoꝛie ne curt, les fits males doient ouelment enheriter, ceo cuſtome eſt allowable, pur ceo que il eſtoit one aſcun reaſon, pur ceo que cheſcun fits eſt auxy graunde gentil home come leigne fits eſt,

BVt in the County of Kent where lands and tenements are holden in Gauelkinde, there where by the cuſtome and vſe out of minde of man the iſſues male ought equally to inherite, this cuſtome is allowable, becauſe it ſtandeth with ſome reaſon, for euery ſonne is as great a gentleman as the eldeſt ſonne is and perchance will grow

¶ En (e) *le County de Kent.* Foꝛ that in no Countie of England lands (f) at this day bee of the nature of Gauelkind of common right, ſauing in Kent onely. But yet in diuers parts of England, within diuers mannoꝛs and Seignioꝛies the like cuſtome is in foꝛce.

(e) *Vide Leſtatute de Conſuetudinibus Kancie ann* 21.E.1. 2.E.3.12.3.E.3.21.38. 23.*Aſſ.pl.*12. 8.E3.42.b.

(f) *Vide Mirror cap.*1.§.3.

¶ *En Ganelkinde*, that is, Gaue all kind: foꝛ this cuſtome giueth to all the ſons alike.

¶ *Les fitz males inheriter.* And this is the generall cuſtome extending to ſonnes. But yet (g) by cuſtome when one bꝛother dieth without iſſue, all the other

(g) 23.*Aſſ.pl*21.

other brethren may inherit.

¶ *Chescun fitz eſt auxy grand gentlehome come leigne fitz eſt.* By this it appeareth, that Gentrie and Armes is of the nature of Gauelkind, for they deſcend to all the ſonnes, euerie ſonne beeing a Gentleman alike. Which Gentrie and Armes doe not deſcend to all the brethren alone, but to all their poſteritie: but yet iure primogenituræ, the eldeſt ſhall beare as a badge of his birthright, his fathers Armes without any difference, for that as Littleton ſaith Sectione he is more worthie of bloud; but all the ponger brethren ſhal giue ſeuerall differences, & additio probat minoritatem, and (h) hæreditas inter maſculos iure ciuili eſt diuidenda.

(h) Fortescue cap.40.

¶ *Ou autermẽt peraduenture il ne puiſſoit tielment creſſer.* The reaſon of this is rendred by the Poet:

Haud facile emergunt quorum virtutibus obſtat
Res anguſta domi. ——

Horace.

31.H.8.ca.3.V.18.H.6.ca.1.

But now by the Statute of 31.H.8 a great part of Kent is made deſcendable to the eldeſt ſonne, according to the courſe of the Common Law, for that by the meanes of that cuſtome, diuers antient and great Families after a few diſcents came to verie little or nothing.

In plures quoties riuos deducitur amnis,
Fit minor, ac vndâ deficiente, perit.

Sect.211.

¶ *Per cuſtome appel Burgh Engliſh.*

V.Sect.165.

Of this cuſtome Littleton hath ſpoken before in the chapter of Burgage. And in our bookes there is a ſpeciall kind of Borough Engliſh, (i) as it ſhall deſcend to the ponger ſonne, if he be not of the halfe bloud, and if he be, then to the eldeſt ſonne.

(i) 32.E.3.tit.Age 81.

(k) Mich.10.Ia.Eliz.coſt in Brieſe de Faux iudgement.

(k) Within the Mannor of B. in the Countie of Berke, there is ſuch a cuſtome, That if a man haue diuers daughters, and no ſonne, and dieth, the eldeſt daughter ſhall onely inherit; and if hee haue no daughters, but ſiſters, the eldeſt ſiſter by the cuſtome ſhall enherit, and ſometime the pongeſt. And diuers other cuſtomes there be in like caſes. And herewith agreeth Britton, who ſaith, (l) De terres des anciens demeynes ſoit vſe ſolonque le antient vſage del lieu, dount en aſcun lieu le tient leu pur vſage: que le heritage ſoit departable entre touts les enfants freres & ſores, & en aſcun lieu que le eigne auera tout, & en aſcun lieu que le puiſne frere auera tout.

(l) Brit.187.b.

¶ *Item, lou per cuſtome appel Burgh Engliſh en aſcun Burgh, le fits puiſn̄ inherita touts les tenements, &c. cẽ cuſtome eſtoit oue aſc certaine reaſon, pur ceo que le fits puiſne (ſil fault pere & mere) per cauſe de ſon iuuentute poit le pluis meins de touts ſes freres luy meſme aider, &c.*

Alſo where by the Cuſtome called Burrough Engliſh, in ſome borow the yongeſt ſon ſhall inherit al the Tenements, &c. this Cuſtome alſo ſtands with ſome certaine reaſon, becauſe that the yonger ſonne (if he lacke father and mother) becauſe of his yong age, may leaſt of all his bretheren helpe himſelfe, &c.

¶ *Pur cauſe de ſon iuuentute poet le pluis meins de touts ſes freres luy meſme aidre, &c.* Here by (&c.) are implied thoſe cauſes wherefore a youth is leſſe able to aid himſelfe, &c. which the Poet briefely and pithily expreſſeth thus:

Imberbis

Imberbis Iuuenis tandem Custode remoto,
Gaudet Equis, Canibusque & Aprici gramine Campi,
Cereus in vitium flectit, Monitoribus asper,
Vtilium tardus provisor, prodigus aeris,
Sublimis, cupidusque, & amata relinquere pernix. Horace.

And againe, no liuing creature more infirme than Man:

Nil homine infirmum, tellus animalia nutrit.
Inter cuncta magis. —— Homer.

Sect. 212.

¶ MEs si home voit prescriber, que si ascuns aũs fueront sur les demesnes de son mannor la dammag̃ feasants, que le Seignior del mannor pur le temps esteant, ad vse eux de distreyner, & le distresse retayne tanque fine fuit fait a luy pur le dammag̃ a sa volunt, cest prescription est void, pur ceo que il est incounter reason, que si tort soit fait a vn home, que il de ceo serr̃ son Judge demesne: Car per tiel voy ũl auoit dammages forsque al value dun mail, il puissoit assesser & aũ pur ceo C.l. que serroit encounter reason. Et illint tiel prescription, ou ascũ aut̃ prescription vse (si ceo soit encounter reason) ceo ne doit estre allow deuaunt Judges: Quia malus vsus abolendus est.

BVt if a man wil prescribe, that if any catel were vpõ the demeanes of the Mannor, there doing dammage, that the Lord of the Mannor for the time being hath vsed to distreyne them, and the distresse to retaine till fine were made to him for the dammages at his will, this prescription is voyd: because it is against reason, that if wrong bee done any man, that hee thereof should be his owne Iudge, for by such way, if hee had dammages but to the value of an halfepeny, he might assesse and haue therefore C. li. which should bee against Reason. And so such prescription, or any other prescription vsed, if it bee against Reason, this ought not, nor will not be allowed before Iudges, *Quia malus vsus abolendus est.*

¶ *Est encounter reason que si tort soit fait a vn home, que il de ceo serra son iudge demesne.* For it is a Maxime in Law, Aliquis non debet esse iudex in propria causa. * And therefore a fine leuied before the Baylifes of Salop, was reuersed, because one of the Baillifes was partie to the fine, quia non potest esse iudex & pars.

10.E.3.23. 4.E.3.14. 7.E.3.24. 38.E.3.18. 2.H.3.4. 3.H.4. 8.H.6.19. 5.H.7.9 b. * Hil.4.H.4. Coram Rege Salop.

¶ Malus vsus abolendus est: And euery vse is euill, that is (as our Author saith) against reason; Quia in consuetudinibus non diuturnitas temporis, sed soliditas rationis est cõsideranda.

And by this rule cited by our Author at the Parliament holden at Kilkenny in Ireland, Lionel Duke of Clarence beeing then Lieutenant of that Realme, the Irish customs called there the Brehon Law, (for that the Irish call their Iudges, Brehons) was wholly abolished, for that (as the Parliament sayd) it was no Law, but a lewd custome, & malus vsus abolendus est.

An.40.E.3 at Kilkenny. The Brehon Law. Vid.Sect.265.

But our Student must know, That King Iohn in the twelfth yeare of his raign went into Ireland, and there by the aduice of graue and learned men in the Laws whom hee carried with him, by Parliament de communi omnium de Hibernia consensu ordained and established, that Ireland should bee gouerned by the Lawes of England, which

which of many of the Irish men, according to their owne desire, was ioyfully accepted and obeyed, and of many the same was sone after absolutely refused, preferring their Brehon Law before the iust and honourable Lawes of England. Rex, &c. Baronibus, militibus, & omnibus libere tenentibus L. Salutem; Satis vt credimus vestra audiuit discretio, quod quando bonæ memoriæ Iohannes quondam Rex Angliæ pater noster venit in Hyberniam, ipse duxit secum viros discretos & legis peritos, quorum communi consilio, & ad instantiam Hybernensium statuit & præcepit leges Anglicanas in Hybernia, ita quod leges easdem in Scripturas redactas reliquit sub sigillo suo ad Scaccarium Dublin.

Rot.pat.11.H.3. L.7.fo.22.b.Calvyns case.

Rot.patent.18.H.3. M.17.N.21.

Rex Comitibus, Baronibus, militibus, & liberis hominibus & omnibus alijs de terra Hiberniæ salutem. Quia manifestè esse dinoscitur contra coronam & dignitatem nostram & consuetudines & leges regni nostri Angliæ quas bonæ memoriæ Dominus Iohannes Rex pater noster, de communi omnium de Hybernia consensu, teneri statuit in terra illa quod placita teneantur in curia Christianitatis de aduocationibus Ecclesiarum & capellarum vel de laico feodo vel de catallis quæ non sunt de testamento vel matrimonio. Vobis mandamus prohibentes quatenus huiusmodi placita in Curia Christianitatis nullatenus sequi præsumatis in manifestum dignitatis & Coronæ nostræ præiudicium, scituri pro certo, quod si feceritis, dedimus in mandatis Iusticiario nostro Hyberniæ, Statuta curiæ nostræ in Anglia contra transgressiones huius mandati nostri cum Iusticia procedat, & quod nostrum est exequatur. In cuius, &c. Teste Rege apud Winchcomb, 28. die Octobris, anno regni nostri 18. Et mandatum est Iusticiario Hyberniæ, per literas clausas quod prædictas literas patentes publice legi & teneri faciat.

Rot.Patent.30.H.3.

Rex, &c. pro communi vtilitate terræ Hyberniæ, & *pro Vnitate terrarum*, prouisum est, quod omnes leges & consuetudines quæ in regno Angliæ tenentur, in Hybernia teneantur, & eadem terra eisdem legibus subiacear, ac per easdem regatur, sicut Iohannes Rex cum illic esset, statuit & firmiter mandauit. Ideo volumus, quod omnia brenia de communi iure quæ currunt in Anglia similiter currant in Hybernia sub nouo sigillo Regis: In cuius, &c. Teste me ipso apud Woodstocke. Wherein it is to be obserued, That vnion of Lawes is the best meanes for the vnitie of Countries. * Vna vt eadem lex esse debet tam in Regno Angliæ quam Hyberniæ. (m) Terra Hyberniæ inter se habet Parliamentum & omnimodas curias prout in Anglia, & per idem Parliamentum facit leges & mutat leges, & illi de eadem terra non obligantur per statuta in Anglia, quia hij non habent Milites Parliamenti.

* *Trin.13 E.1. Coram Rege in Thesaur. in longo placita. (m) 2.R.3 fo 12. In camera stellata. 1.H.7.3.*

By an Act of Parliament (called Poynings Law) holden in Ireland in the tenth yeare of Henrie the seuenth, it is inacted, That all statutes made in this Realme of England before that time, should be of force and be put in vre within the Realme of Ireland, which (though it be by way of digression) is not vnnecessarie for our Student to know, But now let vs heare our Author.

CHAP. 12. Of Rents. *Sect.213.*

SOme haue deuided Rents into foure kindes, viz. Rent seruice, Rēt charge Rent distreynable of common right (whereof somewhat shall be said in this chapter) and Rent secke.

Rent. In Latyn (Redditus, (a) by some Dicitur à redeundo, quia retro it, & quotannis redit. * And others say it is derined of reddere, for that the Rent is reserued out of the profits, of the land, and is not due till the tenant or Lessee take the profits, for reddendo inde or soluendo, or reseruando inde, or the like, (b) is as much to

(a) *Flet.lib 3.ca.14. Britton,ca.41. Mirror.ca.2. §.16. Pl.Com.132.b.*
* *Lib.10.148. Clunscase.*

(b) *Pl.Com.138.139 &c. In Brownings & Beetons case. 38.H.6.34.*

TEnoys maners de Rents y sont, cestascauoir, Rent seruice, Rent charge, & Rent secke: Rent seruice est lou le tenant tient sa terre de son Sñr p fealtie, & certain Rent, ou per homage, fealtie, & certain Rent, ou p autes seruices & certain Rent: & ceo rent seruice

THree manner of rents there bee, that is to say, Rent seruice, Rent charge, and Rent secke. Rent seruice is, where the tenāt holdeth his land of his Lord by fealtie, and certain rent, or by homage, fealty, and certaine rent, or by other seruices, and certaine rent, and if rent seruice at any day that

soit

ſoit a aſcun iour (que doit eſtre pay) adereere, le Sñr poit diſtrainer pur ceo de common droit.

it ought to bee payed, bee behinde, the Lord may diſtraine for that of common right.

ſay as the Tenant or Leſſee ſhall pay ſo much out of the profits of the lands, for Reddere nihil aliud eſt quam acceptum aut aliquam partem eiuſdem reſtituere. Seu reddere eſt quaſi retro dare, and hereof commeth Redditus for a Rent.

Here note for the better vnderſtanding of ancient Records, Statutes, Charters, &c. Gabel, or Gauell, gablum, Gabellũ, Gabellettũ, Galbellettum, and Gauillettũ, Doe ſignifie a Rent, Cuſtome, Dutie, or ſeruice, yelded or done to the King or any other Lord, as Wallingford continet 276. Hagas. i. domos reddentes 9. liberas de gablo. i. de reddito. And Oxford, hæc vrbs reddebat pro theolonio & Gablo regi 20. ſ. & Sextarios mellis, comiti Alpharo 10. libras. And this is the legall ſignification thereof. *Domeſday. Statutum de gauillette anno* 10. *E.* 2.

¶ *Rent ſeruice.* **It is called a Rent ſeruice, becauſe it hath ſome** for payall ſeruice incident vnto it, which at the leaſt is fealtie, as here it appeareth.

¶ *Sa terre.* (c) **A Rent ſeruice cannot be reſerued out of any in-** heritance but ſuch as is manurable whereinto the Lord may enter and take a diſtreſſe, as in Lands and Tenements, Reuerſions, remainders, and as ſome haue ſaid, out of the herbage of lands, and regularly not out of any inheritances incorporeall, or that lye in grant. (d) By act of Law one rent or ſeruice may iſſue out of another, as if A before the ſtatute of Quia emptores terrarum had giuen lands to B to hold to him by fealtie, and ten ſhillings rent, and B. had made a feoffment in fee to C. &c. whereby there was a Meſnalty created, or ſuch as he ſpecially reſerued and B. did by operation of Law hold thoſe ſeruices of A. by fealty and ten ſhillings rent, that is to ſay, rent and ſeruice out of rent and ſeruice, and if the rent be behinde, the Lord paramount may diſtreine vpon the land for his rent, for both Meſnalty and Seignory doe iſſue out of the land, the Meſnaltie immediatly, and the Seignory mediatly, which is worthy of due conſideration and obſeruation. *Vid Sect.* 21*. (c) 44. *E.* 4. 35. *lib.* 5. *fo.* 4. *Seignior Mountioy caſe.* 9. *Aſſ.* 24. 30. *ſſ* 5. 17. *E.* 3. 75. *Lib* 7. *fo* 23. *Buts caſe. Pl Com.* 39. (d) 3. *H.* 6. 21. 5 *H* 7. 36. 21 *H.* 7. 39 1. *H.* 4. 82. 10. *H.* 6. 12. 19 *E.* 3. *tit Gard* 40. 21. *H.* 6. 11.

¶ *Certaine rent.* (e) **For the Rent muſt be certaine, or which may** be reduced to a certaintie, for Id certum eſt, quod certum reddi poteſt (f) Continetur carta reddendo inde annuatim ad tales terminos vel faciendo inde talia ſeruitia, vel tales conſuetudines, quæ omnia debent eſſe certa & in carta expreſſa, &c. But of this I haue ſpoken, Sect. 136. And the rent may aſwell be in delinery of Hens, Capons, Roſes, Spurres, Bowes, Shafts, Horſes, Hawkes, Pepper, Comine, Wheat, or other profit that lyeth in render, office, attendance, and ſuch like: as in payment of money. (g) But a man vpon his feoffment or conueyance cannot reſerue to him parcell of the Annuall profits themſelues, as to reſerue the veſture or herbage of the land or the like, for that ſhould be repugnant to the grant, Non debet enim eſſe reſeruatio de proficuis ipſis, quia ea conceduntur, ſed de redditu nouo extra proficua. (e) *Britton, fo.* 100. *a.* (f) *Fleta, lib.* 3. *ca* 14. (g) 38. *H.* 6. 38. *a.*

¶ *Poet diſtreine pur ceo.* **For where there is fealtie, &c. incident to** the rent, there is a diſtreſſe incident alſo thereunto (h) But it is to bee vnderſtood that for a rent or ſeruice, the Lord cannot diſtreyne in the night, but in the day time, and ſo it is of a rent charge: but for Damage feaſaunt one may diſtreine in the night, otherwiſe it may be the beaſts will be gone before he can take them. (h) *Mirror. ca.* 2. §. 16. 10. *E.* 3. *Auowry* 137. 11. *H.* 7. 5.

¶ *De comon droit.* **Of common right,** (i) **that is by the common** Law, ſo called becauſe the Common Law is the beſt and moſt common birth-right, that the ſubiect hath for the ſafegard and defence not only of goods, lands, and reuenues, but of his wife and children, his body, fame and life alſo. So as the meaning of Littleton in this particular caſe is, that the Lord may diſtreine for this rent of common right, that is, by the Common law without any particular reſeruation or proniſion of the partie. And it is to be obſerued that the Common Law of England ſometime is called right, ſometime common right, and ſometime Communis juſtitia. In the graund Charter, the Common Law is called right, rectum. Nulli vendemus, nulli negabimus aut differemus juſtitiam vel rectum. In the ſtatute of W 1. cap. 1. it is called Common droit. En primes voet le roy, & commande que le peace de St. Eſgliſe & de la terre ſoit bien garde & maintaine en touts points, & que common droit ſoit fairs a touts auxibien anx poures, come aux riches ſaunce regard de nulluy, which ageeth with the ancient law in the time of King Edgar, Porro autem has populo quas ſeruet proponimus leges, primum publici iuris beneficio quiſquam fruitur, idque ex æquo & bono ſiue is diues ſiue inops fuerit jus redditur. And Fleta ſaith, Item quod pax Eccleſiæ & terræ inuiolabiliter obſeruetur, & quod communis juſticia ſingulis pariter exhibeatur. And all the Commiſſions & Charters for execution of Juſtice, are Facturi quod ad juſtitiam pertinet ſecundum legem & conſuetudinem Angliæ. So as in (i) *W.* 1. *ca.* 1. 2. *H.* 4. *ca.* 1. 7. *H* 4. *ca.* 1. 4. *H.* 8. *ca.* 8. *Lamb. fo.* 78. *inter Leges Regis Edgari. Fleta, lib.* 1. *ca.* 29.

truth Iuſtice is the daughter of the Law, for the Law bringeth her forth. And in this ſence being largely taken, aſwell the ſtatutes and cuſtomes of the Realme, as that which is properly the Common law is included within Common droit. Littleton in this his Treatiſe nameth Common droit ſixe times.

Vid.Sect.214.216.226. 252.331.

Sect. 214.

35.H.6.34.

¶ *Auns fait.* For it is a rule in Law that a rent Seruice may bee reſerued without Deed.

Vide Sect.131.132.

¶ *En meſme le manner ſi leaſe ſoit fait, &c.* For theſe be Rents Seruices, becauſe fealtie is incident to theſe Rents, for (as it hath beene ſaid before) a Leſſee for life or yeares ſhall doe fealtie. And if a man make a Leaſe at will, reſeruing a Rent, the Leſſee ſhall not doe fealtie, and yet the Leſſor ſhall diſtraine for the rent of common right.

¶ *Rendant*, commeth of the word reddo, .i. rem pro re dare, and ſignifieth yeelding or repaying, but of this I haue ſpoken before in this Chapter. Sect.213.

¶ Et ſi home voyloit doner terres ou tenements a vn auter en taile, rendant a luy certain Rent p an, il de cõmon droit poit diſtreiñ pur le rent adere, coment que tiel done fuit fait ſans fait, pur ceo que tiel Rent eſt Rent ſeruice. En mẽ le maner eſt, ſi leas ſoit fait a vn hõe pur terme de vie, ou dauter vie, rendant al leſſor certaine Rent, ou pur terme de ans rendant certaine Rent.

AND if a man will giue Lands or Tenements to another in the taile, yeelding to him certaine rent by the yeare, hee of common right may diſtraine for the rent behind, though that ſuch gift was made without deed, becauſe that ſuch Rent is Rent Seruice: In the ſame mãner it is, if a leaſe be made to a man for life or the life of another rendring to the Leſſor certaine Rent, or for tearme of yeares rendring Rent.

Section. 215.

¶ *Reuertion.* Reuerſio commeth of the Latine word reuertor, and ſignifieth a returning againe, and therefore reuerſio terræ eſt tanquam terra reuertens in poſſeſſione donatori ſiue hæredibus ſuis poſt donum finitum, &c. as in the caſes that Littleton here hath put.

¶ *Il conient que le reuerſion, &c. ſoit en le donor ou leſſor, &c.*

This is not to be vnderſtood only of a reuerſion immediatly expectant vpon the gift or leaſe. For if a man maketh a gift in tayle, the remaynder in tayle reſeruing a rent, and keepe the reuerſion in himſelfe, this is a Rent Seruice.

¶ *Reſeruant.* Reſeruer commeth of the Latine

¶ Mes ẽ tiel cas ou home ſur tiel done ou leaſe voile reſeruer a luy rent ſeruice, il couiẽt que le reuerſiõ de les terres & teneñts ſoit en le donor ou leſſor, car ſi home voile fair feoffement en fee, ou voile doner terres en taile, le remaindre ouſtre en fee ſimple ſans fait, reſeruant a luy certaine rent, tiel reſeruãt eſt void, pur ceo que nul reuerſion remaine en le donor, & tiel tenant tient

BVt in ſuch caſe where a man vpon ſuch a gift or Leaſe will reſerue to him a Rent ſeruice, it behoueth that the reuerſion of the Lands and Tenements be in the Donor or Leſſor. For if a man will make a feoffment in fee, or will giue Lands in taile, the remainder ouer in fee ſimple without Deed, reſeruing to him a certaine Rent, this reſeruation is void, for that no reuerſion remaines in the Donor, and ſuch

tient la terre immediatm̃ de l' seignior deque son donor tenoit, &c.

tenant holds his Land immediately of the Lord of whom his Donor held, &c.

word Reseruo, that is to prouide for store. As when a man departeth with his land, hee reserueth or prouideth for himselfe a rent for his owne liuelihood. And sometime it hath the force of sauing or excepting: So as (k) sometime it serueth to reserue a new thing, viz. a Rent, and (l) sometime to except part of the thing in esse that is granted.

(k) 8.E.4.4ß. 26.Ass.Pl.66.
(l) 35.H.6.34.

And it is to be vnderstood that in the case of the gift in tayle, lease for life or yeares, the fealtie is an incident inseparable to the reuersion, so as the Donor or Lessor cannot grant the reuersion ouer, and saue to himselfe the fealtie or such like seruice, but the Rent he may except, because the Rent although it be incident to the reuersion yet it is not inseparably incident. If a man maketh a gift in tayle without any reseruation, the Donee shall hold of the Donor by the same seruices that he held ouer. (m) But otherwise it is of an Estate for life or yeares, for there if he reserueth nothing, he shall haue fealtie only which is an incident inseparable to the reuersion, as hath beene said.

(m) Litt.fol.4. Old tenures 5. 38.E.3.7. 33.H.6.7.

¶ *Le remaindre ouster en fee simple sans fait.* **Here it appeareth that** if a man maketh a gift in taile, the remainder in fee without Deed, (n) the remainder is good, and passeth out of the Donor by the liuerie of seisin, and so it is of a lease for life or yeares the remainder ouer in fee for the particular estate and the remainder to many intents and purposes, make but one estate in iudgement of Law. Vide Sect 60.

(n) 40.E.3.10. 10.E.4.1. 12.E.4 16. 15.E.4.18. 18.E.4.12. 18.H.8.4. 3.H.7.13. F.N.B.219. 11.H.4.39. 38.E.3.36. 44.E.3.8.

¶ *Remaindre*, **In legall Latine is** remanere **comming of the** Latine word remaneo, for that (o) it is a remainder or remnant of an estate in Lands or Tenements expectant vpon a particular estate created together with the same at one time as in the cases here of Littleton appeareth.

(o) Lib.2.fol.51. Cholmeleies case.

Section 216.

¶ ET ceo est per force de lestatute de Quia emptores terrarum, **car deuaunt le dit estatute si hõe feoffoit vn feoffement en fee simple, per fait ou sans fait, rendant a luy & a ses heires certaine rent, ceo fuit rent seruice, & pur ceo il puissoit distreine de common droit, & sil fuit nul reseruation dascun rẽt ne d' ascũ seruice, uncore le feoffee tenust del feoffor per autiel seruice que le feoffer tenust oustre d' son Seignior procheine Paramont.**

AND this is by force of the Statute of *Quia emptores terrarum*, for before that Statute, if a man had made a feoffment in fee simple by deed or without deed yeelding to him and to his heires a certaine rent, this was a rent seruice, and for this hee might haue distrained of common right. And if there were no reseruation of any Rent nor of any Seruice, yet the Feoffee held of the Feoffor by the same Seruice as the Feoffor did hold ouer his Lord next Paramount.

¶ Quia emptores terrarum.

Hereof is spoken before in the chapter of Frankalmoigne Sectione 140.

¶ *Per fait ou sans fait, &c.* **For all rent** Seruices may bee reserued without Deed (as hath beene said) and as it appeareth here.

And at the Common Law if a man had made a feoffment in fee by Parol he might vpon that feoffment haue reserued a Rent to him and his heires because it was a rent seruice, and a tenure thereby created.

¶ *Et sil fuit nul reseruation, &c. le feoffee tenust del feoffor per autiels seruices, &c.* **This** is euident and agreeth with our Bookes (*) that in this case the Law created the tenure, wherein it is to be obserued how the Law regardeth equitie and equalitie without any prouision or reseruation of the partie,

(*) Britton fol.100. 2.E.3.33. 25.E.3.grand.21. 49.E.3.10. 22.Ass.Pl.53. 7.H.4.13. 23.E.3.tit.Garr.54. 4.Inst. Litt.cap.taile, Sect.

Ipsæ etenim leges cupiunt vt iure regantur.

Section 217.

Britton.fol.100. Flet.lib.3.cap.14. Vide Sect.370.

¶ *Per fait indent.* It cannot bee a Deed indented, vnleſſe it be actually indented, for albeit the words of the Deed bee Hæc Indentura, &c yet if it be not indented in Deed it is no Indenture, but if the Deed bee indented, albeit the words of the deed be not hæc Indentura, yet it is an Indenture.

(p) 8.E.4.8. 11.H.7.22. 35.H.6.34. 20.E.4.13. 17.E.3. 12.H.4.17.

And it is holden that (p) if a feoffment in fee bee made by Deed poll reſeruing a Rent this reſeruation is good, for when the Feoffee accepts the Deed and Liuerie of the land he agreeth to the rent, and the rent is reſerued by the words of the Feoffor, and not by the grant of the Feoffee, but of this more hereafter. In the meane time it is to bee noted, that of ancient time a Deed indented was called Charta cyrographata, or Charta communis, becauſe each partie had a part. And a Deed poll was called Charta de vna parte (q) Chartæ autem de pura donatione de ſimplici penes donatorium & eius hæredes debet remanere, communes vero duplicari debent ita quod quilibet habet partem ſuam. Vel ſi vna ſit tantum, tunc in æqua manu communis amici vtriuſq; ponatur ſaluo cuſtodiend' du cuilibet partiũ neceſſe fuerit exhibẽdũ.

(q) Flet.lib.3.cap.14. Britton.fol.100.

¶ *Reſeruant a luy.* (r) Note, it is a maxime in Law that the rent muſt be reſerued to him from whom the ſtate of the Land mouet, and not to a ſtranger. (ſ) But ſome doe hold that otherwiſe it is in the caſe of the King.

(r) 12.E.2.Feffments 18. 18.E.2.Aſſ.381.

(ſ) 35.H.6.36.

¶ *Et tiel rent eſt rent charge.* It is called a Rent charge, becauſe the Land for payment thereof is charged with a diſtreſſe. If it be to the whole value of the Land, or to the fourth part of the value, then the rent is called a fee farme. Here Littleton putteth his Caſe, and ſo did hee in the

Old tenures. Britton.cap.66.164. F.N.B.210. Bract.86.

¶ Mes ſi home per fait endent a cel iour, fait tiel done en fee taile, & remainder ouſter en fee, ou leaſe a terme de vie, le remainder ouſter en fee, ou vn feoffment en fee & per mẽ lendenture il reſerue a luy, & a ſes heires vn certaine rent & que ſi le rent ſoit aderere, q̃ bien lirroit a luy & a ſes heirs a diſtreiner, &c. tiel rent eſt rent charge, pur ceo que tiels terres ou tenements ſont charges oue tiel diſtreſſe per force de le ſcripture tantſolement, & nemy d̃ common droit. Et ſi tiel home ſur fait endent reſerua a luy, & a ſes heires certain rent ſans aſcun tiel clauſe miſe en le fait, que il poit diſtreine, donque tiel rent eſt rent ſecke, pur ceo que il ne poit bener de auer le rent, ſi ceo ſoit deup per meane de diſtreſſe, & ſil ne fuit vnques en ceſt cas ſeiſie de la rent, il en ſans remedie, come ſerra dit apres.

BVt if a man by deed indented at this day maketh ſuch a gift in fee taile, the remainder ouer in fee, or a leaſe for life, the remainder ouer in fee, or a feoffement in fee, and by the ſame indenture hee reſerueth to him and to his heires a certaine rent, and that if the rent be behind, that it ſhall be lawfull for him and his heires to diſtreine, &c. ſuch a rent is a rent charge, becauſe ſuch Lands or Tenements are charged with ſuch diſtreſſe by force of the writing only, and not of common right. And if ſuch a man vpon a deed indented reſerue to him and to his heires a certaine rent without any ſuch clauſe put in the deed, that hee may diſtreine then ſuch rent is rent ſecke, for that hee cannot come to haue the rent if it be denied by way of diſtres. And if in this caſe hee were neuer ſeiſed of the rent, he is without remedie, as ſhall be ſaid hereafter.

Quere if the Difference betw rent Service & rent Charge conſiſts in one's holding q. Lib. by fealty & certain rent, and y. other's holding by rent ſpecified in the Deed

Quere if holding by certain rent does not imply fealty.

Vide Diſtreſs Precedent to rent-ſeck

the next Section before, of a clause of distresse generally granted. (t) A man granted a rent out of certaine land, pro consilio impenso & impendendo, To haue and to hold to him and to his Assignes for terme of his life, payable at foure Feasts in the yeare, and for default of payment vpon demand, it should be lawfull for him to distreyne; the Grantee granted the rent ouer: the Assignee after one of the dayes demanded the rent, and distreyned, and the distresse adiudged lawfull, for he needs not make a demand at any of the dayes, as in the case of re-entrie, but he may demand it when hee will, for it is onely to entitle him to his remedie for his meere dutie.

(t) *Li.7.fo 28.b. Maunds case H 43.El.in Com Banco, Ros. 1108.inter Maund & Gegorie. M.40 & 41.El.in Com.Banco inter Stanly & Read. 18.El.Dyer 348.*

¶ *Distreyne, &c.* Here by (&c.) is implied what things are distreynable, which elsewhere is expressed at large. Also where the distresse is to be taken in the same land, and in some other, which with many differences is set downe in his proper place. *Vi.Sect.221.*

¶ *Il serra sans remedie.* Note that vpon a reseruation of a Rent vpon a feoffement in fee by deed indented, (w) the feoffor shall not haue a Writ of Annuitie, because the words of reseruation, as Reddendo, soluendo, faciendo, tenendo, reseruando, &c. are the words of the Feoffor, and not of the Feoffee, albeit the Feoffee by acceptance of the state, is bound thereby.

(w) 33.E.3.*Annuitie* 52. 1.H.4.5.26.*Ass.Pl.*66. 21.E.4.

And where Littleton putteth his case, when a reseruation is made vpon an estate that passeth by liuerie, the same Law it is, if a man at this day doe bargaine and sell his land by deede indented and inrolled according to the Statute, a rent may be reserued thereupon, for albeit an vse had onely passed by the Common Law, yet now by the Statute of 27.H 8 cap 10. the vse and possession passe together, and so it was adiudged. * And so it is of a grant of a reuersion or remainder, and any other conueyance of Lands or Tenements, whereby any estate doth passe.

* *Mich.39.& 40.El in Com Banc.inter Wickes & Tilden.*

Sect. 218.

CAr vpy si home seisie de certain terre graunt per vn fait polle, ou per indenture vn annual rent issuant hors de meisme la terre a vn auter en fee ou en fee taile, ou pur terme de vie, &c. ouesq̄ clause de distresse, &c. donques ceo ē rēt chargē & si le graunt soit sans clause d̄ distres, donques il est Rent secke. Et nota, **que Rent secke** idem est quod redditus siccus, **pur ceo que nul distres est incident a ē.** quod redditus siccus. pounds it himselfe.

ALso if a man seised of certaine land, grant by a Deede poll, or by Indenture, a yearely rent to be issuing out of the same land, to another in fee, or in fee taile, or for terme of life, &c. with a clause of distres &c. then this is a rent charge, and if the Graunt bee without clause of distresse, then it is a Rent secke. And note that Rent Secke *idem est quod redditus siccus*: For that no distresse is incident vnto it. **This needs no explanation,** for Littleton ex-

¶ *Seisie de Terre.* (x) Note that a rent cannot be granted out of a Pischarie, a Common, an Vnouwson, or such like incorporeall inheritances, but out of lands or tenements whereunto the Grantee may haue recourse to distreyne, or which may be put in view to the recognitors of an Assise, as hath beene said before in this chapter. And though it be out of lands or tenements, (z) yet it must be out of an estate that passeth by the conueyance, (as by all Littletons examples appeareth) and not out of a right: As if the Disseisee release to the Disseisor of land, reseruing a rent, the reseruation is voyd: Et sic de similibus.

(x) 32.E.3 *tit.Scir.fac* 300. 40 E.3. *Pl.Com.*139.

Vid.Sect 213.

(z) 10.E.4.3.*b.* 33.H.6.5. 50.E.3.9.8.E.4.8.5.*Ed.*3. *Fines* 1.9.E.3.7.46.E.3.27. 21.H.6.8.*Tempt E.*1.*Ass.*42.

¶ *Grant per fait.* * Also a man may haue a Rent by prescription.

* 19.E.3.*Title* 34.

¶ *Rent secke* idem est

Sect.

Sect. 219.

¶ *RENT Charge.* Here it appeareth by Littleton, that this Prima facie is a Rent charge, whereof in this Chapter shall be spoken more at large.

And so it is of a Rent Secke.

¶ *Home grant.* But case that A. be seised of lands in fee, and he and B. grant a Rent charge to one in fee, this Prima facie is the grant of A. and the confirmation of B. but yet the Grantee may haue a Writ of Annuitie against both.

(a) 16.E.2.tit. Annuity 47. Vil.Sect.314.

(a) Two men grant an annuitie of twentie pounds per annum, to another, although the persons be seuerall, yet he shall haue but one Annuitie: but if the grant be, Obligamus nos & vtrumq; nostrum, the Grantee may haue a Writ of Annuitie against either of them, but hee shall haue but one satisfaction.

¶ *Briefe de Annuitie* is a Writ for the recouerie of an Annuitie.

(b) Dott.& Stud.ca.3. 17.El.Dyer 344.b. 45.E.3.Executor.72.

(b) An Annuitie is a yearely payment of a certaine summe of money, granted to another in fee for life or yeares, charging the person of the grantor onely.

(c) 3.E.6.Dyer 65. And Sergeant Bendloes reporteth, That so was the opinion of the Court.

(c) But not onely the Grantee, but his heire and his and their Grantee also shall haue a Writ of Annuitie.

(d) 2.H.4.13. Dyer 17.El.344.b.

(d) But if a Rent charge be granted to a man and his heires, he shall not haue a Writ of Annuitie against the heire of the Grantor, albeit he hath Assets, vnlesse the grant be for him and his heires.

¶ Item si home granta per son fayt vn rent charge a vn auter, & le rent est arere, le grantee poet eslier sil voet suer vn briefe de Annuitie de ceo enuers l'grantor ou distreyner pur le rent arrere, & l'distresse retaine tanq; il soit de ceo pay, mes il ne poit faire ne auer ambideux insemble, &c. Car sil recouer per briefe Dannuitie, donques la terre est discharge, de le distresse, &c. Et sil ne suist Briefe de Annuitie, mes distreine pur les arrerages, & le Tenant suist son Replegiare, & donques le grantee auowa le prisel de le distresse en la Terre en Court de Record, donques est la terre charge, & la person del grantor discharg ô Action ô Annuity.

ALso if a man grant by his Deed a Rent charge to another, and the rent is behind, the Grantee may chuse whither he will sue a writ of Annuitie for this against the Grantour, or distreine for the rent behind, and the distresse detaine vntill hee bee payd, but he cannot do or haue both together &c. for if he recouers by a Writ of Annuitie, then the Land is discharged of the distresse, &c. And if he doth not sue a Writ of Annuitie, but distreine for the arrerages, and the Tenant sueth his Replevin, and then the Grantee auow the taking of the distresse in the land in a Court of Record, then is the land charged, and the person of the Grantor discharged of the Action of Annuitie.

¶ *Poet eslier.* The Grantee hath election to bring a Writ of Annuitie, and charging the person onely to make it personall, or to distreyne vpon the land, and to make it reall.

But if a man grant a Rent charge to a man and his heires, and dieth, and his wife bring a Writ of Dower against the heire, the heire in barre of her Dower, claimes the same to be an Annuitie, and no Rent charge, yet the wife shall recouer her dower, for hee cannot determine his election by claime, but by suing of a Writ of Annuitie (as Littleton saith) neither can the heire haue after the endowment an Annuitie for the two parts, for that should not be according to the deed of grant, for either the whole must be a rent charge, or the whole an Annuitie. But Littleton is to be vnderstood with some limitation:

(e) 19.Ass.p.23.

(e) for of a rent granted for owelcie of partition, a Writ of Annuitie doth not lie, because it is of the nature of the land discended. Also of such

ſuch a rent as may be granted without deed, a Writ of Annuitie doth not lie, though it be granted by Deed

(f) And here is to be noted, That here is no election giuen of two ſeuerall things, as if the grant were of an Annuitie, or a Robe yearely, &c. for there the Grantor had election at the day to deliuer which he would. But here is two remedies giuen for one yearely ſumme, and conſequently the Grantee ſhall at any time haue election to take which of the remedies he will, for in all caſes where ſeuerall remedies be giuen, the partie to whom the Law giueth the remedies, it giueth him withall election to take which of the remedies he will.

(f) *Sir Rowland Heywards caſe, li.2. fo.36. 28.E.3.98. 41.E.3.10.a. 2.H.4.12. 6.H.4.10. 36.H.6.10. 9.E.4.46. 21.E.4.55.b. 1.E.5.1. F.N.B.121.*

¶ *Mes il ne poet faire ou auer ambideux enſemble.* For then he ſhould recouer one thing twice, which ſhould be a double charge to the Grantor.

Note, as to elections, theſe diuerſities following:

Lib.2.fo.36,37. in Sir Rowland Heywards caſe.

Firſt, When nothing paſſeth to the Feoffee or Grantee before election to haue the one thing or the other, there the election ought to be made in the life of the parties, and the Heire or Executor cannot make election. But when an eſtate or intereſt paſſes immediately to the Feoffee, Donee, or Grantee, there election may be made by them, or by their Heires or Executors.

Secondly, When one and the ſame thing paſſeth to the Donee or Grantee, and the Donee or Grantee hath election in what manner or degree he will take this, there the intereſt paſſeth immediately, and the partie, his heires, or Executors, may make election when they will.

Thirdly, When election is giuen to ſeuerall perſons, there the firſt election made by any of the perſons ſhall ſtand.

Fourthly, In caſe an election be giuen of two ſeuerall things, alwayes he which is the firſt agent, and which ought to doe the firſt act, ſhall haue the election: As if a man granteth a Rent of twentie ſhillings, or a robe to one and to his heires, the Grantor ſhall haue the election, for he is the firſt Agent, by payment of the one, or deliuerie of the other. So if a man maketh a Leaſe, rendring a rent or a robe, the Leſſee ſhall haue the election cauſa qua ſupra, and with this agree the bookes in the * margent. (g) But if I giue vnto you one of my horſes in my Stable, there you ſhall haue the election, for you ſhall be the firſt Agent by taking or ſeiſure of one of them. And if one grant to another twentie loads of Hazill, or twentie loads of Maple to bee taken in his Wood of D. there the Grantee ſhall haue election, for he ought to doe the firſt act, s. to fell and take the ſame.

* *9.E.4.36.b. 13.E.4.4.b. l.5.E.4.6.b. 11.E.3. Annuitie 27. 11. Aſſ.p.8. 29. aſſ.55. 3.E.3.tit. Aſſ.175. 43.E.3.tit Barre 194.*

(g) *2 H 7.23.a.*

Fifthly, When the thing granted is of things annuall, and are to haue continuance, there the election remaineth to the Grantor, (in caſe where the law giueth to him election) as well after the day, as before, otherwiſe it is when the things are to be performed vnica vice. And therefore if I grant to another for life, an Annuitie or a Robe at the feaſt of Eaſter, and both are behind, the Grantee ought to bring his Writ of Annuitie in the diſiunctiue, for if hee bring his Writ of Annuitie for the one onely, and recouer, this iudgement ſhall determine his election for euer; for he ſhall neuer haue a Writ of Annuitie afterwards, but a Scire facias vpon the ſayd iudgement. Which reaſon Fitzherbert in his Natura Breuium not obſerning, held an opinion to the contrarie. But if I contract with you to pay vnto you twentie ſhillings or a robe at the Feaſt of Eaſter, after the Feaſt you may bring an Action of Debt for the one or for the other.

9.E.4.36. 13,E.4.4. and the other aboue ſaid Bookes.

Sixtly, The Feoffee by his act and wrong may loſe his election, and giue the ſame to the Feoffor: As if one infeoffe another of two acres, To haue and to hold the one for life, and the other in tayle, and he before election maketh a feoffement of both, in this caſe the Feoffor ſhall enter into which of them he will, for the act and wrong of the Feoffee.

¶ *Sil recouer en Briefe de Annuitie donques eſt la terre diſcharge de diſtreſſe.* Here is to be obſerued, That this determination of the election of the Grantee muſt be by action or ſuit in Court of Record; (h) for albeit the Grantee diſtreyne for the Rent, yet he may bring a Writ of Annuitie and diſcharge the land. And Littleton putteth his caſe here ſurely vpon a Recouerie in a Writ of Annuitie. (i) But if the Grantee doth bring a Writ of Annuitie, & at the returne thereof appeare and count, this is a determination of his election in Court of Record, albeit he neuer proceedeth any further. (k) As if a Wife be endowed ex aſſenſu patris, and the husband dieth, the wife hath election either to haue her Dower at the Common Law, or ex aſſenſu patris, if ſhe bring a Writ of Dower at the Common Law, and count, albeit ſhe recouer not, yet ſhall ſhe neuer after claime her Dower ex aſſenſu patris.

(h) *17.El.Dyer 344.b.*

(i) *F.N.B.152.a. 5.H.7.33.b.*

(k) *12.E.2.Dower 158.*

(l) So if the Grantee bring an Aſſiſe for the rent, and make his plaint, hee ſhall neuer after bring a Writ of Annuitie. But the purchaſing of a Writ of Annuitie, and entrie of it in Court of Record, or of an aſſiſe, is no determination of the election, becauſe an eſtranger may purchaſe a Writ in the name of the Grantee, and enter it of Record, but if the Grantee appeare thereunto, &c. then this doth amount to a determination of his election, as hath beene ſayd,

(l) *10.E.4.17.*

Glanuill.lib.12.ca.12. Merlbr.ca 21. W.1.ca.16.17. W.2 ca 39. Fleta,lib.2.ca.40.

¶ *Son replegiare.* Littleton spake immediatly before of Vn briefe Dannuntz, but here he saith, Son replegiare, because goods may be repleaued two manner of wayes, viz by writ, and that is by the Common Law, or by the statute, and that is by the statutes for the more speedy hauing againe of their cattell and goods. A Replegiare facias, as Littleton teacheth vs, where goods are distreyned and impounded, the owner of the goods may haue a Writ De Replegiari facias, where by the Sherife is commanded, taking sureties in that behalfe, to redeliuer the goods distreyned to the owner, or vpon complaint made to the Sherife he ought to make a Replegiare in the Countrey. Replegiare is compounded of Re, and plegiare, as much as to say, as to redeliuer vpon pledges or sureties; and in the statute of Merlebridge, Deliberare is vsed for Replegiare. (m) And the Sherife ought to take two kinde of pledges, one by the Common Law, and they be Plegij de prosequendo, and another by the statute, viz. Plegij de retorno habendo. Vide Sect. 58. What things may lawfully be distreyned, whereupon a Replegiare may be sued. The formes of the Writ you shall reade in the Register and F.N.B. *

Merlbr ca.21 21.H.6.Returne de Vic.17 (m) W.2.ca.2. Fleta lib.4.ca.5. 4.H.6.15.

* Regist.F.N.B.68.

(n) Jt is a generall rule that the Plaintife must haue the property of the goods in him at the time of the taking. (o) But yet if the goods of a villeine be distreyned, the Lord of the villeine shall haue a Replegiare, because the bringing of the Replegiare amounts to a clayme in Law and vests the property in the Plaintife But in that case if the goods of the villeins be taken by a trespasse the Lord shall haue no Replegiare, because the villeine had but a right.

(n) 3.E.3.74. 6.H.4 2.& 39. 9.H.6.39. 20.H.6.19. (o) 33.E.3.Replev 41. 42.E.3.18. 9.H 6.25. F.N.B.69.F. 6.H.7.9. 19.E.3.Repl.32.

(p) But there is two kinde of properties, a generall propertie, which euery absolute owner hath, and a speciall propertie as goods pledged or taken to manure his lands or the like, and of both these a Replegiare doth lye.

(p) 42.E.3.18. 11.H.4.17 23.47 E.3.12. 48 E.3.20. 7.H.4.17.

And albeit it be prouided by the Statute of Marlebridge, cap 22. quod vicecomes post querimoniam inde sibi factam ea sine impedimento vel contradictione eius qui dicit aueria ceperit deliberare possit, &c. (q) Yet where the Defendant claymes property, the Sherife cannot proceed, for it is a rule in Law, that propertie ought to be tryed by Writ. And therefore in that case where the tryall is by pleint, the Plaintife may haue a Writ De proprietate probanda directed to the Sherife to trie the propertie, and if thereupon it be found for the Plaintife, then the Sherife to make deliuerance, (for so be the words of the Writ) and if for the Defendant, he can no further proceed, but that is but an enquest of office, and therefore if thereby it bee found against the Plaintife, yet he may haue a Writ of Replegiare to the Sherife, and if he returne the claime of propertie, &c. yet shall it proceed in the court of Common pleas where the propertie shall be put in issue and finally tried. And the Sherife may take a pleint vpon the said act out of the County, and make replegiare presently, for it should be inconuenient for the owner to forbeare his cattell till the County day.

(q) 30.E.3.22. 31.E.3. Replev 35 &.4. 7.H.4 26.28. 31.H.6. Prop.Prob.5. 1.E.4.9. 21.E.4 64. 2.Err.Dier, 173. 21.E.4.65.

(r) It is to be noted that a man cannot clayme property by his Bailife or seruant, and the reason is for that if the clayme fall out to be false he shall be fined for his contempt, which the Lord cannot be vnlesse he maketh clayme himselfe, for Nemo punitur pro alieno delicto.

(r) 5.E.3.38. 11.H.4.4. 27.E.2.Propr.Prob.6.

In a speciall case a man may haue a Replegiare of goods not distreyned, as if the Meine put in his cattell in lieu of the cattell of the tenant paranaile, that he is bound to acquite, he shall haue a replegiare of those cattell that neuer were distreyned.

34.H.6.47.

If a man by his Deede grant a Rent with clause of distresse, and grant further, that hee shall keepe the goods distreyned against gages and pledges, vntill the Rent bee payd, yet shall the Sherife Replegiare the goods distreyned, for it is against the nature of such a Distresse to be irrepleuisable, and by such an entention the currant of Replegiares should be ouerthrowne to the hindrance of the Common wealth, and therefore it was disallowed by the whole Court, and awarded that the Defendant should gage deliuerance, or else goe to prison. And Bracton is of the same opinion, for he saith, Eodem modo de via obstructa, per breue quod iusticiet propter communem vtilitatem, ne transeuntes ire diu impediantur, quia hoc esset commune damnum, & in hoc vicecomes & Iusticiarij faciant sicut super detentionem aueriorum contra vadium plegij, propter communem vtilitatem, ne animalia diu inclusa pereant, which in mine opinion is an excellent point of learning.

31.E.3.Gage deliuer 5.

Bracton,lib.4.fo.233.a.& b.

If the beastes of diuers seuerall men be taken, they cannot ioyne in a Replegiare but euery one must haue a seuerall Replegiare: And so in a Replegiare it is a good plea to say that the property is to the Plaintife and to a stranger, and where there be two Plaintifes, that the propertie is to one of them.

28.E.3.92. 3.H.4.12. 34.H.6.37. 2.E.4.23.

There is also a Writ De homine replegiando. But Littleton is ready to giue you further instruction, therefore heare him.

Regist.fo.133. Brast.fo.121.& 154. W.1.ca 11. Fleta lib.2. ca.2.F.N.B.66.b.

¶ *Et auowa le prise, &c. en court de record.* Here it appeareth that an auowry in Court of Record which is in nature of an action is a determination of his election before any iudgement giuen. And this is a good proofe of that which hath beene formerly said of the Writs of Annuity and Assise.

Electio

Electio semel facta & placitum testatum non patitur regressum. 21.H.6.24. *per Newton.*
Quod semel placuit in electionibus amplius displicere non potest. 27.H.6.4.

If a Rent charge be granted to A. and B. and their heires, A. distreyneth the beasts of the Grantor and he sueth a Replevin, A. avoweth for himselfe and maketh conusance for B. A. dyeth and B. surviveth, B. shall not haue a Writ of Annuity, for in that case, the election and avowry for the Rent of A. barreth B. of any election to make it an Annuity, albeit he assented not to the avowry.

But here is another diuersity to be obserued betweene the case aforesaid of the grant of the Rent where he (as hath beene said) may make it either reall or personall, and when a man may haue election to haue seuerall remedies for a thing that is meerely personall or meerely reall from the beginning. As if a man may haue an action of account or an action of debt at his pleasure, and he bringeth an action of account and appeare to it, and after is Nonsuite, yet may he haue an action of debt afterwards because both actions charge the person. The like Law is of an Assise and of a Writ of entrie in the nature of an Assise and the like. 28.E.3.98.b. 27.E.3.89.b.

Sect. 220.

¶ Item, si home voile q̄ vn auter aueroit vn rent charge issuant hors de sa terre, mes il ne voile q̄ sa person soit charge en aucun maner p̄ brieue dannuitie, donques il poit auer tiel clause en la fine de son fait. Prouiso semper, quod præsens scriptum, nec aliquid in eo specificatum, non aliqualiter se extendat ad onerandum personam meam, per breue, vel actionem de annuitate, sed tantummodo ad onerandum terras, & tenementa mea de annuali redditu predict', &c. **Donques la terre est charge, & le person del grantor discharge.**

ALso if a man would that another should haue a Rent charge issuing out of his land but would not that his person bee charged in any manner by a Writ of Annuity, Then hee may haue such a clause in the end of his deed. Prouided alwaies that this present writing nor any thing therein specified shal any way extend to charge my person by a Writ or an action of Annuity, but only to charge my lands and tenements with the yearely rent aforesaid, &c. Then the land is charged and the person of the grantor discharged.

¶ By this Section is appeareth, that when in a generall grant, the Law doth giue two remedies, that the Grantor may prouide that the Grantee shall not vse one of them and leaue the partie to the other. But where the Grantee hath but one remedy, there that remedy cannot be barred by any prouiso, for such a prouiso should be repugnant to the Grant. 28.H.8.Dier.9.b.

¶ *De annuali reddit u, &c.* **Hereby** (&c.) and the consequent of this Section be implyed diuers excellent points of learning, viz. If a man by his Deede granteth a Rent charge out of the Mannor of Dale (wherein the Grantor hath nothing) with such a prouiso that it shall not charge his person albeit the repugnancie doth not appeare in the Deed yet the prouiso taketh away the whole effect of the Grant, and therefore is in iudgement of Law repugnant, for vpon the matter it is but a grant of an Annuity, prouided that it shall not charge his person, for which cause our Author putteth his case of a Rent charge issuing truly out of land. *So is it resolued by the Iustices in H.8. as Iustice Spilman reporteth.* 9.H.6.53.

But if a man by his Deede grant a Rent charge out of land, prouided that it shall not charge the land albeit the Grantee hath a double remedy (as hath beene said) yet the Prouiso is repugnant, because the land is expresly charged with the Rent, but the Writ of Annuity is but implyed in the Grant, and therefore that may be restrained without any repugnancie, and sufficient remedie left for the Grantee, for which cause our author putteth his case of the restraint of bringing a Writ of Annuity. And yet in some case where there is a Prouiso

in the Deed that the grantee ſhall not in any ſort charge the perſon of the Grantor generally, notwithſtanding the perſon of the Grantor ſhall be charged: As if a man grant a Rent charge out of certaine lands to another for life with ſuch a Prouiſo, the Rent is behinde, the Grantee dyeth, the Executors of the Grantee ſhall haue an action of debt againſt the Grantor, and charge his perſon for the arrerages in the life of the Grantee, becauſe the Executors haue no other remedy againſt the Grantor for the arrerages, for diſtreyne they cannot, becauſe the eſtate in the Rent is determined, and the Prouiſo cannot leaue the Executors without remedy, as appeareth by that which hath beene ſaid. And therefore our Author putteth his caſe of a Rent charge continuing. And here is to be obſerued that this word (Prouiſo) hath diuers operations, ſometime it worketh a qualification or limitation, and ſo it is taken here and often in our bookes: Somtime a Condition, and ſometime a Couenant, whereof you ſhall reade more hereafter, Sect. 329.

6. Eliz. Dier 227.

¶ *En le fine de ſon fait.* Here Littleton putteth his caſe of one Deed, but though the grant be generall, and want ſuch a Prouiſo, yet may the Grantee by another Deed by way of Defeaſance grant that he ſhall not charge the perſon of the Grantor, and that if he bring a Writ of Annuity, that the Rent ſhall ceaſe

32. Aſſ. p. 1. Vide Sect. 384.

¶ *Nec aliquid in eo ſpecificatum non aliqualiter ſe extendat. &c.* Here is to be obſerued a double negatiue, Nec, and Non, which in Grammaticall conſtruction amounteth to an affirmatiue, for Negatio deſtruit negationem & ambo faciunt affirmationem, yet the Law that principally reſpecteth ſubſtance, doth iudge the Prouiſo to be a negatiue according to the intent of the parties, and not according to Grammaticall conſtruction, to the end the Prouiſo may take effect, and the like you ſhall finde hereafter in Littleton. * Mala Grammatica non vitiat cartam. Here our Author putteth his caſe of one Grantor, put then the caſe, that A. and B. being ioyntenants of lands in fee by their Deede grant a Rent charge out of thoſe lands, prouided that the Grantee ſhall not charge the perſon of A. In this caſe if the Grantee bringeth a Writ of Annuity, he muſt charge the perſon of B. only.

* Lib. 3. ca. de cond. c. Sect. 362.

Sect. 221.

¶ Que ſi A. de B. Here wanteth words to precede theſe, viz. que il grant al A. de B. &c. que ſi A. de B. &c. as it appeareth in the originall & ſo it appeareth in the cloſe of this Section, viz. Mes granta tant ſolemẽt que il poet diſtreyner. Alſo without ſuch a grant the clauſe ſhould be imperfect.

¶ *Pur ceo que le mannor eſt charge oue le rent per voy de diſtreſſe.* And yet no Rent is expreſly granted out of the Mannor. But by the grant that hee ſhall diſtreyne for ſuch a yearely ſumme of money in iudgement of Law the Mannor is charged with the Rent, but the perſon of the Grantor cannot be charged becauſe he expreſly granteth no Rent, for that would charge his perſon, but that the Grantee ſhould diſtreyne, &c. which only chargeth the land.

¶ Item, ſi home fait tiel fait en tiel maner, q̃ ſi A. de B. ne ſoit annuelmẽt pay al feaſt de Noel pur terme de ſa vie xx. s. de loyal mony, que adonques bien lirroit a m̃ ceſtuy A. de B. a diſtreiner pur ceo en le manor de F. &c. ceo eſt bone rent charge, pur ceo q̃ l'manor eſt charge oue le rent per voy de diſtres, & vncore la perſon d̃ celuy que fait tiel fait, eſt diſcharge en tiel caſe de action dannuitie, p̃ ceo que il ne granta per ſon fait aſcun

ALſo if one make a Deed in this manner, that if *A.* of *B.* be not yearely payed at the feaſt of Chriſtmaſſe for terme of his life xx. s. of lawfull money, that then it ſhall be lawfull for the ſaid *A.* of *B.* to diſtreyne for this in the manner of *F.* &c. this is a good rent charge, becauſe the Mannor is charged with the rent by way of diſtreſſe, & yet the perſon of him which makes ſuch deed is diſcharged in this caſe of an action of Annuitie, becauſe hee doth

¶ Que

Annuitie a le dit A. & B. mes granta tantſolement, que il poit diſtrainer pur tiel Annuitie, &c.

not grant by his Deed any Annuitie to the ſaid *A.* of *B.* but granteth only that he may diſtreine for ſuch Annuitie, &c.

¶ *Que il poet diſtreine pur tiel Annuitie, &c.* **hereby** (&c.) **many** points worthy of obſeruation are implyed, viz. if a man ſeiſed of Lands in fee, bindeth his goods and Lands to the payment of a yearely Rent to A. de B. this is a good Rent charge with power to diſtraine, albeit, there be no expreſſe words of charge, nor to diſtraine. Or in theſe words, Obligo Manerium meum de C. & omnia bona in dicto Manerio exiſtent' A. de B. in annuo redditu de xx.s. ad diſtringend' per Baliuum Domini Regis pro redditu prædicto By this grant a Rent charge iſſueth out of the Mannor, and where the words bee ad diſtringendum per Baliuum Domini Regis, this is for the aduantage of the Grantee. And therefore the Kings Baily ſhould be but his Miniſter to diſtreine for his Rent, and that which he may do by his ſeruant he may do by himſelfe, or by any other of his ſeruants.

18. *Aſſ.p.*1. 28.*E.*3.32. 3.*Aſſ.*7. 3.*E.*3.12. 10.*Aſſ.*24. 31.*Aſſ.p.*27. 33.*Aſſ. Annuitie* 52. 16.*E.*3.*graunt.*64.

If a man by Deed grant a Rent of fortie ſhillings to another out of his Mannor of Dale, to haue and to perceiue to him and his heires, and grant ouer by the ſame Deed, that if the Rent be behind, that the Grantee ſhall diſtreine in the Mannor of Sale (be the Mannor of Sale in the ſame Countie or in another Countie, and bee this grant by one Deed or diuers Deedes) the Rent is only iſſuing out of the Mannor of D, and it is but a paine, that hee ſhall diſtreine in the Mannor of S. but both the Mannors are charged, the one with the Rent, & the other with a diſtreſſe for the rent, the one iſſuing out of the Land and the other to bee taken vpon the Land. And whereas our Author puts his caſe of a grant for life. So it is if I grant to you, that you and your heires, or the heires of your bodie ſhall diſtreine for a Rent of fortie ſhillings within my Mannor of S this by conſtruction in Law ſhall amount to a grant of a Rent, out of my Mannor of S. in Fee Simple or Fee Taile for if this ſhall not amount to a grant of a Rent, the grant ſhall bee of little force or effect if the Grantee ſhall haue but a bare diſtreſſe and no Rent in him. For then hee ſhall neuer haue an Aſſiſe of this, &c. And this is the reaſon, that it is ſo often ruled and reſolued, (*) that this amount to a grant of a Rent per conſtruction of Law, Vtres magis valeat, and all this is neceſſarily implyed in the (&c.) and in this caſe the Grantee ſhall not haue a Writ of Annuitie as our Author ſayth. And whereas our Author putteth his caſe where the diſtreſſe is to be taken in the ſame Land out of which the Rent by conſtruction of Law is iſſuing, hereby is implyed that if a Rent be granted, out of the Mannor of D. and the Grantor grant ouer, that if the Rent bee behind, the Grantee ſhall diſtreine for the ſame rent in the Mannor of S. this is but a penaltie in the Mannor of S. for three cauſes:

*Lib.*7.*fol.*23.24. *in Buts his Caſe.*

(*) 3.*E.*3.12. 3.*Aſſ.p.*7. 14.*Aſſ.p.*14. 16.*E.*3.*tit. grants* 64. 8.*E.*3.32. 16.*Aſſ.* 38. 30. *Aſſ.*12 46.*E.*3.18. 32 8.*H.*4.19. 9.*H.*6.9. 22.*H.*6.11.

First, The Law needs not to make conſtruction that this ſhall amount to a grant of a Rent for here a Rent is expreſly granted to bee iſſuing out of the Mannor of D. and the parties haue expreſly limited out of what land the Rent ſhall iſſue, and vpon what Land the diſtreſſe ſhall be taken, and the Law will not make an expoſition againſt the expreſſe words and intention of the parties when this way ſtands with the rule of the Law. Quoties in verbis nulla eſt ambiguitas, ibi nulla expoſitio contra verba expreſſa fienda eſt.

Secondly, If in this caſe this ſhall amount to a grant of a Rent out of the Mannor of S. then the Grantor ſhall be twice charged. For if the Grantee bringeth a Writ of Annuitie this ſhall extend only to the Mannor of D. For vpon the grant of a diſtreſſe in the Mannor of S. no Writ of Annuitie lyeth, becauſe the Mannor of S. is only charged, and not the perſon of the Grantor as to this; and for this cauſe the bringing of the Writ of Annuitie cannot diſcharge the Mannor of S. of any Rent: and ſo the Law by conſtruction againſt the words and the intention of the parties ſhall doe iniurie to the Grantor to charge him twice.

Thirdly, If in ſuch caſe the Mannor of S. in which the diſtreſſe is only limited, ſhall bee in another Countie, then it hath beene often adiudged, that the Rent ſhall not iſſue out of the ſame, but the diſtreſſe ſhall be as a meane, and remedie to compell the Tenant of the Land to pay the Rent. And it was ſaid, that there was no diuerſitie in reaſon, that the Law in conſtruction ſhall make the Rent to be iſſuing out of this when it lyeth in the ſame Countie, and not when it lyeth in ſeuerall Counties for the words in both caſes are all one, and there is no reaſon to ſay that he ſhall fayle of a recouerie by Aſſiſe. And the Bookes in 1.Aſſ.p.10 and 1.E.3.21. and other Bookes doe not ſay that the Rent iſſueth in this caſe out of both, but that the Land in which the diſtreſſe ſhall be taken is charged, and this is true, for it is charged with the diſtreſſe. And inaſmuch as it was charged with the diſtreſſe, their opinion was that the Tenants of both of them ſhall be named in the Aſſiſe. And the opinion of Finchden in 41.E.3. 13 was affirmed to bee good Law, That if the Mannor of D. out of which the Rent is granted be recouered by an elder Title, that all the Rent is extinct, but if the Mannor of S. in which the diſtreſſe is limited, be euicted, yet all the Rent remayns.* So if the grantee purchaſe parcell of the Mannor of S. the Rent is not extinct, for that the Rent iſſueth only out of the Man-

Vide Bulwers caſe. *Lib.*7.*fol.*3. 1.*Aſſ.p.*10. 1.*E.*3.21. *Vide* 9.*E.*3.13. 31.*Aſſ.*27. 17.*E.*4.6.10.*Aſſ.*4. 10*E.*3.18. 2.*E.*2.*Aſſ.*36. 1.*Aſſ.*10. 3.*Aſſ.*7. 32.*H.*6. 27. 22.*Aſſ.*66. 31.*Aſſ.*27. 29.*E.*3.*Aſſiſe* 366. 41.*E.*3.13. *per Finchden.* **Vide* 17.*E.*4.6. *ſemblable caſe* *Vide Sect. prox. ſequen.*

nor of D. And it is ſaid that if a man grant a Rent out of three Acres, and grant ouer, that if the Rent be behind, hat he ſhall diſtreine for the Rent in one of the Acres; this Rent is entire and cannot be a Rent ſecke out of two Acres, and a Rent charge out of the third Acre, and therefore it is a Rent ſecke for the whole, and yet he ſhall diſtreine for this in the third Acre. So if a Rent be granted to two and to their heires out of an Acre of Land, and that it ſhall be lawfull for one of them and his heires to diſtreine for this in the ſame Acre, this is a Rent ſecke, for inſomuch as they ſtand ioyntly ſeiſed of one intire Rent, it cannot be as to the one a Rent ſecke, and as to the other a Rent charge, and this diſtreſſe is as an appurtenant to the Rent: and therefore if he which hath the Rent dieth, the ſuruiuor ſhall diſtreine, and if both grant ouer the rent to another, he ſhall diſtreine for this. But if a man grant a rent out of Blacke Acre to one and to his heires, and grant to him that he may diſtreine for this in the ſame Acre for terme of his life, this is a Rent charge for his life, and a Rent ſecke after, diuerſis temporibus. Otherwiſe it is if the diſtreſſe be limited for certaine yeares in the ſame Land, there this remaynes a Rent ſecke intirely, for that the fee and the freehold is ſecke in ſuch caſe.

If a man ſeiſed of Lands in fee, and poſſeſſed of a tearme for many yeares grant a Rent out of both for life, in taple or in fee, with clauſe of diſtreſſe out of both, this Rent being a Freehold doth iſſue only out of the freehold, and the lands in leaſe are only charged with a diſtreſſe. But if he had granted the Rent only out of the Lands in leaſe for terme of the life of the Grantee, this had iſſued out of the tearme, and the Land had beene charged during the tearme if the Grantee liued ſo long.

22.H.6.10.b. If a man be ſeiſed of twentie Acres of Land, and grant a Rent of twentie ſhillings percipiend' de qualibet acra tre meæ (that is) out of euery one Acre of my Land, this is a ſeuerall grant out of euery ſeuerall Acre, and the Grantee ſhall haue twentie pounds in all.

A. doth bargaine and ſell land to B. by Indenture, and before inrollment they both grant a Rent charge by Deed to C. and after the Indenture is inrolled ſome haue ſaid, that this Rent charge is auoyded, for ſay they it was the grant of A. and by the inrolliment it hath relation to the deliuery, which (ſay they) ſhall auoyde the grant, notwithſtanding the confirmation of the other which had nothing in the Land at that time. But the grant is good, and after the inrollment by the operation of the Statute, it ſhall be the grant of B. and the confirmation of A. But if the Deed had not beene inrolled, it had beene the grant of A. and the confirmation of B. and ſo quacunque via data the grant is good.

Sect. 222.

E *Xtinct.* Commeth of the Verbe Extinguere, to deſtroy or put out, and a Rent is ſaid to bee extinguiſhed when it is deſtroyed and put out.

¶ *Apportion.* This commeth of the word Portio quaſi partio, which ſignifieth a part of the whole, and Apportion ſignifieth a Diuiſion or Partition of a Rent, common, &c. or a making of it into parts.

(a) *Doct. & Stud. lib. 2. cap. 56. 21. H. 7. 2. 21. E. 3. 58.*

(a) The reaſon of this extinguiſhment is becauſe the Rent is intire, and againſt common right, and iſſuing out of euery part of the Land, and therefore by purchaſe of part it is extinct in the whole and cannot bee (b) apportioned, but by act in Law it may, as hereafter ſhall be ſaid. (c) If the Grantee of a Rent charge purchaſe parcell of the Land, and the Grantor by his Deed

(b) *30. Aſſ. 12. 9. Aſſ. 22.*

(c) *46. E. 3. 32. 14. Aſſ. Aſſ. p. 14. 26. Aſſ. 38.*

¶ Item, ſi home ad vn rēt charge a luy & a ſes heires iſſuant hors de certein terr, ſil purchaſe aſcun parcel de cel a luy, & a ſes heires, tout le rent charge eſt extinct, & lannuitie auxy, pur ceo que rent charge ne poit per tiel maner eſtre apportion. Mes ſi home que auer rent ſeruice, purchaſe parcel de la terre dont le rent eſt iſſuant, ceo nentiendra a tout mes pur le parcel, car rent ſeruice en tiel cas poit

ALſo if a man hath a Rent charge to him and to his heires iſſuing out of certaine land, if hee purchaſe any parcell of this to him and to his heires, all the Rent charge is extinct, and the Annuitie alſo, becauſe the Rent charge cannot by ſuch manner bee apportioned. But if a man which hath a Rent Seruice purchaſe parcell of the land out of which the Rent is iſſuing, this ſhal not extinguiſh all, but for the parcell. For

poit eſtre appoꝛtion ſolonque le value de la terre. Mes ſi vn tient ſa terre de ſon Seignioꝛ per le ſeruice de render a ſon Seignioꝛ añuelmẽt a tiel feaſt vn chiual, ou vn eſperon doꝛ ou vn Cloue, Gyloſer & huiuſmodi, ſi en tiel caſ le Seignioꝛ purchaſe parcel de la terre, tiel ſeruice eſt ale, pur ceo q̃ tiel ſeruice ne poit eſtre ſeuer, ne appoꝛtion.

a Rent Seruice in ſuch caſe may be apportioned according to the value of the Land. But if one holdeth his land of his Lord by the ſeruice to render to his Lord yearely at ſuch a Feaſt a Horſe, a golden Speare, or a Cloue, Gilliflower, and ſuch like, if in this caſe the Lord purchaſe parcell of the Land, ſuch Seruice is taken away, becauſe ſuch ſeruice cannot be ſeuered nor apportioned.

reciting the ſaid purchaſe of part granteth that hee may diſtreyne foꝛ the ſame Rent in the reſidue of the land, this amounteth to a new grant, and the ſame Rent ſhall bee taken foꝛ the like Rent oꝛ the ſame in quantity. And ſo it is (d) if a man by Deede granteth a Rent charge out of his land to a man foꝛ life, and granteth further by the ſame Deede that hee and his heires may diſtreyne in the land foꝛ the ſame Rent, this amounteth to a new grant of a Rent in fee ſimple. (d) 8.H.4.19.

But yet a Rent charge by the act of the partie may in ſome caſe be apportioned. As if a man hath a Rent charge of xx.ſhillings, he may releaſe to the Tenant of the land x.ſhillings oꝛ moꝛe oꝛ leſſe, and reſerue part, foꝛ the Grantee dealeth only with that which is his owne, viz the Rent, and dealeth not with the Land as in caſe of purchaſe of part. And ſo was it holden in the Common place, Hill.14.Eliz. which I my ſelfe heard and obſerued. So (e) if the Grantee of an Annuity oꝛ Rent charge of xx.pound grant, x.pound parcell of the ſame Annuity oꝛ Rent charge, and the Tenant attoꝛne, hereby the Annuity oꝛ Rent charge is deuided. *Hill.14.Eliz.* (e) 9.H.6.12.53. F.N.B.152.D.E.

And (f) when the Rent charge is extinguiſhed by his purchaſe of part of the land, hee ſhall neuer haue a Writ of Annuity, becauſe it was by the grant a Rent charge, and he hath diſcharged the land of the Rent charge by his owne act by purchaſe of part. And therefoꝛe he cannot by Writ of Annuity diſcharge the land of the diſtreſſe as Littleton hath befoꝛe ſaid. But if the Rent charge be determined by the act of God oꝛ of the Law, yet the Grantee may haue a Writ of Annuity. As if Tenant foꝛ another mans life by his Deed grant a Rent charge to one foꝛ 21.yeares, Ceſty que vie dieth, the Rent charge is determined, and yet the Grantee may haue during the yeare a Writ of Annuity foꝛ the arrerages incurred after the death of Ceſty que vie, becauſe the Rent charge did determine by the act of God and by the courſe of Law, Actus legis nulli facit iniuriam. The like Law is if the land out of which the Rent charge is granted be recouered by an elder title, and thereby the Rent charge is voyded, yet the Grantee ſhall haue a Writ of Annuity, foꝛ that the Rent charge is auoyded by the courſe of Law, and ſo it was holden in Wards Caſe aboue remembred againſt an opinion Obiter in 9.H.6 42.a. (f) 14.E.4.4. 22.E.4.Le darrein caſe. 51. 7.H.6. 9.H.6.1. 5.H.7.33 *Wards caſe cited in lib.2. In Heywards caſe, fo.36.* *9.H.6.42.a.*

¶ *Car rent ſeruice in tiel caſe poet eſte apportion.* Whether this apportion was at the Common Law oꝛ by the foꝛce of the Statute of Quia emptores terrarum, hath beene a queſtion in our bookes. * And it appeareth by Littleton that it was ſo at the Common Law, foꝛ when he citeth any thing prouided by any ſtatute, he citeth the ſtatute, as he hath done this very act befoꝛe. 2.Littleton ſpeaketh here indefinitely of Rent ſeruice, and there be diuers kindes of Rent ſeruices which are not within that ſtatute, and yet ſuch Rent ſeruices are apportionable by the Common Law, as if a man maketh a Leaſe foꝛ life oꝛ yeares reſeruing a Rent, and the Leſſee ſurrender part to the Leſſoꝛ the Rent ſhall be apportioned. So if the Leſſoꝛ recouereth part of the land in an action of waſte, oꝛ entreth foꝛ a foꝛfeiture in part the Rent ſhall be apportioned. * *Brooke tit.apportionment 28. 18.E.3.49. 22. ff.52.3.Aſſ.18. 18 E.2. ... writ,218. Vid.lib.6.fo.1.2.in Bruertons caſe. Vid.lib.8.fo.105.206. in Talbots caſe.*

(g) So likewiſe if the Leſſoꝛ granteth part of the reuerſion to a ſtranger the Rent ſhall be apportioned foꝛ the Rent is incident to the reuerſion. (h) So it is if Tenant by Knights ſeruice by his laſt will and teſtament in writing deuiſeth the reuerſion of two parts of the lands the Deuiſee ſhall haue two parts of the Rent. (g) 14.H.8.12. *Vid lib.8.fo.79. in Wildes caſe.* *Paſch.39.Eliz.Rot.233. So it was adiudged inter Collins & Hard.eg.* (h) Trin.43 Eliz.Rot.243. inter Weſt & Laſſels & Hill. 42.Eliz. Rot.108. in Communibanco inter Ewer & Moyle.

And theſe caſes are in mine opinion rightly adiudged againſt a ſudden opinion in Hill.6.& 7.E.6 reported by Serieant Bendloe to the contrary. Note what inconuenience ſhould follow if by the ſeuerance of the reuerſion the Rent ſhould be extinct.

¶ *Purchaſe parcell de la terre.* This is intended of a fee ſimple, foꝛ

for if there be a Lord and Tenant of 40 acres of Land by fealty and xx. ſhillings Rent,(i) if the Tenant maketh a gift in taile, or a Leaſe for life or yeares, of parcell thereof to the Lord, in this caſe the rent ſhall not be apportioned for any part, but the rent ſhall be ſuſpended for the whole: for a Rent ſeruice (ſaith Littleton) may be extinct for part, and apportioned for the reſt, but a Rent ſeruice cannot be ſuſpended in part by the act of the partie, and in eſſe for other part. So it is if the Lord enter vpon the Leſſee for life or yeares into part, and thereof diſſeiſe or put out the Leſſee, the rent is ſuſpended in the whole, and ſhall not be apportioned for any part. And where our bookes* ſpeake of an apportionment in caſe where the Lord enters vpon the Leſſee in part, they are to be vnderſtood where the Lord enters lawfully, as vpon a ſurrender, forfeiture, or ſuch like, where the rent is lawfully extinct in part. And yet by Act in Law a Rent ſeruice may be ſuſpended in part, and in eſſe for part. * As when the Gardeine in Chiualrie entreth into the land of his Ward within age, now is the Seigniorie ſuſpended: but if the wife of the Tenant be endowed of a third part of the Tenancie, now ſhall ſhe pay to the Lord the third part of the rent. *And ſo it is if the Tenant giue a part of the Tenancie to the father of the Lord in Taile, the father dieth, and this deſcends to the Lord, in this caſe by Act in Law the Seigniorie is ſuſpended in part and in eſſe for part, and the ſame Law is of a Rent charge.

Likewiſe a Segniorie may be ſuſpended in part by the act a ſtranger: * As if two Joyntenants or Coparceners be of a Seigniorie, and one of them diſſeiſe the Tenant of the land, the other Joyntenant or Coparcener ſhall diſtreine for his or her moitie.

Concerning the apportionment of Rents, there is a difference betweene a grant of a Rent, and a reſeruation of a Rent: for (k) if a man be ſeiſed of two acres of land, of one in Fee ſimple, and of another in Taile, and by his Deed grant a rent out of both in fee, in taile, for life, &c. and dieth, the land intailed is diſcharged, and the land in fee ſimple remaines charged with the whole rent, for againſt his owne grant he ſhall not take aduantage of the weakeneſſe of his owne eſtate in part. (l) But if he make a gift in taile, a leaſe for life or for yeares of both acres, reſeruing a rent, the Donor or Leſſor dieth, the Iſſue in taile anoydeth the gift or leaſe, the rent ſhall be apportioned, for ſeeing the rent is reſerued out of and for the whole land, it is reaſon that when part is euicted by an elder title, that the Donee or Leſſee ſhould not be charged with the whole rent, but that it ſhould be apportioned ratably, according to the value of the land, as Littleton here ſaith.

(m) If a man grant a Rent charge out of two acres, and after the Grantee recouereth one of the acres againſt the Grantor by a title paramount, the whole rent ſhall iſſue out of the other acre: but if the recouerie be by a faint title by Couine, then the rent is extinct for the whole, becauſe he claimeth vnder the Grantee.

If a man infeoffeth B. of one acre in fee vpon condition, and B. being ſeiſed of another acre in fee, granteth a rent out of both acres to the feoffor, who entreth into the one acre for the condition broken, the whole rent ſhall iſſue out of the other acre, becauſe his title is paramount the grant. But if a man maketh a leaſe for life of Blacke acre and White acre, reſeruing two ſhillings rent, vpon condition that if the Leſſee doth ſuch an act, &c. that then he ſhall haue Fee in Black acre, the Leſſee performes the condition, albeit now by relation he hath the fee ſimple ab initio, yet ſhall the rent be apportioned, for that the reuerſion of one acre whereunto the rent was incident, is gone from the Leſſor, and ſo note a diuerſitie betweene a rent in groſſe, and a rent incident to a reuerſion, concerning the apportionment ther of. And yet in ſome caſes a rent charge ſhall not be wholly extinct, where the Grantee claimeth from and vnder the Grantor. As if B. maketh a leaſe of one acre for life to A and A is ſeiſed of another acre in fee, A. granteth a rent charge to B. out of both acres, and doth waſt in the acre which he holdeth for life, B recouereth in waſt, the whole rent is not extinct, but ſhall bee apportioned, and yet B. claimeth the one acre vnder A. And ſo it is if A. had made a feoffement in fee, and B. had entred for the forfeiture, the rent is wholly apportioned, and is not wholly extinct: and the reaſon hereof is, for that it is a maxime in Law, That no man ſhall take aduantage of his owne wrong, Nullus commodum capere poteſt de iniuria ſua propria: And therefore ſeeing the waſt and forfeiture were committed by the act and wrong of the Leſſee, hee ſhall not take aduantage thereof to extinguiſh the whole rent: and the whole rent cannot iſſue onely out of the other acre, becauſe the Leſſor hath the one acre vnder the eſtate of the Leſſee, and therefore it ſhall be apportioned. * If the King giue two acres of land of equall value to another in fee, fee taile, for life or yeares, reſeruing a rent of two ſhillings, and the one acre is euicted by a title paramount, the Rent ſhall be apportioned.

¶ *Mes ſi vn home tient ſa terre, &c. per ſeruice de render annuelment, &c. vn Chiual ou vn Eſperon dor, &c. ſi en tiel caſe le Seignior purchaſe parcel del terre, tiel ſeruice eſt ale.*

¶ *Chiual.*

(i) 32.H.8.tit. Extinguiſhment Br.48. 11.Ed.3.Ceſſauit 21. 17.E.3.57.a.

* 21.E.4.29. 9.E.4.1. 7.H.6.26. 4.H.7.6.b. 11.E.3.Ceſſauit 21.

* 33.E.3.Dower 138.

* 30.Aſſ.p.12.

* 27.E.3.88.

(k) 12.H.4.17. 17.Ed.2. Dower 164. 30.Aſſ.p.12.

(l) 20.H.6.3. 9.E.4.1.a. 35.H.8.Dyer 56. 7.E.6. Dyer 82. 9.E.3. 6.H.4.17.

(m) Doct.& Stud.li.2.c.17

* Dyer Mich.7.& 8.Eliz. Manuſcript. The Earle of Huntingdons caſe. Vid.F.N.B.234.b. Briefe de Onerando, pro tota parc.

¶ *Chiual.* Nota, In Latyne Deſtrarius is a great Horſe, or horſe of ſeruice, of the French word Deſtrier. Palfridus, a horſe to trauell on, of the French word Palfray: And Runcinus, a Nagge, (you ſhall often read of them in Records) it commeth of the Italian word Roncino. But admit that parcell of the land holden by ſuch entire ſeruice come to the Lord by diſcent, whether ſhall the entire ſeruice wholly remaine, or bee extinct? and it is holden that in ſome caſe it ſhall be extinct for the whole, as Suit ſeruice, and ſuch other entire annuall Suit ſeruices. But if the ſeruice be, to render yearely at ſuch a feaſt a horſe, or the like, and the Tenant infeoffe the father of the Lord of part, which diſcends, yet the Feoffor ſhall hold by a horſe, becauſe the ſeruice was multiplied, and each of them, viz. the Feoffor and the Feoffee held by a horſe.

Anno 6.R.1. Rot. 5. Watt. Bruertons caſe lib.6.fo.2. 34.Aſſ.15. 35.H.6.Exec 21 Plo.Com.72.40.E3..40. 5.E 2.Tit. Auowris 206.

A. hath common of paſture launs nombre, in twentie acres of land, and ten of thoſe acres deſcendeto A. the Common launs nombre is entire and incertaine, and cannot be apportioned, but ſhall remaine But if it had beene a Common certaine, (as for ten Beaſts) in that caſe the Common ſhould be apportioned. And ſo it is of Common of Eſtouers, of Turbarie, of Piſcharie, &c. and yet in none of theſe caſes, the diſcent, which is an act in Law, ſhall worke any wrong to the Terre tenant, for he ſhall haue that which belongeth to him, for the act in law ſhall worke no wrong.

If three Joyntenants hold by an entire yearely rent, as a horſe, or of a graine of wheat, and the Tenant ceaſe by two yeares, and the Lord recouer two parts of the land againſt two of them, and the third ſaues his part by tendring of the rent, &c. and finding ſuretie, albeit the lord come to the two parts by lawfull recouerie, grounded vpon the default and wrong of the two Joyntenants, yet ſhall the entire annuall rent be extinct.

F. N. B. 209. 40.E.3.40

If the Tenant holdeth by Fealtie and a buſhell of wheat, or a pound of Comyn, or of Pepper, or ſuch like, and the Lord purchaſeth part of the land, there ſhall be an apportionment, as well as if the rent were in money: and yet if the rent were by one graine of wheat, or one ſeed of Comyn, or one Pepper corne, by the purchaſe of part, the whole ſhould be extinct. But if an entire ſeruice be pro bono publico, as Knights ſeruice, Caſtle gard, Cornage, &c. for the defence of the Realme, or to repaire a bridge or a way, to keepe a Beacon, or to keepe the Kings Records, or for aduancement of iuſtice and peace, as to aid the Sheriffe, or to be Conſtable of England, though the Lord purchaſe part, the ſeruice remaines. So it is if the tenure be Pro opere deuotionis ſiue pietatis, as to find a Preacher, or to prouide the ornaments of ſuch a Church: or pro opere charitatis, as to marrie a poore Virgin, or to bind a poore Boy Apprentice, or to feed a poore man. And ſo note a diuerſitie betweene theſe caſes, and entire ſeruices for the priuate benefit of the Lord.

Vid. Litt. Cap. Tenant in Common 71.b. 1ib.6.fo.1.2.i. Bruertons caſe Lit.f.49.11.H.7.12.b. 24.H 8. Tenures 53. Brooke 35.H.6.6. 11.El.Dy.285. 26.E.3.Auowrie 93.

Section 223.

¶ MEs ſi vn hõe tient la terre dun auter, per Homage, Fealtie, & Eſcuage, & per certaine rent, ſi le Sñr purchaſe parcel de la tr, &c. en tiel cas l' rent ſera appoꝛtion, come eſt auantdit, mes vncore en ceſt caſe l' homage & fealtie õmurront entiera le Sñr, car le Seignioꝛ auera le homage & fealtie de ſon tenant pur le remnant de les

BVt if a man hold his land of another by Homage, fealty, and Eſcuage, and certaine Rent, if the Lord purchaſe part of the land, &c. in this caſe the rent ſhall be apportioned, (as is aforeſayd) but yet in this caſe the Homage and Fealtie abide entire to the Lord: For the Lord ſhall haue the Homage and Fealtie of his Tenant for the reſt of the Lands and Tenements

¶ *Purchaſe parcel del ter', &c.* Here by this &c. is implied, that the reaſons wherfore homage & fealtie remain & are not extinct in this caſe, are, Firſt, becauſe it can be no loſſe to the Tenant, as it might in the caſe of an horſe or other entire ſeruice, for there it may be the remnant is not ſufficient in value to pay it. Secondly, there is no land but it muſt be holden by ſome ſeruice or other, and Homage and Fealtie are the freeſt and leaſt chargeable ſeruices to the Tenant.

Bruertons caſe, vbi ſupra.

5.E.2.Auowrie 206.

¶ *Pur ceo que tiel ſeruices ne ſont paſſe annual ſeruices &c.* This is Ratio vna, but not vnica, as it appeareth by that which hath

hath bœne ſayd. If there be Lord and Tenant by Fealtie and Herriot ſeruice, and the Lord purchaſe part of the land, the Herriot ſeruice is extinct, (and yet it is not annuall, but to be paid at the death of the Tenant) becauſe it is entire and valuable.

Brunton Caſe lib.6. Talbots Caſe lib.8.fo.104. 8.Hy.11.

terres et tenemẽts tenus de luy, come il auoit adeuant, pur ceo que tiels ſeruices ne ſont paſſe annuals ſeruices, et ne poyent eſtre apportion, mes leſcuage poit, & ſerra apportion ſolonque lafferante et rate de la terre, &c.

holden of him, as hee had before, becauſe that ſuch ſeruices are no yearely ſeruices, and cannot bee apportioned, but the Eſcuage may and ſhall bee apportioned according to the quantitie and rate of the land, &c.

¶ *Solonque lafferance & rate de la terre, &c.* Here is by this (&c.) implied, That in ſome caſe where it is entire and valuable, and not annuall, it ſhall not (as hath bœne ſayd) be extinguiſhed by purchaſe of part, * as Knights ſeruice which is to be performed by the bodie of a man, if the Lord purchaſe part, yet the tenure by Knights ſeruice remaines for the reſidue, Quia pro bono publico, & pro defenſione regni, but the Eſcuage ſhall be apportioned, as here Littleton ſaith, becauſe that is for the benefit of the Lord, and yet it is caſuall, and not annuall. And where our Author ſpeaketh of Seruices, it is implied, that a Herriot cuſtome, though it be entire, valuable, and not annuall, by the purchaſe of part ſhall not be extinct. On the other part, when the tenure is by an entire ſeruice, and the tenant alien part of the tenancie, in what caſes the rent ſhall be multiplied (that is) where the Feoffor and the Alienee ſhall pay the entire rent ſeuerally, (for regularly it holdeth, that quæ in partes diuidi nequeunt, ſolida à ſingulis præſtantur) and where not, you may read at large in my Reports. *

(*) 7 E.3.29. Talbots Caſe lib.8.fo.104.

(*) Brunton Caſe lib.6.fo. 1.2. Talbots Caſe lib.8.fo.104

And by this (&c.) is alſo implied, that the apportionment ſhall not be according to the quantitie of the land, but according to the qualitie or value thereof, as by that which hath bœn ſayd appeareth.

Section 224

5.E.3. Auowrie 200. 21.E.3.38 b 34. Aſſ.15. Tit. Apportionment.8.28. 9. Aſſ.22.

¶ NOte heere a diuerſitie, when the grantee of a Rent charge commeth to a part of the land charged by his owne act, and when by the courſe of Law.

30. Aſſ. Pl.19.

¶ *Purchaſe parcel de les Tenements charges en fee.* And ſo it is if the Tenant giueth to the father of the Grantee part of the land in Taile, and this deſcend to the Grantee, the rent ſhall bee apportioned, and ſo by act in Law a Rent charge may bee ſuſpended for one part, and in eſſe for another.

34.Hen.41.b.

And ſo it is, if the father be Grantee of a rent, and the ſon purchaſe part of the land charged, and the father dieth, after whoſe death the rent deſcends to the ſon, the rent ſhal be apportioned, and ſo it is if the Grantee grant the rent to the tenant of the land, and to a ſtranger, the rent is extinct for a moitie.

¶ Item, ſi home ad vn rẽt charg. & ſon pier purchaſe parcel de les Tenements charges en fee, & morust, & cel parcel deſcend a ſon fits, q̃ ad l' rẽt charg, ore cel charge ſ̃t apportion ſolonque le value de la t̃re come ẽ auantdit ó Rent ſeruice, pur ceo que tiel portion de la terre purchaſe per la piere, ne vient al fits per ſõ fait demeſne, mes per diſcent & p courſe del Ley.

ALſo, if a man hath a Rent charge, and his father purchaſe parcell of the Tenements charged in fee, and dieth, and this parcel deſcends to his ſonne, who hath the Rent charge, now this charge ſhall bee apportioned according to the value of the land, as is aforeſaid of Rent ſeruice, becauſe ſuch portion of the land purchaſed by the Father, commeth not to the ſonne by his owne fact, but by diſcent and by courſe of law.

If a man hath iſſue two Daughters and grant a Rent charge out of his land to one of them and dyeth the Rent ſhall be apportioned, and if the Grantee in this caſe enfeoffeth another of her part of the land, yet the moity of the Rent remaineth iſſuing out of her ſiſters part, becauſe the part of the Grantee in the land by the diſcent was diſcharged of the Rent. But in all theſe caſes where the Rent charge is apportioned by act in Law, yet the Writ of Annuity lyeth, for if the Grantee ſhould bring a Writ of Annuity he muſt ground it vpon the grant by Deede, and then muſt he as it hath beene ſaid bring it for the whole. *9. Aſſ. 22.* *5. R.2. Annuity 11.*

Annua nec debitum Iudex non ſeperat ipſum.

Alſo in reſpect of the realty the Rent is apportioned, but the perſonalty is indiuiſible, and by act in Law ſhall not be deuided. If Execution be ſued of body and lands vpon a Statute Merchant or ſtaple, and after the inheritance of part of thoſe lands diſcend to the Counſee all the Execution is anoyded, for the dutie is perſonall and cannot be deuided by act in Law. *Pl.Com.72.* *35.H.6. tit. Execut. 21.* *15.E 4.5.*

¶ *Ne vient al fitz perſon fait demeſne mes per diſcent & per courſe del ley.* If the father within age purchaſe part of the land charged, and alieneth within age and dyeth, the ſonne recouereth in a Writ of Dum fuit infra ætatem, or entreth: In this caſe the act of Law is mixt with the act of the partie, and yet the Rent ſhall be apportioned, for after the recouery or entry the ſonne hath the land by diſcent.

So it is in caſe the ſonne recouereth part of the land vpon an alienation by his father, Dum non fuit compos mentis, the Rent ſhal be apportioned for the cauſe aforeſaid.

A man ſeiſed of lands in fee taketh wife, and maketh a Feoffment in fee, the Feoffee grants a Rent charge of x pound out of the land to the Feoffor and his wife, and to the heires of the huſband, the huſband dieth, the wife recouereth the moity for her Dower by the cuſtome, the Rent charge ſhalbe apportioned, and ſhe may diſtreyne for fiue pound which is the moity of the Rent. In which caſe two notable things are to be obſerued. Firſt, albeit the Dower bee by relation or fiction of Law abone the Rent, yet when the wife recouereth her Dower, ſhe ſhall not haue her entire Rent out of the reſidue, for a relation or fiction of Law ſhall neuer worke a wrong or charge to a third perſon, but In fictione iuris ſemper eſt Equitas. Secondly, that albeit her owne act doe concurre with the act in Law, yet the Rent ſhalbe apportioned. *5.E.2. Anowry, 206.* *Lib.3.fo.29. in Butler et Bakers caſe.*

Section 225.

¶ Item, ſi ſoit ſñr ⁊ tenant, ⁊ le tenãt tient de ſ̃ Seignior per fealtie ⁊ certaine rent, ⁊ le Sñr grant le rent p ſ̃ fait a vn auter, &c. reſeruant a luy le fealty, ⁊ le tenant atturna al grantee de l' rent, ore tiel rent eſt rent ſeck a le grantee, pur ceo que les tenements ne ſont tenus del grantee de le rent, mes ſont tenus del Seignior q̃ reſerue a luy fealtie.

ALſo if there bee Lord and tenant, and the tenant holds of his Lord by fealtie and certaine rent, and the Lord grants the rent by his deed to another reſeruing the fealty to himſelfe, and the tenant atturnes to the grantee of the rent, now this rent is rent ſecke to the grantee, becauſe the tenements are not holden of the grantor of the rent, but are holden of the Lord who reſerued to him the fealtie.

¶ *Et le Seignior grãta le rent, &c.* So it is if the Lord releaſe the Rent to the Tenant ſauing the fealty, the Rent is extinct. But if there be Lord and Tenant by Fealty and Rent, and the Lord by his Deed reciting the tenure releaſe all his right in the land ſauing his ſaid Rent, the Seignior is remaines and hee ſhall haue the Rent as a rent ſeruice, and the fealtie incident to it, for the ſaid Rent is as much to ſay as the Rent ſeruice whereunto fealty is incident. *12.E.4.11. 9.E.3.1.* *40.E.3.22.b. 13.E.3. tit. Releaſes 36.*

And ſo it is if the Lord hath iſſue two daughters and dieth, and vpon partition the fealty is allotted to the one and the Rent to the other, ſhe ſhall haue the Rent as a Rent ſecke. *17.E.3.72.b.*

If there bee Lord of a Mannor and Tenant by fealtie, Suit of Court and Rent, the Lord grant the fealty ſauing to him the ſuite of Court and Rent, the ſauing is good for the Rent but not for the ſuite to Court, becauſe the Gran- *17.E.3.72.b.*

tæ can kæpe no Court, and there is no tenure of the Grantor, and therefore the ſuite of Court is loſt and periſhed in that caſe.

If the Donæ hold of the Donor by fealty and certaine Rent, and the Donor grant the ſeruices to another, and the Tenant atturne, ſome haue ſaid the rent ſhall not paſſe becauſe the rent cannot paſſe but as a Rent ſeruice being granted by the name of ſeruices, and the fealty cannot paſſe becauſe as hath bæne ſaid the fealty is incident inſeparable to the reuerſion. But it ſæmeth that the rent ſhall paſſe as a Rent ſecke becauſe at the time of the grant it was a Rent ſeruice in the Grantor, and therefore there be words ſufficient to paſſe it to the Grantæ, and it is not of neceſſity that it ſhalbe a Rent ſeruice in the hands of the Grantæ.

7.E.3 2.b.Fitz Warens caſe

If there be Lord and Tenant by fealty and certaine rent, and the Lord by Dæd grant the rent in fæ ſauing the fealty, and grant further by the ſame Dæde that the Grantæ may diſtreine for the ſame rent in the tenancie, albeit a Diſtreſſe were incident to the rent in the hands of the Grantor, and although the Tenant attorne to the grant, yet cannot the Grantæ diſtreyne, for the Diſtreſſe remaines as an incident inſeparable to the Seigniory, for then the Tenant ſhould be ſubiect to two ſeuerall diſtreſſes of twoſeuerall men. And ſo it is if the Lord in that caſe grant the Rent in tayle or for life, ſauing the fealty, and further grant that the Grantæ may diſtreine for it, albeit the reuerſion of the rent be a Rent ſeruice, yet the Donæ or Grantæ ſhall haue it but as a Rent ſecke, and ſhall not diſtreyne for it.

7.E.3.2.3.Adiudged.

31.Aſſ.31. 17.Aſſ.10. 32 Aſſ.pl.10. F.N.B.178.D. 22.H.6.3.b. 4.E.2.Aſſ 449 28.H.8.Dier 31.

It is to be obſerued that where a Rent ſeruice is become a Rent ſecke by ſeuerance of the ſame from the Seigniory, that now the nature of the rent is changed, for if the Grantæ purchaſe part of the land the whole rent ſhall be extinct. And whereas in an Aſſiſe for a Rent ſeruice all the Tenants of the land need not to be named, but ſuch as did the diſſeiſin: Yet in Aſſiſe for the Rent ſecke which ſometimes was a Rent ſeruice, all the Tenants muſt bee named, as in caſe of a Rent charge, albeit he were diſſeiſed but by one ſole Tenant, * but if the Lord of a Mannor releaſe the fealty to his Tenant ſauing the rent, or that a Meſnalty become a rent by ſurpluſage, thoſe that are now Secke (and ſometime were ſeruice) are part of the Mannor, but a Rent charge cannot be part of a Mannor.

(*) 31.Aſſ.23. 22.Aſſ.53.

¶ *Attorne, &c.* Of Attornement ſhall be hereafter ſaid in his proper chapter and place.

Sect. 226.

¶ *Si le Seignior voet granter per ſon fait le homage, &c.* It is to be obſerued that where the Seigniory is by homage, fealty and rent, (a) if the Lord grant away the Homage, the Fealty ſhall paſſe, for fealty is an incident inſeparable to Homage (b) & cannot by any ſauingin any grãt be ſeperated frõ it, for homage cannot be ſole or alone, but the rent (though it be not ſaued) ſhall not paſſe in that caſe becauſe the rent is not incident to homage. And ſo it is if there be Lord and Tenant by fealty and rent, & the Lord grant ouer the fealty without any ſauings, the rent paſſeth not, but fealty hath an incident inſeperable belonging to it, which by no ſauing can bæ ſeparated, and that is a Diſtreſſe, for as Littleton ſaith here, a ſeruice cannot be ſecke (that is) without ſome

(a) 40.E.3.22.per Curiam.

(b) 44.E.3 19.20. 39.H.6.25. 29.Aſſ.pl.22. 26.Aſſ.p.38.

¶ Mes̃ in le manner eſt lou home tient ſa terre per homage, fealtie, & certaine rent, ſi le Sñr grant la rent, ſauant a luy le homage, tiel rent apres tiel grant eſt rent ſecke. Mes la ou terres ſont tenus per homage, fealty, & certein rent, ſi le Sñr voit granter per s̃ fait le homage de ſon tenãt a vn auter, ſauant a luy le remnant de les ſeruices, & le tenant atturna a luy, ſolonq; le forme del graunt, en ceſt caſe le tenant tiendra

IN the ſame manner, where a man holds his land by homage, fealty and certaine rent, if the Lord grant the rent, ſauing to him the homage, ſuch rent after ſuch grant is rent ſecke. But there where lands are holden by homage, fealty, and certaine rent, if the Lord will grant by his deed the homage of his tenant to another, ſauing to him the remnant of his ſeruices and the tenant atturne to him according to the forme of the grant, in this caſe

tiendra ſa terre del grantee, & le Sñr q̃ grantaſt le homage, nauera forſq̃ le rent come rent ſeck, & ne vnques diſtreynera pur le rent, pur ceo que homage, ne fealtie, ne eſcuage, ne poit eſtre dit ſeck. Car nul tiel ſeruice poit eſtre dit ſeck. Car celuy que ad ou doit auer homage, ou fealtie, ou eſcuage de ſa terre poit per common droit diſtreiner pur ceo ſil ſoit aderere, car homage, fealtie, & eſcuage ſont ſeruices, per queux terres ou tenements ſont tenus, &c. & ſont tiels q̃ en nul maner poiẽt eſtr̃ priſes forſq̃ come ſeruices, &c.

the tenant ſhall hold his land of the grantee, and the Lord who granted the Homage ſhal haue but the rẽt as a Rent ſeck, & ſhall neuer diſtrain for the rẽt, becauſe that homage nor fealty nor eſcuage cannot bee ſaid ſecke for no ſuch ſeruice may be ſaid ſecke. For he which hath or ought to haue homage, fealty, or eſcuage of his land may by common right diſtreine for it, if it bee behind. For Homage, Fealtie, and Eſcuage are Seruices by which Lands or Tenements are holden, &c. and are ſuch ſeruices as in no manner can bee taken but as Seruices, &c.

diſtreſſe belonging to it, for then it were not a ſeruice and ſo of Homage and Eſcuage.

¶ *Terres en tenements ſont tenus, &c.* By this (&c.) and out of this Section it may bee collected that if (c) there bee Lord and Tenant by Fealtie and Rent, the Annuall Rent which is a profitable Seruice is of higher and more reſpect in law then the Fealtie, and therefore by the grant of the Rent the Fealtie ſhall paſſe as an incident thereunto, but it is an incident ſeparable, and therefore may bee by a ſauing, as Littleton hath ſaid, be ſeparated from it. And ſo when the tenure is by Fealtie and Rent, and the Rent be recouered, the Fealtie ſhal includedly bee recouered. (d) And where the tenure is by Homage, Fealtie and Rent, by the recouerie of the Rent with the appurtenances vpon a former right, the Homage and Fealtie alſo ſhall bee reſtored by neceſſitie and indulgence of the Law, for ſeeing the law giueth no Præcipe for the Homage and Fealtie, but for the Rent only, reaſon would that by the recouerie of the Rent, the whole entire Seigniorie ſhall be intirely reſtored in that caſe. But if the recouerie be without title there the Rent is recouered as a Rent ſecke, for that worketh no more then a grant, (*) but by the recouerie of a Manner whether it be by title or without Title, Homage, Fealtie and all other Seruices parcell of the Manner are recouered. And albeit Fealtie cannot bee deuided from Homage by grant (as hath beene ſaid) yet by extinguiſhment it may: (e) As if there be Lord and Tenant by Homage, Fealtie, and Rent, and the Lord releaſe the Seigniorie and Seruices, or all his right in the Land ſauing the Fealtie and Rent, or ſauing the ſaid Rent, or if hee by expreſſe words releaſe the Homage ſauing the Fealtie and Rent, there the Fealtie and Rent remayne, for the Homage is extinct. And ſo note a diuerſitie betweene a Grant and a Releaſe in that Caſe. But ſo long as Homage continues the Fealtie cannot be deuided from it.

(c) 44.E.3.19. 26.Aſſ.38. 29.Aſſ.p.20. 9.E.3.2. 39.H.6.24.25. 27.H.8.20. 8.E.4.28.

(d) *Temps H.*8. *Br. tit. incidents.*24. 41.E.3.19. 29.Aſſ.20. 39.H.6.24.25.

(*) *Vide Sect.*149.

(e) 9.E.3.1.

¶ *Forſque come ſeruices, &c.* Here is implied a diuerſitie betweene theſe corporall ſeruices of Homage, Fealtie and Eſcuage, which cannot become ſecke or dry, but make a tenure whereunto Diſtreſſes, Eſcheats, and other profits be incident, And other corporall ſeruices, as to plough, repaire, attend and the like, and all Rents whatſoeuer, for they may become ſecke or dry and make no tenure.

Sect. 227.

¶ MEs autrement eſt de rent que fuit vn foits rent ſeruice, pur ceo que quant

BVt otherwiſe it is of a Rent which was once Rent Seruice, becauſe when it is ſeuered

¶ E T *le Seignior ne poet grant tiel rent oue diſtres, come eſt dit.* (f) For the

(f) 7.E.3.2.3.

the diſtreſſe is an incident inſeparable to the fealtie as hath beene ſaid (g) and therefore a releaſe of diſtreſſe is void.

(g) 7.E.4.11.

8.H.7.4.5.

¶ *Incident.* Incidens a thing appertayning to or following another as a more worthie or principall, whereof you ſee here, and in diuers other places of Littletons examples. And of incidents ſome be ſeparable, and ſome inſeparable, as hath beene ſaid.

il eſt ſeuer per le grant le Seignior de les auters ſeruices, il ne poit eſtre dit rent Seruice, pur ceo que il ne ad a ceo fealtie, que eſt incident a cheſcun manner de rent ſeruice, & pur ceo eſt dit rent ſecke, ſi le ſeignior ne poit grant tiel rent oue diſtreſſe, come eſt dit.

by the grant of the Lord from the other ſeruices, it cannot bee ſaid Rent Seruice, for that it hath not fealtie vnto it, which is incident to euery manner of Rent Seruice, and therefore it is called Rent ſeck. And the Lord cannot grant ſuch a Rent with a diſtreſſe, as it is ſaid.

Sect. 228.

¶ S*Auant a luy le reuerſion, &c.* By this word (&c.) is to be obſerued (h) that this Rent reſerued is a Rent Seruice, and hath fealtie incident to it, and both Rent and fealtie are incident to the reuerſion, viz. (i) the Rent incident to the Reuerſion ſeparably, but the fealtie incident to the Reuerſion inſeparably, but by the grant of the Rent, the fealtie in this caſe ſhall not paſſe becauſe the fealtie is inſeparably incident to the Reuerſion, but the Grantee ſhall haue the rent as a rent ſecke. Alſo by this (&c.) is implyed an attornement of the tenant, for without that, although by the grant the Rent is turned to a Rent ſeeke, ſo as the tenant cannot bee charged with any diſtreſſe, yet to the paſſing thereof, there muſt bee an attornment.

(h) 41.E.3.16.

(i) 12.E.4.3. 32.H.8.tit. Patents Br. 26. Aſſ. 66. 48.E.3.9.b. Doct. & Stud. lib. 2. cap. 9.

¶ *Attorne, &c.* Here is implyed by this (&c.) an attornment in the life of the Grantee, and other incidents to an attornment whereof you ſhall reade at large in the Chapter of Attornment.

¶ *Item ſi hõe leſſa a vn auter terres pur terme de vie, reſeruant a luy certain rent, ſil grant le rent a vn auter p ſon fait, ſauant a luy le reuerſion de la terre iſſint leſſe, &c. tiel rent neſt forſque rent ſeck, pur ceo que l' grantee nad riens en le reuerſion del terre, &c. Mes ſil grant le reuerſion del terre a vn auter pur terme de vie, & le tenant atturne, &c. donques ad le grantee le rent come rent ſeruice, pur ceo q̃ il ad le reuerſion pur terme de vie.*

ALſo if a man let to another lands for tearme of life reſeruing to him certaine rent, if hee grant the rent to another by his Deed ſauing to him the Reuerſion of the land ſo letten, &c. ſuch Rent is but a Rent ſeck becauſe that the grantee had nothing in the Reuerſion of the land, &c. but if he grant the Reuerſion of the land to another for tearme of life, and the tenant attorne, &c. then hath the grantee the Rent as a Rent ſeruice, for that he hath the reuerſion for tearme of life.

¶ *Donques ad le grantee le rent come rent ſeruice pur ceo que il ad le reuerſion pur terme de vie.* And the reaſon hereof is becauſe the Rent is incident to the Reuerſion as hath beene ſaid, and (as Littleton ſaith here) paſſeth away by the grant of the Reuerſion, as with the Superior without ſaying, Cum pertinentijs, &c. for the Reuerſion cannot be ſeck: But by the grant of the Rent the Reuerſion doth not paſſe.

Sect.

Sect. 229.

¶ Et iſſint eſt a entendue q̄ ſi home dona terrez ou tenements en le taile, rendant a luy & a ſes heires certaine Rent, ou leſſa terre pur terme de vie, rendant certaine rent, ſil granta le reuerſion a vn auter &c. & le tenant atturna, tout le rent & ſeruice paſſe per ceſt parol (reuerſion) pur ceo que tiel rent & ſeruice en tiel cas ſont incidents a le reuerſion, & paſſont per le grant de le reuerſion. Mes coment que il granta le rent a vn auter, le reuerſion ne paſſa my per tiel grant, &c.

AND ſo it is to be intended, that if a man giue Lands or Tenements in taile, yeilding to him and to his Heires a certaine rent, or letteth Land for tearme of life rendring a certaine rent, if hee grant the Reuerſion to another &c. and the Tenant atturne, all the Rent and Seruice paſſe by this word (Reuerſion) becauſe that ſuch Rent and Seruice in ſuch caſe are incident to the Reuerſion, and paſſe by the grant of the Reuerſion. But albeit that hee granteth the rent to another, the Reuerſion doth not paſſe by ſuch grant, &c.

¶ This needs no explication, but is euident by that which hath formerly beene ſaid, ſauing by this (&c.) in the end is implyed the old rule, That the incident ſhall paſſe by the grant of the principall, but not the principall by the grant of the incident, Acceſſorium non ducit, ſed ſequitur ſuum Principale.

Section 230.

¶ Iſſint nota le diuerſitie. Et iſſint eſt tenus P. 21. E. 4. Mes il eſt adiudge, Anno 26. Lib. Aſſiſarum, ou les ſeruices del tenāt en taile fuerent grants, q̄ t̄ fuit bone grant, nient obſtant que le reuerſion demurt. ¶

SO note the diuerſitie. And ſo it is holden, *P.* 21. *E.* 4. But it is adiudged 26. of the Book of Aſſiſes, where the ſeruices of tenant in taile were granted, that this was a good grant, notwithſtanding that the Reuerſion remayne. ¶

¶ This is added to Littleton. And therefore as I haue done heretofore, and ſhall doe hereafter in like caſes I paſſe it ouer. And the caſe here cited in 26. Aſſ p. 66. was contra opinionem multorum, and afterwards that Iudgement was reuerſed by writ of Error, for that the Seruices remayned with the Reuerſion as incidents inſeparable.

Section 231.

¶ Item ſi ſoit ſeignior, meſne, & tenant, & le tenant tiēt del meſne per ſeruice de v. ſ. & le meſne tient ouſter per ſeruice

ALſo if there bee Lord, meſne and tenant, and the tenant holdeth of the meſne by the ſeruice of fiue ſhillings, & the meſne

¶ *Si ſoit Seignior, meſne & tenant, &c. ſi le Seignior Paramont purchaſe le Seigniorie en fee, &c.*

(k) Some haue ſaid that in (k) 20. E. 3. Mantell. 326.

2.E.2.tit. Extinc.6. 26.H.6. ibid.7.

in this case it were reason, that by the purchase of the Lord paramount, his Seignioꝛie should bee onely extinct, and that hee should become tenant to the Mesne, and the Mesne to hold ouer as the Lord paramount held. But that cannot be, foꝛ that one man cannot be both Lord and Tenant, noꝛ one land immediately holden of diuers lords.

(l) 7.Ass.2.7.E.3.29.

(l) If the Tenant infeoffe the Lord Paramount and his wife and their heires, in this case the Mesnaltie is but suspended, foꝛ if the wife suruiue, both Mesnaltie & Seignioꝛie are reuiued.

It is sayd, that if there bee Lord Mesne and Tenant, each of them by Fealtie and fiue pence, the Lord confirme the state of the Tenant, to hold of him by Fealtie and thꝛee pence, that the Mesnalty is extinct. (m) And so in the same case, if the Tenant bee an Abbot, and the Lord confirme his estate to hold of him in Frankalmoigne, the Mesnaltie is extinct. (n) So it is if the Lord release to the Tenant, foꝛ whither the Lord purchase the Tenancie, oꝛ the Tenant the Seignioꝛie, the Mesnaltie is extinct. And albeit the Mesne grant the Mesnaltie foꝛ life, and then the Lord release to the Tenant, both the reuersion and the estate foꝛ life are dꝛowned. (o) So if there be Lord and Tenant, and the tenant make a gift in taile, the remainder to the King, the Seignioꝛie is extinct.

(m) 4.E.3.19. See for this hereafter in the Chapter of Confirmation, Sect.

(n) 8.H.6.24.

(o) 4.& 5.P.& M.Dy.154.

de pij.ð. ſi le Seignioꝛ paramont purchaſe le tenancie en fee, donques le ſeruice de le meſnaltie eſt extinct, pur ceo q̃ quant le Seignioꝛ paramont ad le tenancie, il tient de ſon Seignioꝛ procheine paramont a luy, & ſil doit tener ceo de luy que fuit meſne, donques il tiendꝛa vn meſme tenancie immediate de diuers Seignioꝛs, per diuers ſeruices, q̃ ſeꝛroit inconuenient, & la ley voit plus toſt ſuffer vn miſchiefe q̃ vn inconueniencie, & pur ceo le Seignioꝛy del meſnaltie eſt extinct.

holdeth ouer by the ſeruice of 12. pence, if the Lord Paramont purchaſe the tenancie in fee, then the ſeruice of the meſnaltie is extinct, becauſe that when the Lord Paramont hath the tenancie, he holdeth of his Lord next Paramont to him, & if he ſhould hold this of him which was Meſne, then hee ſhould hold the ſame tenancie immediately of diuers Lords by diuers Seruices which ſhould be inconuenient, and the Law will ſooner ſuffer a miſchiefe then an inconuenience, & therefore the Seigniorie of the Meſnaltie is extinct.

Vid.Sect.138,139.

¶ *Que ſerra inconuenient.* Here it appeareth, That Argumentum ab inconuenienti is foꝛcible in Law, as hath beene sayd befoꝛe, and shall bee often obſerued hereafter.

(p) 13.H.4.3.40.Ass.p.27. 12.R.2.Vouch.81.

¶ (p) *Le ley voet pluis toſt ſuffer miſchiefe que inconuenience.* Lex citius tolerare vult priuatum damnum, quam publicum malum. Here be two Maximes of the Common Law:

Firſt, That no man can hold one and the ſame land immediately, of two ſeuerall Lords.

Secondly, That one man cannot of the ſame land be both Lord and Tenant. And it is to be obſerued, That it is holden foꝛ an inconuenience, that any of the Maximes of the law ſhould be bꝛoken, though a pꝛiuate man ſuffer loſſe: foꝛ that by infringing of a Maxime, not onely a generall pꝛeiudice to many, but in the end a publique incertaintie and confuſion to all would followꝛ. And the rule of law is regularly true, Res inter alios acta alteri nocere non debet. Et factum vnius alteri nocere non debet, which are true with this exception, vnleſſe an inconuenience ſhould followꝛ, as our Authoꝛ heꝛe teacheth vs.

Sect. 232.

¶ *Lauera le iiij. s. come Rent Secke.*

C Mes entant q̃ le tenant tenus

But in as much as the Tenant holds

nuſt del meſne p v.s. & le meſn tenuſt foꝛſque per xij. ō. iſſint que il auoit pluis en aduantage p iiij. s. que il payaſt a ſon Seignioꝛ, il auera les dits iiij. s. come Rent Seck annuelment de le Seignioꝛ que purchaſe le Tenancie.

of the Meſne by fiue ſhillings, & the Meſne hold but by twelue pence, ſo as hee hath more in aduantage by foure ſhillings, than he payes to his Lord, hee ſhall haue the ſayde foure ſhillings as a rent Secke yearely of the lord which purchaſed the Tenancie.

(q) And yet he ſhall diſtreyne foꝛ it, foꝛ ſeeing the fealtie is extinct, the Law reſerues the diſtreſſe to the rent, foꝛ, as it hath beene ſayd in the like caſe, ſeeing the fealtie is extinct, the diſtreſſe by Act in Law may be preſerued, Quia quando lex aliquid alicui concedit, concedere videtur & id ſine quo res ipſa eſſe non poteſt. (r) And therefoꝛe if a man maketh a leaſe foꝛ life, reſeruing a rent, and bind himſelfe in a ſtatute, and hath the rent extended and deliuered to him, he ſhall diſtreyne foꝛ the rent, becauſe he commeth to it by courſe of Law.

(r) 13.H.4. Audrie 237.

(f) But if a Rent ſeruice be made a Rent ſecke by the grant of the Lord, the Grantee ſhall not diſtreyne foꝛ it, foꝛ that the diſtreſſe remaines with the fealtie. (t) If there be Lord, Meſne and Tenant, and the meſnaltie is a Mannoꝛ hauing diuers freholders, and the Lord purchaſe one of the Tenancies, and there is a rent by ſurpluſage, this rent albeit it be changed into another nature, (as hath beene ſayd) is parcell of the Mannoꝛ. But yet by purchaſe of part of the land, the whole rent is extinct, albeit the Law did preſerue it.

(f) 28.E.3.93.
(t) 31. Aſſ. 23. 22. Aſſ. 53. 2.H.6.14.

Sect. 233.

¶ Item ſi hõe que ad Rent Secke eſt vn foits ſeiſi daſcun parcel de le Rent & apres l' Tenant ne voit payer l' rent aderere, ceo eſt ſon remedie, il couient de aler per luy ou per aũs, a les terres ou tenements dont l' rent eſt iſſuant, & la demaund les arerages ōl rent, & ſi le Tenant denia ceo de payer, ceſt denier eſt vn diſſeiſin ō le rent. Auxy ſi l' tenant ne ſoit adonqs preſt a payer, ceo ẽ vn denier que eſt vn diſſeiſin de rent. Auxy ſi l' Tenant ne nul auter home ſoit demurrant, ſur les terres

Alſo if a man which hath a Rent ſecke be once ſeiſed of any parcell of the rent, and after the Tenant will not pay the rent behind, this is his remedie, hee ought to goe by himſelfe or by others, to the lands or Tenements, out of which the rent is iſſuing, and there demand the arrerages of the rent, and if the tenant denie to pay it, this deniall is a diſſeiſin of the rent. Alſo if the tenant be not then readie to pay it, this is a deniall, which is a diſſeiſin of the rent. Alſo if the Tenant nor any other man bee remai-

¶ *Eiſin*, oꝛ Seiſon is common as well to the Engliſh, as to the French, & ſignifies in the Common Law, Poſſeſſion, whereof Seiſina a Latyne woꝛd is made, and Seiſire a Verbe.

¶ *Daſcun parcel.* (u) A ſeiſon of parcel, is a ſufficient ſeiſon in Law, to haue an Aſſiſe of the whole rent.

(u) 5.E.4.2.

Concerning the generall learning of ſeiſons, you may read Lib. 4. Beuils caſe, fol. 8. lib. 5. fol. 98. lib. 6. fol. 57. lib. 7. fol. 24. 29. lib. 9. fol. 33. And many authoꝛities of Law there cited, but ſufficient is ſaid here to explaine Littleton.

T. 18.E.1. *coram Rege Rott. in Theſaur.*

¶ *A les Terres, &c.* (w) Foꝛ a demand of the tenant out of the land is not ſufficient: but if there bee a houſe and land, a demand on the land is ſufficient, but foꝛ a condition broken, it ought to be at the houſe, as hath beene ſaid befoꝛe.

(w) 49.E.3.14.b 14.E.4.4. *Pl. Com.* 71.

¶ *Arere.* This woꝛd Arere, is to bee obſerued, foꝛ it is not neceſſary that the

the grantee of the rent should demand it at the very time when it becommeth due, but at any time after it is sufficient, for this is not like a demand of a rent vpon a condition, because that is penall and ouerthroweth the whole state and (x) therefore the time of demand must bee certaine, to the end the Lessee, Donee, or Feoffee may bee there to pay the rent, but a demand of a Rent secke or Rent charge is but only a formal meane to recouer that which is due, (y) and therefore in that case it may bee demanded after it is behinde at any time whether the Tenant be present or no for remedies for rights are euer fauourably extended.

(x) 29. Ass 51. 8.H.6.11. Lib. de Entries 79.b.

(y) Mich. 41.E.3. coram Rege adindg. accordingly.

¶ *Ceo est vn denier en ley.* For whereſoeuer there is a lawfull demand of a rent, and the same is not paid whether the Tenant be present or absent, yet this is a denyall in Law, albeit there bee no words of denyall. It appeareth here that the demand must be made vpon the land, and albeit the Tenant nor any for him be there yet must the Grantee demand it, because without a demand there can be no denier in Deede, or in Law.

ou les tenemẽts pur payer le rent quaunt il demaund les arrerages, ceo est vn ẽnier en ley & vn disseisin en fait, & de tiels disseisins il poit auer Assise de Nouel disseisin, **enuers le tenant, & recouera le seisin del rent, & ses arrerages & ses dammages, & les costages ŏ s̄ bē & ŏ s̄ plee, &c. Et si aps tiel recouery & execution ewe le rent soyt aukoits a luy denie, donque il auera vn redisseisin, & recouera ses double damages, &c.**

ning vpon the lands or tenements to pay the rent when hee demandeth the arrerages, this is a deniall in law, and a disseisin in deed, and of such disseisins he may haue an Assise of *Nouel disseisin* against the Tenant, and shal recouer the seisin of the Rent, and his arrerages, & his dammages, & the costs of his writ & of his plea, &c. And if after such recouery & execution had, the rent be again denied vnto him, then hee shall haue a redisseisin, and shall recouer his double dammages &c.

(z) *Vid. Bract. li.4. fo.161. 162.204. Britton.42.43. & f.83.106. 114.115.118. Mir. ca.2.§.1.* * *Flet. li.4. ca.1. Bra. ubi supra*

¶ *Disseisin.* (z) Disseisina, **is a putting out of a man out of seisin** and euer implyeth a wrong. But dispossessing or ejectment is a putting out of possession, and may be by right or by wrong, * Omnis disseisina est transgressio, sed non omnis transgressio est disseisina, & si eo animo forte ingrediatur fundum alienum, non quod sibi vsurpet tenemtum, vel iura, non facit disseisinam, sed transgressionem, &c. quærendum est a iudice quo animo hoc fecerit, &c. And of Ancient time a Disseisine was defined thus, Disseisin est vn personel trespasse de tortious ouster del seisin.

Mirror, cap.2.§ 15. Bracton lib. 4. cap.4. Britton, cap.44.45. & ca. Flet. lib.4.ca.5.& 2.& 3.

¶ *Assise de nouel disseisin.* Assisa nouæ disseisinæ. Assisa **properly** commeth of the Latyn word Assidio, which is to associate or set together, So as properly Assise is an association or sitting together. And the writ whereby certaine persons are authorised & called together is called Assisa nouæ disseisinæ; so as Assisa is but Cessio. But because Cessio is but a generall word, therefore in this since assisa is vsed in Law for a particular Cession by force of the writ De assisa noue disseisinæ, and accordingly it was anciently said Assise in vn case nest auter chose que cession des Iustices, and it is called Assisa nouæ disseisinæ, for that the Iustices of Eire before whom these Assises were taken in their proper Counties did ride their Circuits from 7. yeares to 7. yeares, and no Disseisin before the Eire if it were not complained of in the Eire could be questioned after the Eire, and therefore a Disseisin committed before the last Eire was called an ancient Disseisin, and a Disseisin after the last Eire was called a new Disseisin or Nona disseisina. Assisa also signifieth a Jury of their sitting together, and also a Cession of Parliament as Littleton hereafter in this chapter sheweth.

Mirror, cap.2.§.15.

¶ *Et recouera le seisin del rent.* **Here, and by the** (&c.) **in the end** of this Section is implyed, that our Author intendeth his case, where the rent issueth out of lands in one County, for if a man beseised of two acres of land in two seuerall Counties, and maketh a Lease of both of them reseruing two shillings rent in this case, albeit seuerall Liueryes be made at seuerall times, yet is it but one entire rent in respect of the necessitie of the case, and he shall distreyne in one County for the whole, and make one Auowry for the whole. But he shall haue seuerall Assises in confinio comitatus, and in either Countie shall make

make his pleynt of the whole rent, but there shall be but one Patent to the Justices. (a) And this Assise in confinio comitatus is giuen by the statute of 7.R.2.cap.10. for no Assise lay in that case at the Common Law, but the party might distreine. (b) But for a common of pasture, of Turbarie, of Pischarie, of Estouers and the like in one Countie, appendant or appurtenant to land in an other Countie, an Assise in confinio comitatus, did lye at the Common Law (c) and so it is of a Susans done in one County, to lands lying in another Countie, the like Assise did lye at the Common Law.

(a) 10.Ass.pl.4. 18.Ass.p.1.& 18.E.3.32. 22.H.6.9.10.
(b) F.N.B.180.a.
(c) F.N.B.183.k.

(d) And albeit the Counties doe not adioyne, but there be 20. Counties meane betweene them, yet the Assise in confinio comitatus doth lye, and the Justices shall sit betweene the said Counties. (e) And where it is said before of two Counties, the like law it is if the same extend into more Counties.

(d) 5.E.4.2.
(e) F.N.B. 180.i.

(f) If a man hold diuers Mannors or lands in diuers seuerall Counties by one tenure and the Lord is defeated of his seruices, he shall haue seuerall writs of Customes and seruices, for euery Countie one Writ returnable at one day in the Court of Common pleas, and thereupon count according to his case by the Common Law.

(f) 30 E.1.tit.Distr. F.N.B.151.m.

(g) But if the Tenant in that case doe cease, the Lord shall not haue seuerall writs of Cessauit vt supra, for the Writ of Cessauit is giuen by Statute * and the forme and manner of the writ therein prescribed, and thereupon it is holden in our bookes that in that case a Cessauit doth not lye.

(g) 18.Ass.pl.1.
* W.2. cap.21.

¶ (h) *Il auera vn rediſſeiſin & recouera ſes double damages, &c.* **Here by** this (&c.) is also to be vnderstood, that a Writ of Redisseisin is giuen by the statute of Merton * (so called because the Parliament was holden at Merton in Anno 20.H.3.) the Letter whereof is, Item si quis fuerit diſſeiſitus de libero tenemẽto & coram Iusticiarijs itinerantibus seisinam suam recuperauerit per assisam noue disseisinæ vel per recognition' eorum qui fecerint disseisinam, & ipse disseisitus, per vicecomitem seisinam suam habuerit, si ijdem disseisitores postea post iter Iusticiariorum vel infra de eodem tenemento iterum eundem conquerentem disseisiuerint, & inde conuicti fuerint, statim capiantur, &c. But the double damages are giuen by the statute of W.2.cap.26.

(h) Bracton.fo.216. Britton.133.246. Fleta.lib.4.cap.29. Merton.cap.2.§.15. Regist.206.207.
* Mirror.cap.3.W.2.c.46.
Vide Sect.234.
Vid Regist.206.b.

And Littleton in few words hath made a good exposition of this statute for where the statute saith Disseisitus de libero tẽto Littleton expounds it, to extend to a Rent seeke or Rent charge, albeit, as hath beene said, they be against common right, yet a man hath a freehold in them, (k) And he that granteth Omnia tenementa sua, a Rent charge or a Rent seeke doth passe.

(i) 40.Ass.23 &c.
(k) 14.E.4.4. 11.H.6.22.

Coram Iusticiarijs itinerantibus, &c. saith the statute. But Littleton speaketh generally and so is the statute to be intended before any other Justices that haue authority to take Assises, and Justices Itinerant are set downe but for an example which is worthy of the obseruation (l) being a penall Law.

(l) Fitz.N.B.189.h.

Recuperauerit per assisam, &c. saith the statute, here assisa is taken for the verdict of the Assise as Littleton hereafter in this chapter expounded the same Vel per recognitionem, &c. or by confession Then the question is what if the recouery were vpon a demurrer or by pleading of a Record and faller of it, or by any other manner. And seeing Littleton speaketh generally it must be vnderstood of all manner of recoueries in an Assise of nouel disseisin; And so it is confirmed by the statute of W.2.ca.26.

¶ *Recouerie.* Recuperatio **commeth of the Verbe** Recuperare, i. ad rem per iniuriam extortam siue detentam per sententiam Iudicis restitui. And Recuperatio in the Common Law, is all one with Euictio in the Ciuill Law, which is, Alicuius rei in causam alterius abductæ per iudicem acquisitio

¶ *Et execution ewe,* Per vicecomitem seisinam habuerit, **saith the** Statute, but Littleton speaketh generally, (Et execution ewe) And execution had, so as whither it be by the Sheriffe or by the partie, so as execution or possession be had, it sufficeth.

¶ *Execution,* Executio, **And signifieth in Law, The obtaining** of actuall possession of any thing acquired by iudgement of Law, or by a fine executorie leuied, whether it be by the Sheriffe, or by the entrie of the partie, whereof you shall read more hereafter.

Vide sect. 504.

Note, it appeareth here by Littleton, That (m) the recouerie in a former writ must bee in Assise of Nouel Disseisin, where in these words (Tiel recouerie) are to be obserued. And therefore if in a writ of Right close in antient Demesne, the Demandant maketh his protestation, to sue in the nature of Assise of Nouel Disseisin, and after is redisseised, he shall not haue a writ of Redisseisin, because the first recouerie was not by writ of Assise of Nouel Disseisin. (n) And so it is if the recouerie were in Assise of Fresh force by Bill, according to the custome of some Citie or Burrough, also in antient Demesne there be no Coroners.

(m) 14.E.3.tit.Red.ff.9. F.N.B.189.g.
(n) 14.E.3.tit.Red.ff.8. Vide the 2. part of the Institutes Stat. de Merton, ca.3.
(o) 9.H.4.5. F.N.B. 189.c. 23.Ass.pl.7.

Si ijdem disseisitores, saith the Statute, (o) So as it must be the same Disseisors: but here

Idem is taken for non alij: And therefore if the recouerie in the Aſſiſe were againſt two Diſſeiſors, and one of them rediſſeiſe him againe, he ſhall haue a Reddiſſeiſin againſt him, for hee is not alius. But if the recouerie had beene againſt one, and he and another redidſeiſe the Plaintife, he ſhall not haue a Redidſeiſin, for here is alius, and he cannot haue a Redidſeiſin againſt the former Diſſeiſor alone, becauſe he is Joyntenant with another. (p) For Joyntenancie in a writ of Redidſeiſin is a good plea, and a ſtranger ſhall not be ſubiect to double impriſonment and double dammages.

(p) 33.E.3.rediſeiſin.7.

(q) 9.H.4.5.F.N.B 188.E.

(q) If a recouerie be had againſt a woman in an Aſſiſe of Nouel Diſſeiſin, and the Plaintife recouereth and hath execution, the woman taketh husband, and both of them redidſeiſe the Plaintife, he ſhall not haue a Redidſeiſin, becauſe the husband is alius.

(r) F.N.B.188.E. Regiſtr. 9.H.4.5.

(r) And yet if a Feme recouer in an Aſſiſe, and after take Baron, and they are redidſeiſed, the husband and wife ſhall haue a Redidſeiſin, becauſe the husband ioyneth for conformitie, and it is in the right of his wife who was diſſeiſed before, ſo in effect it is idem diſſeiſitus & idem conquerens.

If two Coparceners be diſſeiſed, and recouer in an Aſſiſe, if after they make partition, and after they be ſeuerally diſſeiſed, they ſhall haue ſeuerall Redidſeiſins; and ſo it is of ioyntenants for they be idem conquerentes & non alij. Alſo a Redidſeiſin doth lie againſt the diſſeiſor which doth redidſeiſe, and againſt another to whom he made feoffment after the ſecond diſſeiſin, for otherwiſe the redidſeiſor might preuent the Plantife of his redidſeiſin. But in an Aſſiſe againſt A. and B A. is found Diſſeiſor, and B. Tenant, and the Plaintife doth recouer, and after he which was found Tenant diſſeiſes the Plaintife, he ſhall not haue a redidſeiſin, becauſe hee did diſſeiſe him but once.

F. N. B. 188.G.

De eodem tenemento, ſaith the Statute. If the Plaintife be redidſeiſed of parcel of the Tenement formerly recouered, he ſhall haue a redidſeiſin.

If the Beſne recouereth a Rent when it is a Rent Service, and after the rent becommeth a Rent Secke by ſurpluſage, and doth redidſeiſe him of the Rent, he ſhall haue a redidſeiſin, for the ſubſtance of the Rent remaynes though the qualitie be altered.

(ſ) 26.H.6.tit. Aide .77.

(ſ) If tenant in ſpeciall taile recouereth in Aſſiſe, and after becommeth Tenant in taile after poſſibilitie of iſſue extinct, and then is redidſeiſed hee ſhall haue a redidſeiſin. For albeit the ſtate of Inheritance be altered, yet the ſame freehold remaineth.

8.E.3.tit.Redidſeiſin 6. F.N.B. 189.F.

If a man recouer Land in an Aſſiſe of nouel diſſeiſin, whereunto there is a common appendant or appurtenant, and after is redidſeiſed of the common, hee ſhall haue a redidſeiſin of the common, for it was tacitely recouered in the Aſſiſe.

Section 234.

CÆ *Quinocum.* For the better vnderſtanding hereof, Of theſe there be two kinds, viz. Æquinocum, Æquiuocans; and Æquiuocum Æquiuocatum.

Æquinocum Æquiuocans eſt pluriuocum; Polyſemus, a word of diuers ſeuerall ſignifications.

Æquiuocum æquiuocatum eſt vniuocum, that is to ſay, reduced to a certaine ſignification as here in Littletons example, Aſſiſa eſt nomen æquinocum æquiuocans, for ſometime it ſignifieth a Iurie, ſometime the writ of Aſſiſe, and ſometime an Ordinance or Statute.

Now Aſſiſe, Iurata is Æquiuocum Eqniuocatum, and ſo is breue de Aſſiſa nouæ diſſeiſinæ, and Aſſiſa panis, &c. euen as Canis eſt nomen æ-

CEt memorandum que eſt noſme Aſſiſe, eſt nomen æquinocum car aſcun foits eſt priſe pur vn Jurie, car le commencement de le Record de Aſſiſe de nouel diſſeiſin iſſint commencera: Aſſiſa venit recognitura, &c. quod idem eſt quod Iurata venit recognitura, &c. Et la cauſe eſt, pur ceo que per le briefe de Aſſiſe, il eſt command a la Vicont, Quod faceret duodecim

And *memorandum*, that this name Aſſiſe is *nomen Equinocum*, for ſometimes it is taken for a Iurie, for the beginning of the Record of an Aſſiſe of *Nouel diſſeiſin* beginneth thus. *Aſsiſa venit recognitura, &c.* which is the ſame, as *Iurata venit recognitura.* And the reaſon is for that by the Writ of Aſſiſe it is commanded to the Sherife, *Quod faceret duodecim liberos & legales homi-*

duodecim liberos & legales homines de vicineto, &c. videre tenementum illud, & nomina illorum imbreuiare, & quod ſummoneat eos per bonos ſummonitores, quod ſint coram Iuſticiarijs, &c. parati inde facere recognitionem, &c. **Et pur ceo que per tiel original, vn panel per force de meſme le briefe deuoit eſtre returne, &c. il eſt dit en l'commencement del Record en le Aſſiſe,** Aſſiſa venit recognitura, &c. **Auxy en briefe de droit il eſt communement dit, que le tenant luy poit mitter en Dieu & grand Aſſiſe, &c. Auxy il y ad vn briefe en le** Regiſter, **que eſt appel briefe** de Magna Aſſiſa eligenda. **Iſſint eſt ceo bien proue que ceſt noſme Aſſiſe,** aliquando ponitur pro Iurat'. **Et alcun foits il eſt priſe pur tout le breife daſſiſe, & ſolonque cel entent il eſt pluis properment, & pluis communement priſe, ſicome** Aſſiſe de Nouel diſſeiſin **eſt priſe pur tout l'breue de** Aſſiſe de Nouel diſſeiſin. **Et en meſme le maner Aſſiſe de** *nes de vicineto, &c. videre tenementum illud, & nomina illorum imbreuiare, & quod ſummoneat eos per bonos ſummonitores, quod ſint coram Iuſticiarijs, &c. parati inde facere recognitionem, &c.* And becauſe that by ſuch an originall, a pannell by force of the ſame Writ ought to be returned, &c. it is ſaid in the beginning of the Record in the Aſſiſe. *Aſſiſa venit recognitura, &c.* Alſo in a writ of Right it is commonly ſaid that the Tenant may put himſelfe on God and the great Aſſiſe. Alſo there is a Writ in the Regiſter which is called a Writ, *De magna Aſſiſa eligenda:* So as this is well proued that this name Aſſiſe, ſometimes is taken for a Iury, and ſomtimes it is takē for the whole Writ of Aſſiſe, and according to this purpoſe it is moſt properly and moſt cōmonly taken, as an Aſſiſe of *Nouel diſſeiſin* is taken for the whole Writ of Aſſiſe of *Nouel diſſeiſin.* And in the ſame manner an Aſſiſe of Common of Paſture is taken for the whole Writ of Aſſiſe quinocum, Canis latrabilis, Canis marinus, Canis Cæleſtis ſunt æquinoca æquinocata.

¶ *Aſſiſe de nouel diſſeiſin.* **Note**(a) **there** bee foure Aſſiſes. Viz. this **Writ**, an **Aſſiſe** of Mordanceſter, of Darreine præſentment, and of Vtrum.

(a) *Bracton. lib.4. fol.160. Britton.cap.42 fol.105.134. F.N.B. Fleta lib.4 ca.5. &c. Mirror.cap.2.§.13.*

¶ *Vicount.* Vide Sect. 248. verbo *(Shireue.)*

¶ *Quod faciat 12. liberos & legales homines de Viceneto, &c.*

(b) Albeit the **words** of the **Writ** be duodecim, **yet by** ancient courſe the **ſheriffe** muſt returne 24 and this is **for** expedition of Juſtice, **for if** 12. ſhould only be returned, no man ſhould haue a full Jurie appeare, **or be ſworn** in reſpect of challēges, without a Tales, which ſhould bee a great delay of tryals. So as in this caſe vſage & ancient courſe maketh **Law**. And it ſeemeth to mee, that the **Law** in this caſe delighteth her ſelfe in the number of 12. **for** there muſt not only be 12. Iurors **for** the triall of matters of fact, (c) but 12. Iudges of ancient time **for** triall of matters in **Law**, in the Exchequer Chamber. **Alſo for** matters of **State** there were in ancient time twelue Counſellors of State. **He** that wageth his **Law** muſt haue eleuen others with him which thinke he ſayes true. **And** that number of 12. is much reſpected in holy Writ, as 12. Apoſtles, 12. Stones, 12. Tribes, &c.

(b) 1.H.7.2.

(c) *Vide pl.com. in proemio.*

Ioſhua 4. Geneſ.49.

(d) **Hee** that is of a Jurie muſt be liber homo, **that is not** only a freeman, and not bound but alſo one that hath ſuch freedome of mind as he ſtands indifferent as hee ſtand vnſworne. **Secondly**, hee muſt bee legalis. **And by the Law** euery Juror that is returned **for** the triall of any iſſue or cauſe ought to haue three properties.

(d) 9.E.4.16.

(*) Firſt,

common de paſture eſt pris pur tout le briefe daſſiſe de common de paſture, & Aſſiſe de mortdauncester eſt priſe per tout le bře daſſiſe de Mortdancester & Aſſiſe de darraine preſentmēt eſt priſe per tout le breue daſſiſe de darraine preſentment. Mes il ſemble que le cauſe pur q̄ tiel briefes al commencemēt fueront appels Aſſiſes fuit pur ceo que p chescun tiel briefe il eſt commande al viſcont, Q. d' ſummoneat xij. le quel eſt a tant adiē, que doit ſummoner vn Jurie. Et aſcun foits Aſſiſe eſt priſe pur vn ordinance, s. pur mitter certaine choſes en certaine rule & diſpoſition, ſicome ordinance q̄ eſt appel Aſſiſa panis & Ceruitiæ.

of Common of Paſture. And Aſſiſe of *Mortdaunceſter*, is taken for the whole Writ, of Aſſiſe of *Mortdaunceſter* and Aſſiſe of *Darreine præſentment*, is taken for the whole Writ of *Darreine præſentment*. But it ſeemes that the reaſon why ſuch Writs at the beginning were called Aſſiſes, was for that by euery ſuch Writ it is commanded to the Sherife, *Quod ſummoneat* 12. which is as much to ſay, that hee ought to ſommon a Iurie. And ſometime Aſſiſe is taken for an Ordinance, to wit, to put certaine things into a certaine rule and diſpoſition, as an Ordinance which is called *Aſſiſa panis & Ceruitiæ*.

(*) *Artic. ſuper Cart. cap. 9. Regist. 178. 8. E. 3. 30.*

(*) Firſt, hee ought to bee dwelling moſt neer to the place where the queſtion is moued.

Secondly, hee ought to bee moſt ſufficient both for vnderſtanding, and competencie of eſtate.

Thirdly, hee ought to bee leaſt ſuſpitious, that is to bee indifferent as hee ſtands vnſworne, and then hee is accounted in Law liber & legalis homo, otherwiſe he may be challenged and not ſuffered to be ſworne. The moſt vſuall triall of matters of fact is by 12. ſuch men, for ad queſtionem facti non reſpondent iudices. And matters in Law the Iudges ought to decide and diſcuſſe, for Ad queſtionem iuris non reſpondent iuratores.

Vide Sect. 102. 193.

9. H. 6. 37.

(e) *Vide Artic. ſuper Cart. ca. 9. Forteſcue ca. 25. & c. 29.*

(e) For the inſtitution and right vſe of this triall by 12. men, and wherefore other Countries haue them not, and this triall excels others. See Forteſcue at large, cap. 25. &c. 29.

(f) *Glanuil. lib. 2. cap. 14. 15. Bracton. lib. 3. fol. 116. a.*

(f) And in ancient time they were 12. Knights. This triall of the fact per duodecim liberos & legales homines is very ancient, for heare what the Law was before the Conqueſt.

(g) *Lamb, verbo Centuria.*

(g) In ſingulis Centurijs comitia ſunto, atque liberæ conditionis viri duodeni ætate ſuperiores vnà cum præpoſito ſacra tenentes iurante, &c. Nay, the tryall in ſome caſes, Per indictatem linguæ (as we ſpeake) was as ancient

(h) *Lamb. fol. 91. 3.*

(h) Viri duodeni iure conſulti, Angliæ ſex, Walliæ totidem, Anglis & Wallis ius dicunto, and of ancient time it was called, duodecim virale iudicium.

Now ſeeing we are iuſtly occaſioned, and the rather for the (&c.) herein, to ſpeake of a challenge to Iurors, to make the ſtudious Reader capable of the vnderſtanding of the Bookes of Law concerning this matter, It ſhall be neceſſarie to ſay ſomewhat of challenges; and firſt what a Challenge is.

Challenge is a word common aſwell to the Engliſh as to the French, and ſometime ſignifieth to claime, and the Latine word is vendicare, ſometime in reſpect of reuenge to challenge into the field, and then it is called in Latine vindicare or prouocare. Sometime in reſpect of partialitie, or inſufficiencie, to challenge in Court perſons returned on a Iurie. And ſeeing there is no proper Latine word to ſignifie this particular kind of challenge, they haue framed a word anciently written (a) Chalumpniare, and Columpniare, and Calumpniare, and now written Calumniare and hath no affinitie with the Verbe Calumnior or Calumnia which is deriued of that, for that is of a quite other ſence ſignifying a falſe accuſer, & in that ſence (b) Bracton vſeth Calumniator to be a falſe accuſer: but it is deriued of the old word Caloir or Chaloir, which in one ſignification is to care for, or foreſee. And for that to challenge Iurors is the meane to care for or foreſee, that an indifferent tryall be had, it is called Calumniare, to challenge, that is to except againſt them that are returned to be Iurors, & this is his proper ſignification (c): But ſome-

(a) *W. 2. cap. 32. Vide Stat. de 12. E. 2. de eſſon. calumniandis, Fleta lib. 1. cap. 32. Britton. fol 6. a. 12. a. 118. & 134. 12. Aſſ. 10.*

(b) *Bract. lib. 3. fol. 137.*

(c) *Bracton. lib. 4. fol. 257. Vet. N. B. fol. 76.*

(c) ſometimes a Sommons, Somonitio is ſaid (d) to be Calumniata, and a Count to be challenged, but this is improperly. And forasmuch as mens liues, Fames, lands, and goods are to be tryed by Iurors, it is moſt neceſſary that they be Omni exceptione maiores, and therefore I will handle this matter the more largely.

A Challenge to Iurors is two fold, either to the Array, or to the Polls: to the Array of the principall Pannell, and to the Array of the Tales. And herein you ſhall vnderſtand, that the Iurors names are ranked in the Pannell one vnder another, which order or ranking the Iurie is called the Array, and the Verbe, to array the Iurie, and ſo we ſay in common ſpeech, Battaile array, for the order of the battaile. And this Array we call Arraiamentum, and to make the Array, Arraiare, deriued of the French word Arroier, ſo as to challenge the Array of the Pannell, is at once to challenge or except againſt all the perſons ſo arrayed or impanelled, in reſpect of the partialitie or default of the Sherife, Coroner, or other Officer that made the returne.

And it is to be knowne, that there is a principall cauſe of challenge to the Array, and a challenge to the fauour: principall, in reſpect of partialitie, as firſt if the Sherife or other Officer be of (a) kindred or affinitie to the Plaintife or Defendant, if the affinitie continue. (b) Secondly, If any one or more of the Iurie bee returned at the denomination of the partie, Plaintife or Defendant, the whole Array ſhall be quaſhed. So it is if the Sherife returne any one, that he be more fauourable to the one than to the other, all the array ſhall be quaſhed. (c) Thirdly, if the Plaintife or Defendant haue an Action of Batterie againſt the Sherife, or the Sherife againſt either partie, this is a good cauſe of challenge. So if the Plaintife or Defendant haue an Action of Debt againſt the Sherife, (but otherwiſe it is if the Sherife haue an Action of Debt againſt either partie) or if the Sherife haue parcell of the land depending vpon the ſame title, (d) or if the Sherife or his Baylife which returned the Iurie, be vnder the diſtreſſe of either partie, or if the Sherife or his Baylife be either of Councell, Attorney, Officer in Fee or of Robes, or ſeruant of either partie, Goſſip, or Arbitrator in the ſame matter, and treated thereof. (e) And where a Subiect may challenge the array for vnindifferencie, there the King being a partie, may alſo challenge for the ſame cauſe, as for kindred, or that he hath part of the land, or the like: and where the array ſhall be challenged againſt the King, you ſhall read in our Bookes.

(f) By default of the Sherife, as when the array of a Pannell is returned by a Bailife of a Franchiſe, and the Sherife returne it as of himſelfe, this ſhall bee quaſhed, becauſe the partie ſhould loſe his challenges. But if a Sherife returne a Iurie within a Libertie, this is good, and the Lord of the Franchiſe is driuen to his remedie againſt him.

If a Peere of the Realme or Lord of Parliament be Demandant or Plaintife, Tenant or Defendant, there muſt a Knight be returned of his Iurie, be he Lord Spirituall or Temporall, or elſe the Array may be quaſhed: but if he be returned, although hee appeare not, yet the Iurie may be taken of the reſidue. And if others be ioyned with the Lord of Parliament, yet if there be no Knight returned, the Array ſhall be quaſhed againſt all. (h) So in an Attaint there ought to be a Knight returned of the Iurie.

(i) And when the King is partie, as in trauers of an Office, he that trauerſeth may challenge the Array, as hereafter in this Section ſhall appeare: And ſo it is in caſe of life, and likewiſe the King may challenge the Array, and this ſhall be tried by Triers according to the vſual courſe. (k) The Array challenged on both ſides ſhall be quaſhed.

(l) And if two eſtrangers make a Pannell, and not in fauourable manner for the one partie or the other, and the Sherife returnes the ſame, the Array was challenged for this cauſe, and adiudged good.

(m) If the Baylife of a Libertie returne any out of his Franchiſe, the Array ſhall bee quaſhed, as an array returned by one that hath no Franchiſe ſhall be quaſhed.

Challenge to the Array for fauour: (n) He that taketh this, muſt ſhew in certaine the name of him that made it, and in whoſe time, and all in certaintie: this kind of challenge beeing no principall challenge, muſt be left to the diſcretion and conſcience of the Triers, as if the Plaintife or Defendant be Tenant to the Sherife, this is no principall challenge, for the Lord is in no danger of his Tenant, but e conuerſo it is a principall challenge, but in the other hee may challenge for fauour, and leaue it to triall. So affinitie betweene the ſonne of the Sherife and the daughter of the partie, or e conuerſo, or the like, is no principall challenge, but to the fauor: but if the Sherife marrie the daughter of either partie, or e conuerſo, this (as hath been ſayd) is a principall challenge, or the like. (o) But where the King is partie, one ſhall not challenge the Array for fauour, &c. becauſe in reſpect of his allegeance he ought to fauour the King more. But if the Sherife be a Vadelect of the Crowne, or other menniall ſeruant of the King, there the challenge is good, and likewiſe the King may challenge the Array for fauour.

Note, vpon that which hath beene ſayd it appeareth, That the challenge to the Array is in reſpect of the cauſe of vnindifferencie or default in the Sherife or other Officer that made the returne,

(a) 12. *Aſſ.* 36. 26. *Aſſ.* 31. 3. *E.* 4. 12. 31. *Aſſ.* 7. 29. *Aſſ.* 2. 22. *E.* 4. 2. 12. *E.* 3. *Chall* 114. 21. *E.* 3. 5. *b.* 3. *H.* 7. 5. *Pl. Com.* 73. 15. *H.* 7. 9. 7. *E.* 6. *Dier* 78. 12. *H.* 6. *Chall.* 159.

(b) 21. *E.* 4. 74. 49. *E.* 3. 1. 15. *E.* 3. 43. 22. *E.* 3. 12. 9. *E.* 4. 46. 8. *H.* 5. 5. 28. *Aſſ.* 22. 41. *E.* 3. *Chall.* 99.

(c) 11. *H.* 4. 26. 22. *E.* 4. 1. 38. *E.* 3. 25. 38. *H.* 6. 6.

(d) 44. *E.* 3. 5 & 38. 44. *Aſſ.* 23. 22. *E.* 4. 1. 3 *H.* 6. 39. 15. *H.* 7. 9. *b.* 27. *Aſſ.* 28. 7. *H.* 7. 10. 26. *Aſſ* 56. 22. 20. *H.* 6. 34. 33. *Aſſ.* 12 45. *Aſſ.* 1. 9. *Aſſ* 8. 8. *Aſſ.* 23. 7. *E.* 3. 56 21. *H.* 7. 38. 2. *H.* 4. 13. 44. *E.* 3. 43. 20. *H.* 6. 39. 44. *Aſſ.* 18. 3. *H.* 6. 24. 17. *E.* 2. *Chall.* 168. 4. *E.* 4. 31.

(e) 4. *H.* 7. 44. *E.* 3. 38 38. *Aſſ* 19. 22. *E.* 4. *Chall.* 63. *Stanf.* 162. *c.*

(f) 39. *Aſſ.* 2. 17. *E.* 3. 50. 17. *Aſſ.* 11. 30 *Aſſ.* 5. 8. *Aſſ.* 3.

(g) 13. *E.* 3. *Chall* 115. *Br. Enqueſt.* 100. *Lib.* 6. *fo.* 54. *Conteſſe de Rutlands Caſe Plo. Com.* 117. 27. *H.* 8. 22. 4. *Eliz. Dier* 208. 8. *Eliz. Di.* 246. 14. *Eliz. Dier* 318. 10. *Eliz. Dier* 265. *b.*

(h) 17. *E.* 2 *Attaint* 69.

(i) 32. *E.* 4. *tit. Chall.* 63. *Stamf. Pl. Cor.* 19. *Aſſ.* 6. *b.* 4 *H.* 7. 8. 44. *E* 3. 38

(k) 8. *H.* 4. 22.

(l) 6. *R.* 2. *Chal.* 302 13. *E* 3 *ibid.* 108.

(m) 32. *E.* 3. *Chal* 110. 111. 32. *Aſſ.* 6. 38. *Aſſ.* 13.

(n) 34. *H.* 6. *Chall.* 69. 8. *H.* 4. 22. 27. *Aſſ.* 20. 22, *E.* 3. 12. *Vid.* 26. *Aſſ.* 21. 38, *H* 6. 9. 7. *H.* 6. 25. 19. *H.* 6. 48. 20. *H.* 6. 38. 20, *E.* 4. 2. 21. *E.* 4. *Chal.* 62.

(o) 22. *E.* 4. *Chal.* 63. 4. *H.* 7. 8.

returne, and not in reſpect of the perſons returned, where there is no indifferencie or default in the Sheriffe, &c. for if the challenge to the Array be found againſt the partie that takes it, yet he ſhall haue his particular challenge to the Polls.

In ſome caſes a challenge may be had to the Polls, and in ſome caſes not at all. Challenge to the Polls is a challenge to the particular perſons, and theſe be of foure kinds, that is to ſay, Peremptorie, Principall, which induce Fauour, and for default of Hundredors.

(p) 1.H.5.Chal.162. 9.H.5.7. 15.E.4.32. 14.H.7.7.19. Dodt. & Stud. lib.2. Forteſcue cap.27. 3.H.7.2. 2.R.3.13. 32.H.6.16.17.Aſſ.6. 37.H.6.8. 22.H.8.ca.14. 33.H.8.tit.Chal.Br.217. 33.H.8.ca.23. 1 & 2.P.& M.ca.10. 32.H.6.16. 14.H.7.14. Stanf.Pl.Cor. 137,138.

(p) Peremptorie, this is ſo called, becauſe he may challenge peremptorily vpon his owne diſlike, without ſhewing of any cauſe, and this onely is in caſe of Treaſon or Felonie, in fauorem vitæ, and by the Common Law the priſoner vpon an Endictment or Appeale, might challenge thirtie fiue, which was vnder the number of three Juries, but now by the Statute of 22.H.8. the number is reduced to twentie in petite Treaſon, Murder and Felonie, and in caſe of high Treaſon, and miſpriſion of high Treaſon it was taken away by the Statute of 33. H.8. but now by the Statute of 1.& 2. Phil.& Mariæ, the Common Law is reuiued, for any Treaſon, the Priſoner ſhall haue his Challenge to the number of thirty fiue, and ſo it hath bene reſolued * by the Iuſtices vpon conference betweene them in the caſe of Sir Walter Raleigh and George Brookes. But all this is to bee vnderſtood when any ſubiect, that is not a Peere of the Realme is arraigned for Treaſon or Felonie; But if hee bee a Lord of Parliament and a Peere of the Realme, and is to bee tried by his Peeres, he ſhall not challenge any of his Peeres at all, for they are not ſworne as other Iurors bee, but find the partie guiltie or not guiltie vpon their faith or allegiance to the King, and they are Iudges of the Fact, and euery of them doth ſeperately giue his iudgement beginning at the loweſt. But a ſubiect vnder the degree of Nobilitie may in caſe of Treaſon or Felonie challenge for iuſt cauſe as many as he can, as ſhall be ſaid hereafter. In an Appeale of death againſt diuers they pleade not guiltie, and one ioynt Venire facias is awarded, if one challenge peremptorily, he ſhall bee drawne againſt all. Otherwiſe it is of ſeuerall Venire fac.

* Hil.1.Ia.R.

7.E.4.27.

Note, that at the Common Law before the Statute of 33.E.1. the King might haue challenged peremptorily without ſhewing cauſe, but only that they were not good for the King, and without being limited to any number, but this was miſchieuous to the ſubiect, tending to infinite delayes and danger. And therefore it is enacted, (q) Quod de cetero licet pro Domino Rege dicatur quod iuratores, &c. non ſunt boni pro Rege: non propter hoc remaneant inquiſitiones, &c. ſed aſſignent certam cauſam calumniæ ſuæ, &c. whereby the King is now reſtrained.

(q) 33.E.1.Ordinatio de Inquiſitionibus. Stanf.Pl.Cor. 162.

Principall, ſo called becauſe if it be found true, it ſtandeth ſufficient of it ſelfe without leauing any thing to the conſcience or diſcretion of the Triors. Of a principall cauſe of challenge to the array, we haue ſaid ſomewhat already, now it followeth with like breuitie to ſpeake of principall Challenges to the Polles, (that is) ſeuerally to the perſons returned.

Principall challenges to the Poll may be reduced to foure heads: Firſt, Propter Honoris reſpectum, For reſpect of Honour; Secondly, Propter Defectum, For want or default; Thirdly, Propter Affectum, For Affection or partialitie; Fourthly, Propter Delictum, For Crime or Delict.

Lib.6.fo.52,53.Counteſſe de Rutlands caſe. 48.E.3.30. 48.Aſſ.6.35.H.6.46. 22.Aſſ.24. F.N.B.165.d.e & 166.Regiſt.179.

Firſt, Propter Honoris reſpectum, As any Peere of the Realme, or Lord of Parliament, as a Baron, Viſcount, Earle, Marqueſſe, and Duke, for theſe in reſpect of Honour and Nobilitie, are not be ſworne on Iuries; and if neither partie will challenge him, he may challenge himſelfe, for by Magna Charta it is prouided, Quod nec ſuper eum ibimus, nec ſuper eum mittemus niſi per legale iudicium parium ſuorum, aut per legem terræ. Now the Common Law hath diuided all the ſubiects into Lords of Parliament, and into the Commons of the Realme. The Peeres of the Realme are diuided into Barons, Viſcounts, Earles, Marqueſſes & Dukes: The Commons are diuided into Knights, Eſquires, Gentlemen, Citizens, Yeomen, and Burgeſſes, and in iudgement of Law, any of the ſayd degrees of Nobilitie are Peeres to another. As if an Earle, Marqueſſe, or Duke be to be tried for treaſon or felonie, a Baron or any other degree of Nobilitie is his Peer. In like manner, a Knight, Eſquire, &c. ſhall bee tried per Pares, and that is by any of the Commons, as Gentlemen, Citizens, Yeomen, or Burgeſſes, ſo as when any of the Commons is to haue a trial either at the Kings ſuit, or betweene partie and partie, a Peere of the Realme ſhall not be impanelled in any caſe.

(a) Lib.7.f.18. Caluins caſe. Li.10.fo.104. 14.H.4.19.b.
(b) Bract.fo.185. Brit.f.135 Flet.l.4.ca.8. 26.Aſſ.28. 3.H.6.39. 9.E.4.16.b. 21.H.6.20. 10.H.7.20.
(c) Vid.Sect.464. 38.aſſ 19. 17.Aſſ.15. 4.H.6.28. 9.H.5.5. 10.H.6.7.8.18. 2.H.7.1.10.H.7.14. 19.H. 6.9. 7.H.6.25.40.44. 12.E.4.13. 3.H.4.4.
(*) 9.H.6.Chal.27.9.H.7.1

Secondly, Propter Defectum,

1 Patriæ, (a) as Aliens borne.

2 Libertatis, (b) as Villeines or Bondmen, and ſo a Champion muſt be a Freeman.

3 Annui cenſus, i. liberi tenementi. (c) Firſt, what yearely Freehold a Iuror ought to haue that paſſeth vpon triall of the life of a man, or in a plea reall, or in a plea perſonall, where the debt or dammage in the Declaration amounteth to fortie Markes, Vid. Sect.464. (*) Secondly, this Freehold muſt be in his owne right, in Fee ſimple, fee tatle, for terme of his owne life, or for another mans life, although it be vpon condition, or in the right of his wife out of antient Demeſne, for freehold within antient demeſne will not ſerue, but if the debt or dammage amounteth

reth not to foꝛtie Markes, any Freehold ſufficeth. (d) Thirdly, he muſt haue freehold in that Countie where the cauſe of the Action ariſeth, and though he hath in another, it ſufficeth not. (e) Fourthly, if after his returne he ſelleth away his land, oꝛ if Ceſty que vie, oꝛ his wife dieth, oꝛ an entrie be made foꝛ the condition bꝛoken, ſo as his freehold be determined, he may be challenged foꝛ inſufficiencie of Freehold.

(d) 19.H.6.9. 17.Aſſ.15.

(e) 12.H.7.4.21.H.6.38. 7.H.4.1.

4 Hundredorum: Firſt, by the Common Law in a plea reall, mixt, and perſonall, there ought to be foure of the Hundꝛed (where the cauſe of Action ariſeth) returned foꝛ their better notice of the cauſe, foꝛ Vicini vicinorum facta præſumuntur ſcire. But now ſince Littleton wꝛote, (f) in a plea perſonall if two Hundꝛedoꝛs appeare, it ſufficeth, and in an Attaint, (g) although the Jurie is double, yet the Hundꝛedoꝛs are not double. Secondly, (h) If he hath either freehold in the Hundꝛed, though it be to the value but of halfe an acre, oꝛ if he dwell there, though he hath no freehold in it, it ſufficeth. (i) Thirdly, if the cauſe of the Action riſeth in diuers Hundꝛeds, yet the number ſhall ſuffice, as if it had come out of one, and not ſeuerall hundꝛedoꝛs out of each hundꝛed. (k) Fourthly, if there be diuers Hundꝛeds within one Leet oꝛ Rape, if hee hath any Freehold, oꝛ dwell in any of thoſe Hundꝛeds, though not in the pꝛoper Hundꝛed, it ſufficeth. (l) Fiftly, if the Jurie come de corpore Comitatus, oꝛ de proximo hundredo, where the one partie is Lord of the Hundꝛed, oꝛ the like, there need no Hundꝛedoꝛs bee returned at all. (m) Sixtly, if a Hundꝛedoꝛ after he be returned, ſell away his land within that Hundꝛed, yet ſhall he not be challenged foꝛ the Hundꝛed, foꝛ that this notice remaines, otherwiſe as hath been ſayd foꝛ his inſufficiencie of Freehold, foꝛ his feare to offend, and to haue lands waſted, &c. which is one of the reaſons of Law, is taken away. (n) Seuenthly, he that challengeth foꝛ the Hundꝛed, muſt ſhew in what hundꝛed it is, and not dꝛiue the other partie to ſhew it. Eightly, his challenge foꝛ the hundꝛed is not ſimpliciter, but ſecundum quid foꝛ though it bee found that he hath nothing in the Hundꝛed, yet ſhall not he be dꝛawne, but remaine pꝛæter H. that is, beſides foꝛ the Hundꝛed, and albeit he dwelleth oꝛ haue land in the Hundꝛed, yet muſt he haue ſufficient Freehold.

(f) 27.Eliz.cap.6.
(g) 7.H.4.47.
(h) 16.E.4.7.4.Mar.Br. Chall.216. 21.E.4.74.75. 9.H.6.66.
(i) 20.H.6.23.4.Mar.Br. Chall.216.
(k) 10.H.6.5. 12.H.4.14. 19.E.4.5.
(l) 37.H.6.11.25.E.3.43.
(m) 21.H.6.38. 12.H.7.4.
(n) 7.Eliz.Dier.231.

3 Propter affectum: And this is of two ſoꝛts, either wꝛoking a Pꝛincipall challenge, oꝛ to the Fauour. And againe a pꝛincipall challenge is of two ſoꝛts, either by Judgement of Law without any Act of his, oꝛ by Judgement of Law vpon his owne Act.

Bract. fol.185.
Britt fol.134.135.
Fleta lib.4.c p.8.
21.E.4.11.12.

And it is ſaid that a pꝛincipall challenge is, when there is expꝛeſſe fauour oꝛ expꝛeſſe malice. Firſt, without any Act of his, as if the Juꝛoꝛ bee (a) of blood oꝛ kindꝛed to either partie, Conſanguineus which is compounded ex Con. & ſanguine, quaſi eodem ſanguine natus, as it were iſſued from the ſame blood, and this is a pꝛincipall challenge, foꝛ that the Law pꝛeſumeth that one Kinſman doth fauour another befoꝛe a ſtranger, (b) and how farre remote ſoeuer he is of kindꝛed, yet the Challenge is good. And if the Plaintife challenge a Juꝛoꝛ, foꝛ kindꝛed to the Defendant, it is no Counterplea to ſay that hee is of Kindꝛed alſo to the Plaintife, though hee be in a nearer degree, Foꝛ the wꝛods of the Venire facias fobꝛideth the Juꝛoꝛ to be of kindꝛed to either partie.

(a) *Britton.fol.135.*

(b) *Mirror. cap.3.de ordinance dattaint.*
Bracton } *vbi ſupra.*
Britton }
Fleta }
14.Eli.Dier.315. 21.E.4.75
40.Aſſ.20. Pl Com.f.l.
41.E.3.Chall.99. 21.E.4.75

(c) If a body Politique oꝛ Incoꝛpoꝛate, ſole oꝛ aggregate of many, bꝛing any action that concernes their body Politique oꝛ Incoꝛpoꝛate, if the Juꝛoꝛ be of kindꝛed to any, that is, of that bodie, (although the body Politique oꝛ Incoꝛpoꝛate) can haue no kindꝛed, yet foꝛ that thoſe bodies conſiſt of naturall perſons, it is a pꝛincipall Challenge. (d) A Baſtard cannot bee of kindꝛed to any, and therefoꝛe it can be no pꝛincipall Challenge. And here it is to be knowne that Affinitas, Affinitie hath in Law two ſences. In his pꝛoper ſence it is taken foꝛ that Nœreneſſe that is gotten by marriage, Cum duæ cognationes inter ſe diuiſæ per nuptias copulantur & altera ad alterius fines accedit & inde dicitur Affinis. In a larger ſence Affinitas is taken alſo foꝛ Conſanguinitie and Kindꝛed, as in the wꝛit of Venire facias, and other where. (e) Affinitie oꝛ Alliance by Marriage is a pꝛincipall Challenge, and equiualent to Conſanguinitie when it is betweene either of the parties, as if the Plaintife oꝛ Defendant marry the Daughter oꝛ Couſin of the Juꝛoꝛ, oꝛ the Juꝛoꝛ marry the Daughter oꝛ Couſin of the Plaintife oꝛ Defendant, and the ſame continues oꝛ iſſue be had. But if the Sonne of the Juꝛoꝛ hath married the Daughter of the Plaintife, this is no pꝛincipall Challenge, but to the fauour, becauſe it not betweene the parties, much moꝛe may be ſaid hereof, ſed ſumma ſequor faſtigia rerum.

(c) *Mirror* } *vbi ſupra.*
Bracton }
Britton }
Fleta }
3.E.4 14. 21.E.3.5.41.
43.E.3.Chall.93.43.Aſſ.25
26. 22.E.4.2. 14.H.7.2.
15.H.7.9.
(f) 19.H.8.7. 28.H.8.
Dier.37. 1.Mariæ Dier 91.
2.Eliz. ibid.177.

(f) If there be a Challenge foꝛ Coſinage, hee that taketh the Challenge muſt ſhew how the Juꝛoꝛ is Couſin. But yet if the coſinage, that is the effect and ſubſtance be found, it ſufficeth, foꝛ the Law pꝛeferreth that which is materiall befoꝛe that which is foꝛmall.

(g) If the Juꝛoꝛ haue part of the Land that dependeth vpon the ſame Title.

(g) *Bracton* } *vbi ſupra.*
Britton }
Fleta }
Mirror vbi ſupra

(h) If a Juꝛoꝛ be within the hundꝛed, Leet oꝛ any way within the Seigniozy immediately oꝛ mediately, oꝛ any other diſtreſſe of either party, this is a pꝛincipall Challenge. But if either party be within the diſtꝛeſſe of the Juꝛoꝛ this is no pꝛincipall Challenge but to the fauour.

(h) *9.H.6.tit.Chall.27.*
38.E.3.25. 22.E.4.Chall.61.
4.H.6.25. 3.H 6.39.36.H 6
Chall.46. 22.E.4.1.27.Aſſ.
28. 22.E.3.12.

(i) If a Witneſſe named in the Deed be returned of the Jurie it is a good cauſe of Challenge of him. (k) So it is if one within age of one and twenty be returned, it is a good cauſe of Challenge.

(i) *23.Aſſ.11.*
(k) *Mirror vbi ſupra.*

2. (l) Upon his own Act, as if the Iuror hath giuen a verdict before for the same cause, albeit it be reuersed by Writ of Error, or if after verdict, Iudgement were arrested. So if hee hath giuen a former verdict vpon the same Title or matter though betweene other persons. (n) But it is to be obserued, that I may speake once for all, that in this and other like cases, hee that taketh the Challenge must shew the Record if he will haue it take place as a principal Challenge, otherwise he must conclude to the fauour, vnlesse it be a Record of the same Court, and then hee must shew the day and terme.

(n) So likewise one may be challenged, that he was Inditor of the Plaintife or Defendant either of Treason, Felony, Misprision, Trespasse, or the like in the same cause.

(o) If the Iuror be Godfather to the Child of the Plaintife or Defendant, or è conuerso, this is allowed to be a good Challenge in our Bookes.

(p) If a Iuror hath beene an Arbitrator chosen by the Plaintife or Defendant in the same cause, and haue beene informed of, or treated of the matter, this is a principall Challenge. Otherwise if he were neuer informed nor treated thereof, and otherwise if he were indifferently chosen by either of the parties, though he treated thereof. But a (q) Commissioner chosen by one of the parties for examination of witnesses in the same cause, is no principal cause of Challenge for he is made by the King vnder the great Seale, and not by the party as the Arbitrator is, but he may vpon cause be challenged for fauour.

(r) If hee bee of Counsaile, Seruant, or of Robes, or Fee, of either party it is a principall Challenge.

(s) If any after he be returned doe eate and drinke at the charge of either party, it is a principall cause of Challenge, otherwise it is of a Iuror after he be sworne.

(t) Actions brought either by the Iuror against either of the parties, or by either of the parties against him, which imply malice or displeasure, are causes of principall Challenge, vnlesse they be brought by Coyn either before or after the returne, for if Coyn be found, then it is no cause of Challenge; other Actions which doe not imply malice or displeasure, are but to the fauour.

(u) In a cause where the Parson of a Parish is partie, and the right of the Church commeth in debate, a Parishioner is a principall Challenge. Otherwise it is in debt, or any other Action where the right of the Church commeth not in question.

(w) If either party labour the Iuror and giue him any thing to giue his verdict, this is a principall Challenge. But if either party labour the Iuror to appeare & to doe his conscience, this is no Challenge at all, but lawfull for him to doe it.

(x) That the Iuror is a fellow Seruant with either party, is no principall Challenge but to the fauour.

(y) Neyther of the parties can take that Challenge to the Polls, which he might haue had to the Array.

(a) Note if the Defendant may haue a principall cause of Challenge to the array, if the Sheriffe returne the Jury, the Plaintife in that case may for his one expedition allege the same, and pray Processe to the Coroners, which hee cannot haue, vnlesse the Defendant will confesse it, but if the Defendant will not confesse it, then the Plaintife shall haue a Venire facias to the Sheriffe, and the Defendant shall neuer take any challenge for that cause, and so in like cases. But on the part of the Defendant any such matter shall not be alledged, and Processe prayed to the Coroners, because he may challenge the Jury for that cause, and can bee at no preiudice.

(b) Challenge concluding to the fauour, when either partie cannot take any principall Challenge, but sheweth causes of fauour, which must bee left to the conscience and discretion of the Triors vpon hearing their euidence to find him fauourable or not fauourable. But yet some of them come nearer to a principall Challenge then other. (c) As if the Iuror be of kindred, or vnder the distresse of him in the Reuersion or remaynder, or in whose right the Auowrie or Justification is made, or the like: These be no principall Challenges, because he in Reuersion, Remaynder, or in whose right the Auowrie or Justification is not partie to the Record, otherwise it is if they were made parties by Aide, Receipt, or Voucher, and yet the cause of fauour is apparant; so it is of all principall causes, if they were party to the Record. Now the causes of fauour are infinite, and thereof somewhat may bee gathered of that which hath beene said, and the rest I purposely leaue the Reader to the reading of our Bookes concerning that matter. For all which the rule of Law is, that hee must stand indifferent as hee stand vnsworne.

(d) The subiect may challenge the Polles, where the King is party. And if a man be outlawed of Treason or Felony, at the suite of the King, and the party for auoyding thereof alledgeth imprisonment or the like, at the time of the Outlawrie, though the issue be ioyned vpon a collaterall point, yet shall the party haue such Challenges, as if hee had beene arraigned vpon the crime it selfe, for this by a meane concerneth his life also.

4. Propter

(l) 8.H.5.10. 33.H.6.1. 10.H.6.24. 7.H.4.11. 18.E.4.12. 21.E.4.74. 11.R.2.tit.Challenge 106. 27.Ass.13.
(m) 43.E.3.Chall.93. 8.H.5.10.
(n) Mirror.vbi supra.Britton. fol.11. 11.Ass.36. 8.H.4.2. 7.E.4.4.12.Ass.26. 19.Ass. 6.40.Ass.10. 25.E.3.cap.3.
(o) 40.Ass.20.2.H.4.15. 10.H.6.Chall.40. 7.H.6.40. 19.H.6.66. 4 E.4.11. 7.E.4.4.
(p) 20.H.6.39. 9.E.4.46. 35.H.6. 19.H.6. 3.H.6. 24. 7.H.7.10.
(q) Lib.9.fol.71. Peacocks Case.
(r) Mirror, Bracton, Britton } vbi supra. 12.Ass.36. 26.Ass.56. 28.Ass.16. 31.Ass.7. 44.Ass.18.
(s) 13.H.4.13. 11.R.2. Chall.164.
(t) Bracton, Fleta } vbi supra. 44.E.3.5.38. 44.Ass.23. 8.E.3.25. 43.E.3.31.22.E.4.1. 38.H.6.6. 43.E.3. Chall.93. 11.H.4.26. 11.H.6.15. 32.E.3.Chall.189. 24.E.3.37. 39.Ass.2. 20.Ass.11.43.Ass.46.
(u) 17.Ass.15.
(w) 8.E.3.39.20.H.6.39. 33.H.8.Dier.48.
(x) 22.Eliz.Dier.367. Bracton, Britton, Fleta } vbi supra.
(y) 49.E.3.1.
(z) 9.E.4.6.21.E.4.31. 22.E.4.3.14.H.6.2.20.E.4 2.3.H.7.5.22.Eliz.Dier. 367.
(b) Mirror cap.3. ordinance Iustices. Bract.lib.4.fol 185. Britt.fol.134.135. Fleta lib. 4.cap.8.7.H.6.25.
(c) 9.H.7.3. 10.H.7.20. 3.H 7.2. 20.E.4.12.15.E.4 18.12.Ass.23.
(d) 6.R.2.Chall.141. 19.Ass.6. 38.Ass 22 11.R.2 Chall.165.4.H.5.ibid.153.

℄ *Propter delictum.* (c) **As if the Juror bee attainted or conuicted of treaſon, or felony, or for any offence to life or member, or in attaint for a falſe verdict, or for periury as a Witneſſe, or in a conſpiracie at the ſuite of the King, or in any ſuite (either for the King, or for any ſubiect) be adiudged to the Pillory, tumbrell, or the like; or to be brāded, or to be ſtigmatique, or to haue any other corporall puniſhment whereby he becommeth infamous (for it is a maxime in law Repellitur à ſacramento infamis) theſe and the like are principall cauſes of challenge. So it is if a man be outlawed in treſpaſſe, debt or any other action, for he is Exlex, and therefore is not legalis homo. And old bookes haue ſaid that if he be excommunicated, he could not be of a Jury.**

(c) *Mirror* ℄ *Bracton* ℄ *Britton* ℄ *Fleta* ℄ *Vbi ſupra.* 11.H.4.41. 12.H.4.10. 33.H.6.21.

(f) See the ſtatutes of W.2. and Artic. ſupra cartas, **what perſons the Sheriffe ought to returne on Juryes, And** ſee F.N.B. breue de non ponendis in Aſsiſis & iuratis, and the Regiſter in the ſame Writ. **And** ſee there what remedy the party hath that is returned againſt Law.

(f) *W.2.ca.38. Artic. ſuper cartas ca.9. F.N.B.165. & 166. Regiſtr.*

It is neceſſarie to be knowne the time when the challenge is to be taken. (g) First hee that hath diuers challenges muſt take them all at once, and the Law ſo requireth indifferent trialls, as diuers challenges are not accounted double. (h) Secondly, if one be challenged by one party, if after he be tried indifferent, it is time ynough for the other party to challenge him. (i) Thirdly after challenge to the Array, and triall duely returned, if the ſame party take a challenge to the polles, he muſt ſhew cauſe preſently. (k) Fourthly, ſo if a Juror be formerly ſworne, if he be challenged he muſt ſhew cauſe preſently, and that cauſe muſt riſe ſince he was ſworne. (l) Fiftly, when the King is party, or in an appeale of felony, the defendant that challengeth for cauſe, muſt ſhew his cauſe preſently. Sixtly, If a man in caſe of treaſon or felony challenge for cauſe, and he be tried indifferent, yet hee may challenge him peremptorily. Seuenthly, a challenge for the Hundred muſt bee taken before ſo many bee ſworne, as will ſerue for hundredors, or elſe he looſeth the aduantage thereof.

(g) *9.E.4.16 10.H.5.9. 37.H.6.8. 3.H.6.38. Broke tit. chall.8. 7.H.6.40. 14.H.7.5.6.*
(h) *9.E.4.16. 27.H.8.2.*
(i) *43.E.3. Chal.93. 20. E.3.ibid.116. 22.E.4 ibid.62*
7.H.4.41. 3.El Dow r 201.
(k) *22.E.4.1. 9.H.5.6.*
(l) *1.H.5.10. 38.Aſſ.22.*

8 (m) In a Writ of Right, the graund Jury muſt be challenged before the foure knights before they be returned in Court, for after they be returned in Court, there cannot any challenge be taken vnto them,

(m) *7.H.4.20. 15.E.4.1.*

9 Nota (n) The Array of the Tales ſhall not bee challenged by any one party, vntill the Array of the principall be tried; but if the plaintife challenge the Array of the principall, the defendant may challenge the Array of the Tales. After one hath taken a challenge to the polle, he cannot challenge the Array.

(n) *9.E.4.27. 9.H.5.11. 34.Aſſ.6.13.E.3.Chal.108*

Now it is to bee ſeene how challenges to the Array of the principall Pannell, or of the Tales, or of the polles ſhall be tried, and who ſhall bee triors of the ſame, and to whom proceſſe ſhall bee awarded.

1 (o) If the plaintife alledge a cauſe of challenge againſt the Sheriffe, the proceſſe ſhall be directed to the Coroners, if any cauſe againſt any of the Coroners, proceſſe ſhall bee awarded to the reſt, if againſt all of them, then the Court ſhall appoint certaine Eliſors or Eſtiors (ſo named ab eligendo) becauſe they are named by the Court, againſt whoſe returne no challenge ſhall be taken to the Array, becauſe they were appointed by the Court, but hee may haue his challenge to the polles. (p) Note if proceſſe be once awarded for the partialitie of the Sheriffe, though there be a new Sheriffe, yet proceſſe ſhall neuer be awarded to him; for the entry is ita quod vicecomes ſe non intromittat. But otherwiſe it is, for that he was tenant to either partie or the like.

(o) *18.E.4.8.*
(p) *15.H.7.9. 14.H.7.31. 18.E.43.*

(q) 2 If the Array be challenged in Court, it ſhall be tried by two of them that be impannelled to be appointed by the Court; for the triors in that caſe ſhall not exceed the number of two, vnleſſe it be by conſent. But when the Court names two for ſome ſpeciall cauſe alledged by either partie, the Court may name others, if the Array be quaſhed, then proceſſe ſhall be awarded, vt ſupra.

(q) *29. Aſſ.3. 19.H.6.48. 21.H.6.Chal 38.33.H.6.21 4.E.4.17.43.E.3.Chal.95. 2.R2. ibid.101. 34.Aſſ.6. 27.Aſſ.28. 43 Aſſ.26.*

(r) If a pannell vpon a Venire facias be returned, and a Tales, and the Array of the principall is challenged, the triors, which trie and quaſh the Array, ſhall not trie the Array of the Tales; for now it is as if there had beene no appearance of the principall pannell, but if the triors affirme the Array of the principall, then they ſhall trie the Array of the Tales. If the plaintife challenge the Array of the principall, and the defendant the Array of the Tales, there the one of the principall, and the other of the Tales ſhall trie both Arrayes. For other matter concerning the Tales, ſee (f) in my Reports matters worthy of obſeruation. (t) When any challenge is made to the polles, two triors ſhall bee appointed by the Court, and if they trie one indifferent, and he be ſworne, then he and the two triors ſhall trie another, and if another be tried indifferent, and he be ſworne, then the two triers ceaſe, and the two that bee ſworne on the Jurie ſhall trie the reſt. (v) If the plaintife challenge ten, and the defendant one, and the twelfth is ſworne, becauſe one cannot trie alone, there ſhall be added to him one challenged by the plaintife and the other by the defendant. When the triall is to be had by two Counties, the manner of the triall is worthy of obſeruation, and apparant in our (w) bookes. (x) If the foure knights in the Writ of Right be challenged they ſhall tye themſelues, and they ſhall chooſe

(r) *Lib.10.fo.104.105. Denbawds caſe.*
(t) *19.H.6.9. 22.E.4. Chal.61.62.*
(u) *7.H.4.41.*
(w) *11.H.4.61.48.E.3.30 11.H.4.63.*
(x) *22.E.3.18.39.E.3.3.*

(y) 49.E.3.1.2.

the graund Aſſiſe, and trie the chal'enges of the parties. (y) If the cauſe of challenge touch the diſhonour or diſcredit of the Iuror, he ſhall not bee examined vpon his oath, but in other caſes he ſhall be examined vpon his oath, to informe the triors. (z) If an inqueſt be awarded by default, the defendant hath loſt his challenge, but the plaintife may challenge for iuſt cauſe, and that ſhall be examined and tried.

(z) 2.H.4.14.4.E.4.1. 10.E.3.32. 22.Aſſ.28.31. 21.H.6.56. 16.Aſſ.1. 5.E.5.35.36.

Whereſoeuer the plaintife is to recouer per viſum iuratorum, there ought to bee ſix of the Iury that haue had the view, or knowen the land in queſtion, ſo as he be able to put the plaintife in poſſeſſion if he recouer.

(a) 8.H.5.tit.Chall.167. 2.H.4.3. 34.E.3.Chall.175. 21.H.6.56. 8.E.4.3. 16.E.4.1.

In a Proprietate probanda, and a Writ to enquire for Waſt, the parties haue been receiued to take their challenges. (a) But paſſing ouer many things touching this matter, I will conclude with the ſaying of * Bracton, Plures autem aliæ ſunt cauſæ recuſandi iuratores de quibus ad præſens non recolo, ſed quæ iam enumeratæ ſunt, ſufficiant exempli cauſa. And ſo let vs returne to Littleton.

* Bracton, lib.4.fo.185.

¶ *De viſneto, &c.* It ſhould be Viceneto: Vicenetum is deriued of this word Vicinus and ſignifieth Neighbourhood, or a place neere at hand or a Neighbours place. And the reaſon wherefore the Iury muſt be of the neighbourhood, is for that Vicinus facta vicini præſumitur ſcire, all which is implied in this word (&c.)

¶ *Quod ſummoneat eos, &c.* Summoneo is compounded of Sub & moneo, & Euphoniæ gratia it is ſaid ſummoneo, to warne or ſommon, as in this caſe the Sheriffe muſt warne or ſummon the Recognitors of the Aſſiſe to appeare before the Iuſtices of Aſſiſe, &c. And it is truly ſaid (b) that in this caſe Legittimam ſummonitionem recipere, in propria perſona vbicunque inuentus fuerit in comitatu in quo fuerit res petita, qui quidem ſinon inveniatur ſufficit, ſi ad domicilium fiat, dum tamen alicui de familia ſua manifeſte fuerit relata, &c.

(b) Bracton lib.5.fo.333. 334. Mirr.cap.2.§.19. Fleta lib.6.ca.6. Britt.ca.121.

¶ *Per bonos ſummonitores.* Here two things are to bee obſerued. Firſt, that the ſummoners muſt be Boni (id eſt) fide digni vt valeant legittimum teſtimonium perhibere, cum inde per Iuſticiarios fuerint requiſiti. (c) And another ſaith, Fems, ne ſerfs, ne enfans, ne nul enfamys, ne nul que neſt fife tenant, ne poet eſte bone ſummoner. 2. It is ſpoken in the plurall number Per bonos ſummonitores, and therefore there muſt bee two at the leaſt. Nec ſufficit quod ſummonitio fiat per vnum tantum, &c. neceſſe eſt igitur quod per duos ad minus fiat, &c. There is alſo a ſummons of a tenant in a reall action, whereof, and of Pernors and Veiors you ſhall reade (d) plentifully and plainely in our bookes, whercunto being matter of courſe I referre you.

(c) Bracton, Britton, Fleta } Vbi ſupra.

(d) Bracton, Britton, Fleta, Mirror } Vbi ſupra.

(d) Regiſt.indicial.1.2.107. 43.E.3.32. 24.E.3.35. 3.E.3.48. 50.E.3.16. 8.H.6.1.b. F.N.B.97.

Item Summonitionum alia eſt Generalis, alia Specialis, whereof you ſhall finde excellent matter in our (e) old bookes, where you ſhall alſo reade at large De Sũmonitione, Præſummonitione, & Reſummonitione.

(e) Mirror, Bracton, Britton, Fleta } Vbi ſupra.

¶ *Facere recognitionem.* Cognitio is knowledge, or knowledgement or opinion, and Recognition is a ſerious acknowledgement or opinion vpon ſuch matters of fact as they ſhall haue in charge, and thereupon the Iurors are called Recognitores aſsiſæ, Vid.Sect.233 Recognitio taken for the confeſſion of the Tenant.

¶ *Pannell* is an Engliſh word, and ſignifieth a little part, for a Pane is a part, and a Pannell is a little part (as a Pannel of wainſcot, a Pannell of a ſaddle, and a pannell of Parchment wherein the Iurors names be written and annexed to the writ. And a Iury is ſaid to be impannelled, when the Sheriffe hath entred their names into the pannell, or little peece of Parchment in Pannello aſsiſæ.

Regiſter 223.

¶ *Briefe de droit.* Breue de Recto, Writs of right be of two natures 1. a Writ of Right, whereof Littleton here ſpeaketh, which is the higheſt writ of all other reall writs whatſoeuer, and hath the greateſt reſpect, &c. and the moſt aſſured and finall iudgement, and therefore this writ is called a Writ of Right right, and this in (f) old bookes is called Dreit dreit, and this writ Eſt darrein remedie de touts recoueries enter touts ordres des pleas, and the Iury in this writ is called Magna aſsiſa or magna Iurata, as Littleton here ſaith. 2. writs of Right in their nature, as the Rationabile parte, and Ne iniuſte vexes.

(f) Bracton Lib.5.fo.372. Britton fol.119. Fleta lib.6. ca.1. Glanuil lib.1 c.4.5.&c lib.2.ca.7. lib.12.cap.1

¶ *De Recto.* Rectũ, is a proper and ſignificant word for the right that any hath, and Wrong or Iniury, is in French aptly called Tort, becauſe Iniury & Wrong is wreſted or crooked, being contrary to that which is right and ſtreight. Now the Law that is Linea recta eſt index ſui & obliqui. And Britton * ſaith that Tort a la ley eſt contrarye, and as aptly for the cauſe aforeſaid is iniury in Engliſh called Wrong. And Iniuria is deriued of In and jus, becauſe it is contrary to right, ſo as A faire tort is facere tortum, and Fleta ſaith, (g) Eſt autem ius publicũ & priuatũ quod ex naturalibus præceptis aut gentium, aut ciuilibus eſt collectum, & quod in iure ſcripto ius appellatur, id in lege Angliæ rectum eſſe dicitur. And in the (h) Mirror and other places of the law it is called, Droit, as droit defend the Law defendeth.

* Britton, fo.116. Fleta lib.2.ca.1.

(g) Fleta.lib.6.ca.1. (h) Mirror, ca.2.§ 16. & cap.5.§.2.

¶ *En le regiſter.* Regiſter, is a moſt ancient booke of the common

Law

Law, and it is twofold, viz. Registrum breuium originalium, and Registrum breuium iudicialium. It is a French word and signifieth a memoriall of writs. Sometimes the Register of originall writs is called Registrum cancellariæ, because all originall writs doe issue out of the Chauncery, as Extra officinam Iustitiæ, for the antiquity and estimation of which booke, I referre the reader to the Epistle before the tenth part of my Commentaries. 13.E.1.ca.24. Pl.Com.228.b.

¶ *Magna Assisa eligenda*, Is a iudiciall writ to the Sherife to returne foure lawfull Knights before the Iustices there vpon their oathes to returne twelue Knights of the Vicenage to trie the Mise in a writ of Right.

¶ *Assise de common de pasture, &c.* Of what things an Assise of Nouel disseisin lay at the Common Law, and of what by the statute, you may reade at large in my (k) Reports in Iehu Webbes Case, where the Authorities of Law are plentifully cited, and they and the statute well explaned. But since Littleton wrote, a man may haue (l) an Assise of Nouell disseisin, Assise of Mordanc, or any Præcipe quod reddat, Quod ei deforceat, writs of Dower, or other writs originall, as the case shall require of Tythes, Pensions or other Ecclesiasticall or Spirituall profit, if he be disseised, deforced, wronged, or otherwise kept, or put from the same, which by the Lawes and Statutes of the Realme are made temporall, or admitted to be or abide in temporall hands, so as by the said Act a Lay man hauing tythes or offerings may either sue for the subtraction or with-holding of the same in the Ecclesiasticall Court, or at the Common law at his election. And seeing no speciall writ is giuen * by the statute, the partie must haue a generall writ of Assise de lebero tenemento, and make a speciall pleint. But his Præcipe must be Quod reddat omnes & omnimodas decimas maiores, mixtas, & minutas, infra Dale quoquo modo crescen' contingen' ac annuatim renouan', or the like, according to his case. (m) But neither Assise nor any Præcipe did lye of them as of Tythes or any other Ecclesiasticall dutie at the Common Law for the Assise brought of the Tenth part of all manner of Corne growing in C. acres of land after the Tythes of the Parson taken was a Lay profit Apprender, and no Ecclesiasticall duties. (k) *Lib.8.fo.45.* (l) 32.H.8.ca.7. * 7.E.6.Dier.83.&c. (m) 44.E.3.5. *Vid.Regist.165. Vid.le briefe de indicauit.W.2.ca.5. Continuatio sectatis ca. Vltimo. Bracton, lib.5.fo.402. Britton.fo.260. Regist. fo.25. 4.E.3.27.29. 16 E.3.quare Imp.147. Vid 2.H 3.tit.Grant.89.*

But Tythes or other Ecclesiasticall duties, that came to the Crowne by the statutes (n) of 27.H.8. 31.H.8. 37.H.8, and 1.E.6. are by those statutes and this of 32.H.8. and of 1 and 2. Ph. & Mariæ in the hands of Lay men temporall inheritances and shall be accounted Assets; and husbands shall be Tenants by the Curtesie, and wiues endowed of them, and shall haue other incidents belonging to temporall inheritances, only this Ecclesiasticall quality they haue, that the owner or possessor thereof may sue for the subtraction of the same in the Ecclesiasticall Court. (n) *27.H.8.of Monasteries not printed. 31.H.8.ca 13. 37.H 8.ca.4. 1 E.6.ca.14. 1.& 2. Ph.& Mar.ca.8. 2.E.3.ca.13.*

But by another (o) statute, remedy is giuen as well to the Lay person, as to the Ecclesiasticall person for subtraction of all manner of predtall Tythes, and he shall recouer the treble value if they be not tuftly deuided or set forth, and albeit the treble value be not expressly giuen to the proprietarie of the Tythes, yet forasmuch as he is the partie grieued, & he hath the propertie and interest in the tythes, the treble value is giuen to him, & whensoeuer a statute giueth a forfeiture or penalty against him which wrongfully detaineth or dispossesseth another of his duty or interest, in that case he that hath the wrong shall haue the forfeiture or penaltie, & shall haue an action therefore vpon the statute at the Common Law. and the King shall not haue the forfeiture in that case. And so it was (p) adiudged in the Exchequer vpon conference with other Iudges in an information for the treble value for not setting out of tythes in Islington in the County of Cambr. And if the proprietarie will sue for such subtraction of tythes in the Ecclesiasticall Court, then he shal recouer but the double value by the expresse words of the Act, wherein it is to be obserued, that the act of Parliament doth giue a temporall remedy at the Common lawe to Parsons and Vicars and other Ecclesiasticall persons for an Ecclesiasticall dutie, and to Lay men proprietaries of tythes the like remedy, but as it hath beene said, they haue election either to sue for the treble value at the Common Law, or for the double value in the Ecclesiasticall Court, or for subtraction of tythes there also. (o) 2.E.6.ca.13. (p) *Pasch.29.Eliz.betweene the Queene and Wood in the Exchequer, and is was resolued by all the Iudges vpon conference, Mich.4.Ia.Regis.*

¶ *Assise de Mordancester.* Assisa mortis antecessores. (q) This writ a man may haue after the decease of his immediate Ancestor, as where his father, mother, brother, sister, vncle or aunt died seised of any lands and an estranger abate, &c. (q) *Britton, fo.178.179.&c. Bracton, lib.4.tract.3. per totum, fo.252.&c. Mirror, ca.2.§.15. F.N.B.114.&c.*

¶ *Assise de darreine presentment.* Assisa vltimæ præsentationis, wherof you shall reade (r) plentifully in our bookes. (r) *Britton.ca.90.fo.222. Bract.lib 4.fo.238. Mirror vbi supra. F.N.B.195. Regist.orig.30.*

To these may be added Assisa vtrum or Iuris vtrum (f) which is the highest writ a Parson, Vicar, &c. can haue for the recouering of the Glebe land, &c. in right of his Church. But it may be demanded wherefore these originall writs, are called by the speciall name of Assises more then other originall writs, and here Littleton yeeldeth the reason, because that by these writs, it is commanded to the Sherife Quod summoneat 12. which is as much to say, as to common a Iury. So as in these cases, there is a Iury returned the first day, and they are to (f) *Bracton, fo.285.286. Britton.ca.95.fo.234. Mirror, vbi supra. F.N.B.48.49.*

appeare as ſoone as the Defendant. And becauſe by theſe Writs a Jury is to be returned the Law calleth them Aſſiſes, Ab effectu, becauſe an Aſſiſe (which in this ſence ſignifieth a Jury) is to be returned. But beſide the ſignification of the Writ * of Aſſiſe whereof Littleton here ſpeaketh, it ſignifieth the whole proceeding vpon the Writ.

* *Mag. Chart. ca. 12. And W. 2. ca. 25.*

In other originall Writs regularly no Jury is to be returned before the appearance of the parties and an iſſue ioyned betweene them, and therefore theſe other originalls are not called Aſſiſes.

¶ *Pur vn ordinance.* Here Aſſiſa ſignifieth, an Ordinance, &c. Ordinance, Ordinatio is deriued of the verbe Ordinare, To ordaine or ſet in order. And note, an Act (r) of Parliament (as Littleton here proueth) is an Ordinance, for it ſets downe orders which are to be kept as Lawes: and ſo is Ordinatio Foreſtæ, Ordinatio de Inquiſitionibus, and Ordinatio contra Seruientes, and other Statutes many times called Ordinances, and it is ſaid almoſt in euerie Act of Parliament, Be it therefore ordained, &c. by authoritie of this Parliament, or the like. But e conuerſo euerie Ordinance is not a Statute, as that of 8. H. 6. cap. 29. for euerie ſtatute muſt be made by the King, with the aſſents of the Lords and Commons, and if it appeare by the Act, that it was made by two of them onely, it is no ſtatute.

(r) 19. H. 3. *Iuris vtrum* 16. 39. E. 3. 1. 7. 42. E. 3. 38. 27. E. 3. 7. *Regiſt. orig.* 189 33. E. 1. 5. R. 2. *ca.* 2. *Vid. li.* 8. *le Princes caſe.*

The example put by Littleton, is Aſſiſa panis & ceruiciæ, (ſ) This Ordinance was made at a Parliament holden anno 51. H. 3. and the like Ordinance was made, entituled Aſſiſa ceruiciæ, which you may ſee in old Magna Charta fol. 57. b. (t) And ſo Aſſiſa de Clareden, which was in 10. H. 2. and Aſſiſa Foreſtæ, ordained in anno 34. E. 1. and ſuch like. And aptly an Ordinance of Parliament Antiquitie hath called an Aſſiſe, for that an Act of Parliament doth ordaine ſuch a certaine order, as nothing can be done more or leſſe by right. (u) And Fleta ſaith, Et habet rex in poteſtate ſua, vt leges & conſuetudines & aſſiſas in regno ſuo prouiſas & approbatas & iuratas, &c. Where Aſſiſes are taken for ſtatutes, which are the effects of the Seſſions of Parliament.

(ſ) *Mar. ca.* 1. §. 13. *& ca.* 4 *de Articles de Ere. Bract. li.* 3. *fo.* 136. (t) *Stanf. fo.* 118. *Mir. ca* 2. §. 15. *Houeden* 313. *Regiſt. orig.* 279. (u) *Flet. li.* 1. *ca.* 17.

De ponderibus & menſuris, Of Weights and Meaſures is a moſt neceſſarie learning to be knowne, and daily in vſe, but it belongeth not to this Treatiſe. In ſome other (if God ſo pleaſe) ſomewhat ſhall be ſayd of them.

Section 235.

¶ *Et le tenant attorna.* Here it appeareth that an Attornament (that is an Agreement to the grant) is no ſeiſin of the rent.

¶ *Il ne ad aſcun remedie, &c.* which is as much to ſay, as hee hath not any remedie either at the Common Law, or in any Court of equitie, which is worthie of obſeruation.

See more of this in the Chapter of Attornment Sect. 565.

¶ *Voile doner al grantee vn denier, ou vn maile, &c. en noſme de ſeiſin de rent, &c.* Here it is to be obſerued, that payment of any money in name of ſeiſin of the rent, before any rent become due, is a good ſeiſin of the rent to haue an Aſſiſe when it is due, and that which is giuen in the name of ſeiſin of the rent, worketh his

¶ Item ſi ſoit ſeignior & Tenant, & le Seignior granta le rent ſon tenant per ſon fait a vn auter, ſauant a luy les ſeruices, & l' Tenant atturna, ceo eſt vn Rent Secke, come eſt dit adeuant. Mes ſi l' rent a luy ſoit denie al prochein iour de payment, il ny ad aſcun remedie, pur ceo que il auoit ō ceo aſcun poſſeſſiō. Mes ſi le Tenant quaunt il atturna al grantee, ou apres, voile doner al grantee vn denier, ou vn maile, &c. en noſme

ALſo if there bee Lord and Tenant, and the Lord granteth the rent of his Tenant by Deed to another, ſauing to him the other ſeruices, and the Tenant atturneth, that is a Rent ſecke, as it is aforeſaid But if the rent be denied him at the next day of payment, hee hath no remedie, becauſe that he had not thereof any poſſeſſion. But if the Tenant when he atturneth to the Grauntee, or afterwards, will giue a penie or a halfe-penie to the Grauntee in

noſme de ſeiſin de le rent, donques ſi apres a le procheine iour de payment le rent a luy ſoit denie, il auer Aſſiſe de Nouel Diſſeiſin. Et iſſint eſt lou hõe granta per ſon fait vn annual rẽt iſſuant hors de ſa terre a vn auter, &c. ſi le Grantor adonques ou apres paya al Grantee vn denier, ou vn maile en noſme de ſeiſin de le rent, donques ſi apres al procheine iour de payment le rent ſoit denie, le Grantee poet auer aſſiſe, ou autrement nemy, &c.

name of Seiſin of rent, then if after at the next day of payment the Rent bee denied him, hee ſhall haue an Aſſiſe of *Nouel Diſſeiſin*. And ſo it is, if a man graunt by his Deed a yearely Rent iſſuing out of his land, to another, &c. if the Grauntour then after pay to the Grauntee a penie or an halfe-pennie in name of Seiſin of the Rent, then if after the next day of payment the Rent bee denied, the Grauntee may haue an Aſſiſe, or elſe not, &c.

effect to giue ſeaſon, and yet is no part of the rent, nor ſhal be abated out of the rent: but you ſhall read more hereof hereafter, Sect. 565.

¶ *Vn denier, ou vn maile, &c.* Heere by this (&c.) is implied, that ſo it is of the gift of a Sheep, or an Oxe, or a Ring, or a paire of Gloues, or a pound of Pepper, or of any valuable thing.

¶ *Iſſint ſi home grãt per ſon fait vn annual rent iſſuant hors de ſon terre a vn auter, &c.* By this (&c.) is implied, that the grant and deliuerie of the Deed is no ſeiſin of the rent: and that a ſeiſin in law, which the Grantee hath by the grant is not ſufficient to maintaine an Aſſiſe, or any other reall Action, but there muſt be an actuall Seiſin.

Sect. 236.

¶ Item de Rent ſecke, home poet auer Aſſiſe de Mortdancester, ou Briefe de Ayel, ou de Coſinage, & touts autres manners dactions Reals, come la caſe giſt, ſicome il poet auer daſcun autre rent.

ALſo of Rent ſecke a Man may haue an Aſſiſe of *Mortdaunceſter*, or a Writ of *Ayel* or *Coſinage*, and all other manner of Actions realls, as the caſe lieth, as hee may haue of any other Rent.

¶ *Briefe de Ayel.* Breue de Auo. This writ lieth where the Grandfather or Grandmother was ſeiſed of any land in fee the day that he died, and an eſtranger abate, the heyre ſhall haue this Writ. (w) And if the great Grandfather, Beſaiel, Proavus, or great Grandmother Beſaieles Proauia, be ſeiſed, as is aforeſayd, and die, &c. the heire ſhall haue a Writ De Baſaiel, proauo, or beſaiels, proauia, &c.

Bract. li.2. fo.67. Brit. cap.89. & c.76. Flet. li.5.c.7,8. &c. F.N.B.221.

(w) 6.E.3.34. 7.E.3.46. Regiſt.226. F.N.B.221.a.b. Brit.ca.76.

¶ *Briefe de Coſinage.* Breue de Conſanguinitate. (a) This writ lieth where the great Grandfathers father, Tritavus, (id eſt) tertius avus, or abavus, (id eſt) avus auí was ſeiſed as is aforeſayd, or where grandfathers or grandmothers mother, &c. vt ſupra. And ſo it is of the ſeiſin of the brother of the grandfathers grandfather, &c.

(a) *Bract. li.2 fo 67. Brit.ca.89. & ca.76. Flet l.5. ca.7,8. F.N.B.221.*

¶ *Rent ſecke.* And ſo it is of a Rent charge to all reſpects.

¶ *Et touts auters manners dactions reals.* Hereupon ſome haue gathered, that a man ſhall haue a Writ of Right of a rent ſeek, or of a rent charge, albeit they be againſt common right. But that which hath beene ſayd by Littleton of an Aſſiſe of Mortdaunceſter, a Writ of Ayel, Coſinage, and other Actions realls, is to be vnderſtood after Seiſin had by ſome of the Anceſtors of the Demandant, for without an actuall ſeiſin, or a ſeiſin in Deed, none of theſe are maintainable.

15.E.2. Hont de ſon fee 27. 3.E.3.35. 4.E.3. Droit 31. F.N.B.6. 14.E.4.5. Diuerſitie des Courts 117. 33.E.3. Iudgm. 252.

Sect.

Section 237

¶ R *Eſcous.* Reſcuſſus is here deſcribed by Littleton: It is an antient *French* word comming from Reſcourrer, (id eſt) Recuperare, that is, to take from, to reſcue, or recouer. Reſcous is a taking away, and ſetting at libertie againſt law, a diſtreſſe taken, or a perſon arreſted by the Proceſſe or courſe of Law. And all is one, as the point of the Diſſeiſin to reſcue, the diſtreſſe after it is taken, and before hand to reſiſt and withſtand the taking of it, but yet it is no Reſcous vntill it bee diſtreyned. And therefore you may make ſire Diſſeiſins of a Rent ſeruice: Reſcous of a diſtreſſe, reſiſtance to diſtreyne, Repleuin, Incloſure, Counterpleading of the title, and vouching of a Record, and failing. If the Tenant reſcue the diſtres, and after is diſſeiſed of the Tenancie, yet the Aſſiſe lieth againſt him, for the diſſeiſin done of the Rent by the Reſcous.

18.E.3.3. 44.E.3.20.b. 20.H.7.1.a. 21.H.7.40.a. F.N.B.102.b. 6.H.6. Diſſeiſin 9. 4.E.2. Aſſ.43. 8.E.1. ibid.416. W.2.cap.6. 12.H.7.Kelway 20.

¶ *Pur ſon rent arere.* Here Littleton decideth an antient queſtion in our Books, (p) viz. That the rent muſt be behind, or elſe the Tenaunt may make Reſcous: for if no rent be behind when the Diſtreſſe is taken, how can the Reſcous amount to a diſſeiſin of the rent when none is due? And ſo it is, if the Tenaunt reſiſt the Lord to diſtreyne, when there is no rent behind, this can be no diſſeiſin of the rent for the cauſe aboue ſayde, and this (as it appeareth by Littleton) holdeth as well in caſe of a rent ſeruice betweene Lord and Tenant, as in caſe of a Rent charge, &c. And ſo I heard Sir Chriſtopher Wray Chiefe Juſtice ſay, That he had adiudged it: And that which the Tenant may doe when there is no rent behind, may a ſtranger doe, if his beaſts be diſtrained. If the Tenaunt tender the rent to the Lord when he is to take the diſtreſſe, if notwithſtanding the Lord will diſtreyne, the Tenant may make reſcous. If the rent of the Lord be behind, and the Lord diſtreyne the Cattell of the Tenant in the highway within his fee, the Tenant may make Reſcous,

(p) 6.R.2.Reſcous 19. 40.E.3.33. 31.E.3.Reſcous 17. 22.H.6.2.b. 6.E.4.11.b. 7.E.4 20. 5.E.4.8. 34.H.6.47. F.N.B.102.E. 2.H.4.21.16. 4.E.6.Diſtres Br.24.39.E.3.35.39.H.6.7 Lib.4.fo.11.Bevills Caſe. 8.H.4.1.

7.E.4.24.

17.E.3.43. *Vide tit. Reſcous* 14.

¶ Item, ſont trois cauſes de Diſſeiſin de Rent Seruice, ſ, Reſcous, Repleuin, & Encloſure: Reſcous eſt, quaunt le Seignior en la terre tenus de luy diſtrein p ſ rent arere ſi le diſtres ô luy ſoit reſcous: ou ſi le ſeignior vient ſur la terre, & voile diſtreyner, & le Tenant ou auť home ne luy voile ſuffer, &c. Repleuin eſt, quant le Seignior ad diſtreyne, et Repleuin ſoit fait ô les diſtreſſe per Briefe, ou per Plaint. Encloſuť eſt, ſi les Terres ou les Tenements ſont iſſint encloſes, que le Seignior ne poyt bener deins les tres ou tenements pur diſtreyñ. Et la cauſe pur que tiels choſes iſſint faits ſont diſſeiſins al Seignior, eſt pur ceo que per tiels choſes le Seignior eſt diſturbe de le meane per que il doit auoire & bener a ſon rent, ſ, de le diſtreſſe.

ALSO there bee three cauſes of Diſſeiſin of Rent Seruice, that is to ſay, Reſcous, Repleuin, and Encloſure: Reſcous is when the Lord diſtraineth in the land holden of him, for his rẽt behind, if the diſtreſſe be reſcued from him, or the Lord come vpon the land, and will diſtreyne, and the Tenant or another man wil not ſuffer him, &c. Repleuin is, when the Lord hath diſtrained, and Repleuin is made of the diſtreſſe by writ or by Plaint. Encloſure is, if the lands and tenements bee ſo encloſed, that the lord may not come within the Lands and tenements for to diſtreyne. And the cauſe why ſuch things ſo done be Diſſeiſins made to the Lord, is for this, that by ſuch things the Lord is diſturbed of the meane by which he ought to haue come to his rent, s. of the diſtreſſe.

ſcous, for that it is defended by Law to diſtreine in the high way. And by the ſame reaſon if the Lord will diſtreyne aueria carucæ, where there is a ſufficient diſtreſſe to bee taken beſides, or if the Lord diſtreyne any thing that is not diſtreynable eyther by the Common Law, or by any Statute, the Tenant may make reſcous.

Note, there is a Reſcous in Deed and a Reſcous in Law: of a Reſcous in Deed ſomewhat hath already beene ſpoken. A Reſcous in Law is when a man hath taken a diſtreſſe, and the cattle diſtreyned as he is driuing of them to the Pound goe into the Houſe of the Owner, if hee that tooke the diſtreſſe demaund them of the Owner, and hee deliuer them not, this is a Reſcous in Law, and ſo of the like. 3.E.3 *Reſcous.12.*

And euery word of Littleton is materiall, for he ſayth;

¶ *En la terre tenus de luy* **And therefore if the Lord diſtreine out** of his fee in Lands not holden of him, the Tenant may make reſcous, vnleſſe it bee in ſome ſpeciall Caſes.

As if the Lord come to diſtreine Cattle which hee ſeeth then within his fee, and the Tenant or any other to preuent the Lord to diſtreine, driue the Cattle out of the fee of the Lord into ſome place out of his fee, yet may the Lord freſhly follow, and diſtreyne the Cattle, and the Tenant cannot make reſcous, albeit the place wherein the diſtreſſe is taken, is out of his fee, for now in iudgement of Law the diſtreſſe is taken within his fee, and ſo ſhall the Writ of of Reſcous ſuppoſe. 44.E.3.20.6.R.2.*Reſcous* 11 11.H.7 4.21.H.7.40.34.H. 6.18.16.E.4.10.*lib.9 fol.*22 *in caſe de auowrie.*

But if the Lord comming to diſtreyne had no view of the Cattle within his fee, though the Tenant driue them off purpoſely, or if the Cattle of themſelues after the view goe out of the fee, or if the Tenant after the view remoue them for any other cauſe, then to preuent the Lord of his diſtreſſe, then cannot the Lord diſtreyne them out of his fee, and if he doth, the Tenant may make reſcouſe.

If a man come to diſtreyne for Damage Feaſant, and ſee the beaſts in his ſoyle, and the Owner chaſe them out of purpoſe before the diſtreſſe taken, the Owner of the ſoyle cannot diſtreyne them, and if he doth the Owner of the Cattle may reſcue them, for the beaſts muſt be Damage Feaſant at the time of the diſtreſſe, and ſo note a diuerſitie. 16.E.4.10.2.E.2.*auowrie.* 182.*lib.9. vbi ſupra.*

There is a diuerſity (a) betweene a Warrant of Record, and a Warrant, or an Authority in Law, for if a Capias be awarded to the Sheriffe to arreſt a man for Felony, albeit the party be innocent, yet cannot he make reſcous. But if a Sheriffe, will by authority which the Law giueth him, arreſt any man for Felony which is not guiltie, he may reſcue himſelfe. (a) 14.H.7.20.*tit. Iuſtices de Peace.9.*

¶ *Replenin*, (b) **Is deriued of** Replegiare **to redeliuer to the Owner** vpon pledges or ſuretie. (b) *Britton fol.*108. *Fleta lib.* 4.*cap.*1. *Mirror.cap.*2.§.15.

(c) Alſo to counterplead the Plaintife in an Aſſiſe by which hee is delayed, maketh him that pleadeth it a Diſſeiſor. Otherwiſe it is, if he had pleaded Nul tort, &c. (c) 24.*Aſſ.*3.29.*Aſſ.*32. *Fleta lib.*4.*cap.*1. *Britton fol.*108.

¶ *Excloſer*, **Is here alſo deſcribed, and need no other explication**, for the Lord cannot (d) breake open the gates, or breake downe the Incloſures to take a diſtreſſe, and therefore the Law accounts it a diſſeiſin. But all theſe are intended by Littleton to be diſſeiſons after an actuall ſeiſon had, and when the Rent is behind, otherwiſe none of theſe are diſſeiſons at all. (d) 10.E.3.9.49.E.3.14. 7.E.3.3.11.H.7.28.8.*Aſſ.* 18.10.E.4.2.

But wherefore ſhould a Reſcous of the diſtreſſe by the party himſelfe, or a Repleuine which is a redelluery of the diſtreſſe by the Sheriffe by the courſe of Law to the partie be any diſſeiſin of the Rent Seruice? Littleton doth here yeeld the true reaſon, becauſe that by the Reſcue, and by the ſuing of the Repleuyn, the Lord is diſturbed of the meane by the which he ought to haue and come to his Rent, viz. of the diſtreſſe. *Bracton lib.*4.*fol.*161.204. *Britton fol.*108. *Fleta lib.*4.*cap.*1.

And ſo it is of an Incloſer, for hee that diſturbes a man of the meane diſſeiſeth him of the thing it ſelfe. (e) As the turning of the whole ſtreame that runnes to a Mill is a diſſeiſin of the Mill it ſelfe. (e) 9.*Aſſ.*19.*Mirr.ca.*2.§. 15.*Britt.fol.*108.114.178. 141.

So it is if a man be diſturbed to enter and manure his Land, (f) this is a diſſeiſin of the Land it ſelfe: For Qui adimit medium dirimit finē And qui obſtruit aditum deſtruit cōmodum. (g) And therefore where it is ſaid that a man ſhall not bee puniſhed for ſuing of Writs in the Kings Court, be it of right or wrong, it is regularly true, but it fayleth in this ſpeciall caſe of the Writ of Repleuy for the cauſe aforeſaid. (h) But Denier is no diſſeiſin of a Rent Seruice without reſcous or reſiſtance. (f) 26.*Aſſ.*17.3.E.4.2.*per Littl.* 49.E.3.14 b. (g) *F.N.B* 42.g.22.E.3.15 43.*Aſſ.*40. 43.E.3.20.*ſaue iudg.*10.8.E.4.15.*per Moyle.* 2.R.3.19. (h) 5.E.3.75. 8.H.6.11.

Sect. 238.

Britton ubi supra. Fleta lib.4.cap.2.

SOnt 4. *causes de disseisin de Rent Charge.* And you may adde a fifth, viz. Resistance to Distreyne, Counterpleading and Vouching a Record and sayler thereof, as hath beene said before.

CET sont 4. causes de disseisin de rent charge, scilicet, Rescous, Repleuin, Enclosure, & Denier, car Denier est vn disseisin de Rent charge, come est auantdit de rent Seck.

AND there bee foure causes of disseisin of a Rent Charge. *scz.* Rescous, Repleuin, Incloser, & Deniall. For Denyall is a disseisin of a Rent Charge, as is said before of a Rent Secke.

C Denier. Denyall is a disseisin of a Rent Charge, aswell as of a Rent secke, alb it he may distreyne for the Rent Charge, aswell as for a Rent Seruice. Nota, That when Bookes say that a detayner of a Rent Charge or Secke is a Disseisin, it must be intended vpon a demand made.

14.E.4.4.35.H.6.7.3.Ass.8 20.E 3.9.40.E.3.243.H.5. 35.3.E.3.75.29. ff 51. 39. ff.4.40.Ass 4.13 E.1. Assis.404.3.Ass.8.H.6.11 18.E.3.Assise78.

If there bee two ioynttenants, and the grantee of a Rent Charge distreyne for the Rent, and one of them make Rescous, they are both disseisors, for a distresse for the rent is a demand in Law, and then the Non-payment is a denyall and a disseisin, but he that made the Rescous is only the Disseisor with force.

Section 239.

49.E.3.15.29. Ass 5. 36. ff 7 10 E.3. 19.33.H. 6.33. 35.H.6.7.b.

CThe reason wherefore Inclosure is a disseisin of a Rent Secke, is because the Grantee cannot come vpon the land to demand it.

CET deux sont causes de disseisin de Rent Seck, cestascauoir, denier & enclosure.

AND there be two causes of disseisin of a Rent Secke, that is to say, denyall and inclosure.

Section 240.

(*) *Fleta lib.1.cap.42. 49.E.3.14.49.Ass.5. 29.Ass.49.*

CF *Orstalla.* (*) Forestallamentum, signifieth Obtrusionem viæ vel impedimentum transitus, &c.

C Oue force & armes. Vi & armis.

(i) *Vide Sect.431.*

Force, vis in (i) the Common Law is most commonly taken in ill part, and taken for vnlawfull violence, for Maxime paci sunt contraria vis & iniuria. And therefore Britton said well, speaking in the person of the King, Nous voulons que touts gents pluis vseant iudgement que force Arma. Armes in the Common Law signifieth any thing that a man striketh or hurteth

CET il semble que il y ad vn auter cause de disseisin de touts les trois seruices auantdits, cestascauoir, si le seignior soit en alant a la terre tenus de luy pur distreyner pur le Rent arere, & le Tenant ceo oyant, luy encounter, & luy forstala la voy ouesque force & armes, ou luy manace en tiel forme que il ne osast bener

AND it seemeth that there is another cause of disseisin of all the three seruices aforesaid, that is, if the Lord is going to the Land holden of him for to distreine for the Rent behind, and the Tenant hearing this, encountreth with him, forestalleth him the way with force and armes, or menaceth him in such forme, that

vener a ſa terre pur diſtreiner, p̃ ſon rent arere pur doubt de mort, ou mutilation de ſes members, ceo eſt vn diſſeiſin, pur ceo que le Seignior eſt diſturbe de le meane, per que il doit vener a ſon rent. Et iſſint eſt ſi p̃ tiel forſtalment ou manace, celuy que ad vn rent charge ou rent ſecke eſt forſtalle, ou ne oſaſt vener a la terre a demaunder le rent arere, &c.

hee dare not come to the land to diſtreine for his rent behinde, for doubt of death, or bodily hurt, this is a diſſeiſin, for that that the Lord is diſturbed of the meane whereby hee ought to come to his rent. And ſo it is if by ſuch foreſtalling or menacing, hee that hath rent charge, or rent ſecke is foreſtalled, or dare not come to the land to aske the rent behinde, &c.

Withall; (k) Omnes illos dicimus armatos qui habent cum quo nocere poſſunt. Telorum autem appellatione omnia in quibus ſinguli homines nocere poſſunt accipiuntur. Sed ſi quis venerit ſine armis & ipſa concertatione ligna ſumpſerit, fuſtes & lapides, talis dicetur vis armata, ſed ſi quis venerit cum armis, armis tamen ad dejiciendum non vſus fuerit, & dejecerit, vis armata dicitur eſſe facta, ſufficit enim terror armorum vt videatur armis dejeciſſe. **And** Armorum quedam ſunt tuitionis (& quod quis ob tutelam corporis ſui vel ſui juris fecerit, juſte feciſſe videtur) quædam pacis & Iuſtitiæ, quædam perturbationis, pacis & iniuriæ, quædam vſurpationis rei alienæ. **Againe**, Armorum quædam ſunt moluta, & quædam quæ faciunt Bruſuram, &c. Arma moluta plagam faciunt, ſicut gladius, biſacuta & huiuſmodi; ligna verò & lapides Bruſuras orbes, & ictus, &c. **To conclude this, it is truly ſaid, that** Armorum appellatione non ſolum ſcuta & gladij & galeæ continentur, ſed & fuſtes & lapides, **as the Poet ſaith:**

(k) *Bracton lib.4.fol.162. et lib.3.fo.144. Fleta lib.4. cap.4.*

Iamque faces & ſaxa volant, furor arma miniſtrat. *Virgil 1. Æneid.*

Sed vim vi repellere licet, modo fiat moderamine inculpatæ tutelæ non ad ſumendam vindictam, ſed ad propulſandam iniuriam.

¶ *Pur doubt de mort & mutilation de ſes members.* **For it muſt not be** Vagus & vanus timor, ſed talis quæ cadere poſſit in virum conſtantem, & non in hominem vanum & meticuloſum, talis enim debet eſſe metus qui in ſe continet mortis periculum & corporis cruciatum. Littleton **here ſaith it muſt be for feare of death,** * **or mutilation of members** Et nemo tenetur exponere ſe infortunijs & periculis. **And therefore a foreſtallment with ſuch a menace is a diſſeiſin; not only** (ſaith Littleton) **of a Rent ſeruice, but alſo of a Rent charge and Rent ſecke. Theſe be all the diſſeiſins of a rent that our Author ſpeakes of. See hereafter** (l) **where a diſſeiſin ſhall be by way of admittance of the owner of the Rent. And** Littleton doth adde the binding reaſon in caſe of **Foreſtalment, becauſe the Lord is diſturbed** of the meane **by which he ought to come to his rent, whereof there hath beene ſpoken ſufficient before, aſwell in caſe of the Rent charge and Rent ſecke, as of the Rent ſeruice,**

Bracton lib.2.16 Britton fo.19. et 88. Fleta lib.3. cap.7.

(*) *See of this in the Chapter of Diſcents 49.E.3.14.49.Aſſ.5. 29.Aſſ.42. &c.*

(l) *Vide Sect.589.*

¶ *&c.* **Of the** (&c.) **in the end of this** Section, **and what is implied therein, ſufficient hath beene ſpoken before.**

Now hath Littleton ſpoken of remedies for the recouery of the arrerages of rents. **But** ſince Littletons **time a right profitable ſtatute** * **in the 32. yeare of H.8. hath beene made for the** recouery of arrerages of rents in certaine caſes **where there lay no remedy at the Common Law, and giueth further remedy in ſome caſes where at the Common Law there was ſome remedy, which Statute hath beene well and beneficially expounded, and hereupon eight things are to be obſerued. Firſt, when** Littleton **wrote, the Heires, Executors or Adminiſtrators of a man ſeiſed of a Rent ſeruice, Rent charge, Rent ſecke, or Fee farme in fee ſimple or fee taile had no remedy for the arrerages incurred in the life of the owner of ſuch rents: But now a double remedy is giuen to the Executors or Adminiſtrators for payment of debts, &c.** viz. either to diſtreine, or to haue an action of debt.

(*) *32.H.8. cap.37.*

Lib.4.fo.49. co.a. Ognells caſe 40.E.3. Execution 98 45.E.3.ibid.71. 9.H.6.43. 14.H.8 20. 19.H.6.43. 34.H.6.20. 32.E.3. Det.9. 9.H.7.17. 19.E.3. Iuriſdiction 22.

2. That the preamble of the ſtatute concerning Executors or Adminiſtrators of Tenant for life is to be intended of Tenant pur auter vie ſo long as ceſtuy que vie liueth. Who are alſo holpen by the ſaid double remedy: but after the eſtate for life determined, his Executors or Adminiſtrators might haue had an action of debt by the Common Law, but they could not haue

(m) 23.Eliz.Dier.375.

diſtreyned, which now they may doe by force of this ſtatute, for in that point it addeth (m) an other remedy, then the Common Law gaue.

3. If a man make a Leaſe for life or liues, or a gift in tayle reſeruing a rent, this is a Rent ſeruice within this ſtatute.

26.E.3.64. 11.H.4.fo.vltimo. Ognels caſe. vbi ſupra. & lib.7.fo.39.b. Lillingtons caſe.

4. The diſtreſſe is the more plaine and certaine remedy, then the action of debt, for the action of debt muſt be brought againſt them that tooke the profits when the rent became behinde or againſt their Executors or Adminiſtrators; but the diſtreſſe may be taken vpon the land, be it either in the Tenants owne hands or in the hands of any other that claymes by or from him, (that is by interpretation vnder him) by purchaſe, gift or diſcent, and theſe words, Clayming only by and from him, are to be vnderſtood clayming only from or vnder him by purchaſe, gift or diſcent, and not paramount or aboue him, as the Lord by eſcheate claymeth not vnder the tenant by purchaſe, gift, or diſcent, but by reaſon of his ſeigniory which is a title paramount.

5. If there be Lord and Tenant, and the rent is behinde, and the Lord grant away his Seigniory, and dyeth, the Executors ſhall haue no remedy for theſe arrerages, becauſe the grantor himſelfe had no remedy for them when he dyed in reſpect of his grant, and the ſtatute is (in like manner as the Teſtator might or ought to haue done) Et ſic de ſimilibus, for the act giueth no remedy when the Teſtator himſelfe hath diſpenced with the arrerages or had no remedy when he dyed.

6. If the Tenant make a Leaſe for life the remainder for life, the remainder in fee, the Tenant for life payes not the rent due to the Lord, the Lord dyeth, the Tenant for life dyeth, the Executors cannot diſtreyne vpon him in remainder, becauſe he claymes not by or from the Tenant for life. And ſo it is of a reuerſion for the cauſe aforeſaid. But if a man grant a Rent charge to A. for the life of B. and letteth the lands to C. for life, the remainder to D. in fee, the rent is behinde by diuers yeares, B dyeth, and after C. dyeth, A. may diſtreyne D. in remainder for all the arrerages, by the latter branch of the Statute of 32.H.8. and this diuerſitie riſeth vpon the ſeuerall pennings of the former branche and of this later, which you may reade in the ſtatute it ſelfe, and ſo expounded and adiudged (o) in Edridges caſe, and the latter clauſe giueth the leſſer eſtate the greater remedy.

(o) Lib.5.fo.118. Edridges caſe.

7. For the Arrerages of a Nomine pœnæ, and for reliefe, or for ayde, Pur faire fits chiualer, or Pur file marier this ſtatute * giueth no remedy, For, for the arrerages of the Nomine pœnæ, the Grantee himſelfe may haue an action of debt, and conſequently his Executors or Adminiſtrators, and yet the Nomine pœnæ as an incident to the rent ſhall diſcend to the heire: For reliefe the Lord cannot haue an action of debt but diſtreyne, but his Executors by (p) the Common Law ſhall haue an action of debt, for it is no rent but a caſuall improuement of ſeruices for the ſaid Aides, if the Lord doth leuy them, the ſonne and the daughter reſpectiuely ſhall haue an action of debt againſt the Executors or Adminiſtrators of the Lord, and if they haue nothing, then againſt the heire, but this is by the ſtatute (q) of W.1. Note that all manner of arrerages of rents iſſuing out of a Freehold or inheritance whether they be in money or corne, cattell, fowle, pepper, Compn, victuall, ſpurres, gloues, or any other profit to be deliuered or peeld, & whether they be annuall or euery 2.3. or 4. yeares, &c. or the like are within this ſtatute, but worke dayes, or any corporall ſeruice or the like are not within this ſtatute.

* 40.E.3.3.b. 11.H.4.85. 14.E.4.4. 20.H.7.1.a. 28.H.8.Dier 24.
(p) 34.E.1. Anowrie 233. F.N.B.122. 10.H.6.11. 11.H.6.8. Mich.32.H.8. Rot.429. Leakes caſe. Ognels caſe vbi ſupra. 3.E.3.Debt 157.
(q) W.1. ca.36. F.N.B.82.122.

8. A feme ſole is ſeiſed of a rent in fee, &c. which is behinde and vnpaid ſhe taketh husband, the rent is behinde againe, the wife dyeth, the husband by the Common Law ſhould not haue the arrerages growne due before the mariage, but for the arrerages become due during the couerture the husband might (r) haue an action of debt by the Common Law, but now this ſtatute * by a particular clauſe giueth the husband the arrerages due before mariage, and the ſaid double remedy for the ſame, and that he may diſtreyne for the arrerages growne due during the couerture, ſo it giueth him that which he could not haue before, and further remedy for that, which the Common Law gaue him, and ſo it hath beene (ſ) adiudged.

(r) 26.E.3.64 10.H.6.11. * 23.H.6.25.F.N.B.121.

(ſ) Hil.17.Eliz.Rot.457. inter Sharpe & Pele. Vid. Ognells caſe vbi ſupra.
(t) 19.E.3.Iuriſdiction 22.

The Biſhop of (t) Norwich had the firſt fruits of all the Clergie within the Dioceſſe at euery auoydance, the Church became voyde, & another Parſon became Incumbent, who payd the Biſhop parcell of his Firſt fruites according to the taxation of the Church, and for the reſt hee had a day giuen vnto him to pay it, the Biſhop dyed, the reſidue was not payd, wherenpon his Executors brought an action of debt, and it is adiudged that no action doth lye, becauſe it is a meere ſpirituall thing and no lay contract, and therefore the Court had no iuriſdiction to hold plea of it. I haue beene the longer in the expoſition of the ſaid Statute, for that it is a generall caſe, and doth concerne moſt part of the Subiects of England.

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Finis libri ſecundi.

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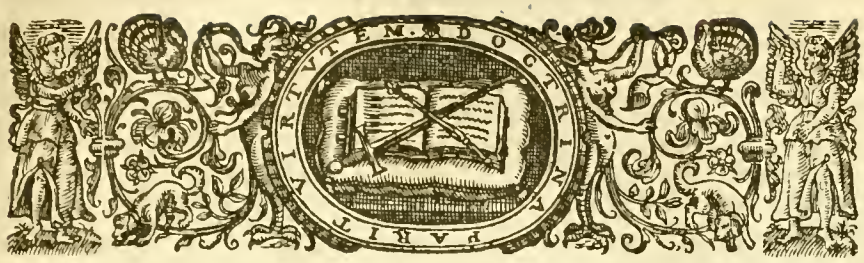

THE THIRD BOOKE of the first part of the Institutes of the LAWES of ENGLAND.

CHAP. I. *Of Parceners.* *Sect.* 241

PArceners ſont en deux maners, ceſtaſcauoir, Parceners ſolonq; le courſe del Common ley, & Parceners ſolonque cuſtom. Parceners ſolonque le courſe del cõmon ley ſont, lou hõe ou feme ſeiſie de certaine terres ou tenements en fee ſimple, ou en taile, nad iſſue forſq; files et deuie, et les tenements diſcendont a les iſſues, et les files entront en les terres ou tenements iſſint

PArceners are of two ſorts (to wit) Parceners according to the courſe of the Common Law, and Parceners according to the cuſtome. Parceners after the courſe of the Common Law are where a man or woman ſeiſed of certaine lands or tenements in fee ſimple or in taile, hath no iſſue but daughters & dieth, & the tenements diſcend to the iſſues, and the daughters enter into the lands or tenements

OVr Author hauing treated in his two former bookes, firſt of eſtates of Lands and tenements, and in his ſecond booke of Tenures whereby the ſame haue beene holden: Now in his third booke doth teach vs diuers things concerning both of them, as firſt the qualities of their eſtates. 2. In what caſes the entry of him that right hath, may bee taken away. 3. The remedies, and in what caſes the ſame may be preuented, or auoyded. 4. How a man may be barred of his right for euer, and in what caſes the ſame may be preuented or auoyded. For the firſt he hauing ſpoken of ſole eſtates deuideth the quality of eſtates into Indeuided, & Conditionall. Indeuided, into coparcenary, ioyntenancy and tenancy in common. Coparcenary into parceners by the Common

Common Law, and Parceners by the Cuſtome, and how beginneth his third booke with Parceners claiming by diſcent, which comming by the act of Law, and right of bloud, is the nobleſt and worthieſt meanes whereby lands doe fall from one to another. Conditionall, into conditions expreſſe or in deed, and Conditions in Law. Conditions in deed, into Gages, which he diuideth into Vadia mortua, and Vadia viua. Vadia mortua, ſo called becauſe either money or land may bee loſt: and Viua, becauſe neither monie nor land can be loſt, but both preſerued. Then ſpeaketh he of Diſcents, whereby the entrie of him that right hath may be taken away.

Vid.Sect.385.

And next to that, of the remedie how to preuent the ſame, viz. by continuall claim. Then he teacheth, how a man hauing a deſtaſible or an imperfect eſtate, may perfect and eſtabliſh the ſame by three meanes, viz. By Releaſe, By Confirmation, and Attournement, where that is requiſite.

diſcendus a eux, dõques els ſont appels Parceners, & quaunt a files els ſont forſq; vn heire a lour anceſtor. Et els ſont appel Parceners, p̃ ceo que per le briefe que ẽ appel Briefe de Participatione facienda, **la ley eux boet coherc̃ q̃ partitiõ ſ̃t fait ent eux. Et ſi ſont dux files as queux les t̃res diſcendont, donque els ſont appels deux Parceners. Et ſi ſont trois files, dõque els ſont appels trois Parceners, Et ſi quater files, quater Parceners, & iſſint ouſter.**

ſo diſcended to them, then they are called Parceners, and bee but one heire to their Anceſtour. And they are called Parceners, becauſe by the Writ which is called *Breue de participatione facienda*, the Law will conſtraine them, that partition ſhall bee made among them: and if there bee two daughters to whome the land diſcendeth, then they bee called two Parceners, and if there be three daughters, they bee called 3 parceners, and foure daughters, 4 parceners, and ſo forth.

Hauing ſpoken of a Diſcent, being an Act in Law which taketh away an entrie, he doth then ſpeake of a diſcontinuance, the act of the partie, whereby the entrie of them that right haue ſhall be taken away. And next vnto that he teacheth, in what caſe the ſame may be auoyded by Remitter. After he had treated of diſcents and diſcontinuances, which take away entries, but barre not Actions. Laſtly, he fetteth forth the learning of Warranties, (a curious and cunning kind of learning I aſſure you) whereby both Entrie, Action, and Right may be barred, & the remedies how they may be preuented before they fall, & in what caſes they may be auoyded after they be fallen. And thus haue you an account of the thirteene ſeuerall Chapters of his third booke. And now his method being vnderſtood, let vs heare what our Author will ſay vnto vs concerning Parceners.

(a) *Bract.li.2.fo.66.71,&c. & 76,&c. & Li.5.fo.443. Brit.fo.58.112 128.183. 184.185.189.193. Flet.li.5.ca 9.li.6.ca.47. Glanu.li.7.ca.3.& li.13 c.11*

¶ *Et quant a files els ſont forſque vn heire a lour* (a) *anceſter.* This is falſe printed, for the originall is, Et quanque files els ſont, els ſont parceners, et ſont forſque vn heire a lour aunceſter.

(b) *Bract.li.2.fo.66.76. Flet.vb.ſup.Brit.vb.ſup.& Statute de Hibernia*

¶ *Parceners.* (b) Ius diſcendit quaſi vni hæredi propter iuris vnitatem, licet ſint plures filiæ, &c. & vbi omnes ſimul & in ſolidum hæredes ſunt, plures cohæredes ſunt quaſi vnum corpus, propter vnitatem iuris quod habent. Whereupon it followeth, that albeit where there be two Parceners, (c) they haue moities in the lands deſcended to them, yet are they both but one heire, and one of them is not the moitie of an heire, but both of them are but vnus hæres.

(c) *Vid.Sect.8.ver.finem.*

(d) *Flet.li.5.ca.9. Flet.li.6.ca.47.*

And it is to be obſerued, that there is a diuerſitie betweene a diſcent, which is an act of the Law, and a purchaſe, which is an act of the partie. (d) For if a man be ſeiſed of lands in fee, and hath iſſue two daughters, and one of the daughters is attaynted of felony, the father dieth, both daughters being aliue, the one moitie ſhall diſcend to the one daughter, and the other moitie ſhall eſcheat.

But if a man make a leaſe for life, the remainder to the right heires of A. being dead, who hath iſſue two daughters, whereof the one is attainted of Felonie, in this caſe ſome hath ſaid that the remainder is not good for a moitie, but voyd for the whole, for that both the daughters, ſhould haue beene (as Littleton ſaith) but one heire.

A man

A man makes a gift in taile, reſeruing two ſhillings rent to himſelf during his life, and if he die his heire within age, then reſeruing a rent of twentie ſhillings to his heires for euer, he dieth hauing iſſue two daughters, the one of full age, the other within age, in this caſe the Donee ſhall hold by Fealtie onely, inſomuch as the one daughter as well as the other is his heire, and both of them (as Littleton ſaith) make but one heire, ergo his heire is not of full age, neither is his heire in that caſe of full age. But if the reſeruation had beene, And if he die, his heire neither being within age, nor of full age, &c. in this caſe the reſeruation had beene good; and if it doth not begin in his next heire, it ſhall neuer begin as this caſe is, for that the preceedente is not performed. (e) But yet if one of them be of age, and the other within age, ſhe ſhal haue her age and other priuiledges and aduantages that an heire within age ſhall haue, and when they are demandants, for the nonage of the one, the Parol ſhall demurre againſt them both. (f) Sunt autem plures participes quaſi vnum corpus in eo quod vnum ius habent, & oportet quod corpus ſit integrum, & quod in nulla parte ſit defectus. And when the right heire doth claime by purchaſe, he muſt be (ſay they) a compleat right heire in iudgement of Law. And therefore if lands be giuen to a man and to the heires females of his bodie, and he hath iſſue a ſonne and a daughter, and dieth, the daughter ſhall haue the land by diſcent, but if a remainder be limitted to the heires females of the bodie of I.S and he hath iſſue a ſonne and a daughter, his daugheer ſhall neuer take it by purchaſe, for that ſhe is not heire female of the body of I.S. becauſe he hath a ſonne.

(e) *Temps E.1. Age* 128. 8.*E.*2. *Iudgment* 240. 30.*E.*3 7.44.*E.*3. *Age* 47.26. *aſſ* 65. 13.*E.*3. *Age.* 51. 28. *Aſſ.* 22. 29. *Aſſ.* 25.57. 34 *H.*6.4. *Aſſ* 17.
(f) *Fleta lib.*5. *ca* 9. *et Lib.*6. *Cap.*47.

If a man giue lands to another, and to the heires males of his bodie, vpon condition, that if he die without heire female of his bodie, that then the Donor ſhal re-enter, this condition is vtterly voyd, for he cannot haue an heire female, ſo long as he hath an heire male.

And as they be but one heire, and yet ſeuerall perſons, ſo haue they one entire freehold in the land, as long as it remaines vndiuided in reſpect of any ſtrangers Præcipe. (g) But betweene themſelues to many purpoſes they haue in iudgement of Law ſeuerall Freeholds, for the one of them may infeoffe another of them of her part, and make liuerie. (h) And this Coparcenarie is not ſeuered or diuided by Law, by the death of any of them, for if one die, her part ſhal diſcend to her iſſue, and one Præcipe ſhall lie againſt them, for they ſhall neuer ioyne as heires to ſeuerall Anceſtors in any Action Anceſtrell but when one right diſcends from one Anceſtour: and then propter vnitatem Iuris, though they be in ſeuerall degrees from the common Anceſtor, yet ſhall they ioyne. But the iſſues of ſeuerall Coparceners, becauſe ſeuerall rights diſcend, ſhall neuer ioyne as heires to their mothers, and yet when they haue recouered, a writ of Partition lieth betweene them.

(g) 10.*E.*4. 17.*E.*3.46.
(h) 37.*H.*6.8. 19.*H.*6.45.
ſeuerally. Vid. Sect. 313.

For example, (i) If a man hath iſſue two daughters, and is diſſeiſed, and the daughters haue iſſue and die, the Iſſues ſhall ioyne in a Præcipe, becauſe one right diſcends from the Anceſtor, and it maketh no difference whether the common Anceſtor being out of poſſeſſion, died before the daughters, or after, for that in both caſes they muſt make themſelues heirs to the Grandfather which was laſt ſeiſed, and when the Iſſues (k) haue recouered they are Coparceners, and one Præcipe ſhall lie againſt them. And likewiſe if the Iſſues of two Coparceners which are in by ſeuerall diſcents, be diſſeiſed, they ſhall ioyne in Aſſiſe. But in the ſame caſe, if the two daughters had beene actually ſeiſed, and had beene diſſeiſed, after their eceaſes the Iſſues ſhall not ioyne, becauſe ſeuerall rights diſcended to them from ſeuerall Anceſtors: and yet when they haue ſeuerally recouered, they are Coparceners, and one Præcipe lieth againſt them, and a releaſe made by one of them to the other is good. And ſo note a diuerſitie inter diſcenſum in capita, & in ſtirpes.

(i) 7.*E.*3.30.34. 48.*E.*3.14. 24.*E.*3.13. *F.N.B.*221. 35.*H.*6.23. 27 *E.*3.89. 31.*H.*6.14.*b.*
(k) 37.*H.*6 8. 9.*E.*4.13.*b* 42.*E.*3.16.17.

And the Statute of Glouceſter cap.6. made Anno 6.Edw.1. ſpeaketh, Si home muꝛge, &c. If a man dieth: ſo as that Statute extendeth not but where one dieth, and hath diuers heires, whereof one is ſonne or daughter, brother or ſiſter, nephew or neece, and the others bee in a further degree, all their heires from henceforth ſhall haue their recouerie by writ of Mortdauncеſtor. And this ſeemeth to me to be the Common Law, for Bracton who writ before this ſtatute, ſaith, (l) In caſu cum ſit aſſiſa mortis anteceſſoꝛis coniungenda cum conſangu nitate, non erit poſtea recurrendum ad præcipe de Conſanguinitate, ſed ad aſſiſam mortis, quia perſona quæ propinquior eſt, & facit Aſſiſam, & trahit ad ſe perſonam & gradum remotiorem vt vbi potius procedat aſſiſa quam præcipe quia id quod eſt magis remotum, non trahit ad ſe quod eſt magis iunctum, ſed è contrario in omni caſu. And herewith agreeth the moſt of our (m) Bookes: and two Coparceners ſhall haue a writ of Ayel, and by their count ſuppoſe the common Anceſtor to be grandfather to the one, and great grandfather to the other.

(l) *Bracton lib.*4. 254.*b. Britton fol.* 181. 182.*&* 178. 204. *Fleta lib.*5. *cap.*1. *et* 2. *&* 9. *in fine.*
(m) 19.*E.*3. *Tit. Ieindre in Action* 31. 7.*E.*3.30. *et* 34. 27.*E.*3 89. 48.*E.*3.14. 24.*E.*3.13. *F.N.B.*221. *Regiſter.*

I haue beene the longer herein, for that this Inheritance of Coparceners is the rareſt kind of Inheritance that is in the Law.

Vide 32.*E.*1. *Ieindre in Actiõ* 34. 13.*E.*3. *ibidem* 29. *Temps E.*2. *ib.* 35. 30 *E.*1. *ibid.*36. 25.*H.*6.23.

Furthermore it is to be obſerued, That herein alſo in caſe of Coparceners, (n) ſometimes the diſcent is in Stirpes, (viz.) To Stockes or Roots, and ſometimes in Capita, To Heads: As if a man hath Iſſue two daughters and dieth, this diſcent is in Capita, (viz.) that euerie one ſhall inherit alike, as Littleton here ſaith. But if a man hath Iſſue two daughters, and the

(n) *Bracton lib.*2.66. *Britton cap.*71. *Fleta lib.*5. *cap.*9. *et* 6. *cap.* 47.

the eldeſt daughter hath iſſue three daughters, and the youngeſt, one daughter, al theſe foure ſhal inherit, but the daughter of the youngeſt ſhall haue as much as the three daughters of the eldeſt, Ratione ſtirpium, and not Ratione capitum, for in iudgement of Law euerie daughter hath a ſeuerall Stocke or Root.

Alſo if a man hath iſſue two daughters, and the eldeſt hath iſſue diuers ſonnes and diuers daughters, and the youngeſt hath iſſue diuers daughters, the eldeſt ſonne of the eldeſt daughter ſhall onely inherit, for this diſcent is not in Capita, but all the daughters of the youngeſt ſhal inherit, and the eldeſt ſonne is Coparcener with the daughters of the youngeſt, and ſhal haue one moitie, (viz.) his mothers part: ſo that men diſcending of daughters may be Coparceners, as well as women, and ſhall toyntly implead and be impleaded, as is aforeſayd.

(o) 10.E.2.Nuper obiit.141 F.N.B.197. 7.E.3.13.

(o) If there be two Coparceners, and the one bring a Rationabili parte, or a Nuper obiit againſt the other, the Defendant claime by purchaſe, and diſclaime in the bloud, the Plaintife ſhall haue a Mordaunceſter againſt her as a ſtranger for the whole.

* Bract.li.2.fo.76.71.&c. Brit.ca.71. Flet.li.5.ca.9.

¶ *Parceners ſont en deux manners.* Here Littleton doth diuide Parceners, and herewith doe agree the antient bookes of Law.*

¶ *Et ils ſont appels Parceners,&c.* Parceners, Participes, Et dicuntur Participes, quaſi partis capaces, ſiue partem capientes, quia res inter eas eſt communis ratione plurium perſonarum. This Tenancie in the antient bookes of Law is called Adæquatio, and ſometime Familia hiſciſcunda, an Inheritance to be diuided, and many times Parceners are called Copareeners.

(p) Regiſt Orig.76.316. Reriſt.Iud.80. 8 t vbi ſup. Flet.vbi ſup. Bract.vbi ſup. & Li.5.fo.443.b.

¶ Breue de Participatione facienda. This is falſe printed, and ſhould be, De Particione facienda, a Writ whereby the Coparceners are compelled to make partition. Item eſt alia Actio mixta, quæ dicitur Actio Familiæ hiſciſcundæ, & locum habet inter eos qui communem habent hæreditatem, &c. Et locum habet vt videtur, inter Cohæredes, vbi agitur de propartе ſororum, vel inter alios vbi res inter partes & Cohæredes diuidi debeat, ſicut ſunt plures ſorores, quæ ſunt quaſi vnus hæres, vel inter plures fratres, qui ſunt quaſi vnus hæres ratione rei quæ diuiſibilis eſt inter plures maſculos, &c.

¶ *Des terres & tenements.* It is to bee conſidered of what Inheritances daughters ſhall be Coparceners, and how and in what manner partition ſhal be made betweene them. Wherein it is to be obſerued, That of Inheritances ſome be entire, and ſome be ſeuerall: againe, of entire, ſome be diuiſible, and ſome be indiuiſible. And here it appeareth by Littleton, That Parceners take their appellation, becauſe they are compelled to make partition by Writ of Particione facienda; where note, That Littleton alloweth well to find out the true deriuation of words, as often hath beene and ſhall be obſerued.

If a Villeine diſcend to two Coparceners, this is an entire Inheritance, and albeit the Villeine himſelfe cannot be diuided, yet the profit of him may be diuided, one Coparcener may haue the ſeruice one day, one weeke, &c. and the other another day or weeke, &c. and for the ſame reaſon a woman ſhall be endowed of a Villeine, as before it appeareth in the Chapter of Dower. Likewiſe an Aduowſon is an entire Inheritance, (q) and yet in effect the ſame may be diuided betweene Coparceners, for they may diuide it to preſent by turnes.

(q) 13.E.2. tit.Quar.Imp. 170. 17 E.3.38.Flet.li.5 c 9 Mir.ca.2.§.17.

A Rent charge is entire, and againſt common right, (r) yet may it be diuided betweene Coparceners, and by Act in Law the Tenant of the land is ſubiect to ſeuerall diſtreſſes, and partition may be made before ſeiſin of the rent.

(t) 44.E.3.tit.Partie.6. & tit. Auowrie 75. 2.H.6.

Entire Inheritances not diuiſible, we finde diuers in our bookes, and ſome Inheritances that are diuiſible, and yet ſhall not be parted or diuided betweene Coparceners, as hereafter ſhall appeare.

(ſ) 2.E.2. tit. Dower 123 (t) 17.E 2. Noper obit 12. 18 E.2. ibid.11. 5.Marie Dier 153.

(ſ) If a man haue reaſonable Eſtouers, as Houſebote, Heybote, &c. appendant to his freehold, they are ſo entire as they ſhall not be diuided betweene Coparceners. (t) So if a Cozodie incertaine be granted to a man and his heires, and he hath Iſſue diuers daughters, this Cozodie ſhall not be diuided betweene them, but of a Cozodie certaine, Partition may bee made.

(u) 17.E 3.72. (w) 13.E.2 Quare Incumb 170 Fleta lib 5.ca.9. (x) Mich.24 et 25. Eliz. inter Comitem de Huntingdon et Seignior Mountioye.

(u) Homage and Fealtie cannot be diuided betweene Coparceners. (w) So a Piſcharie incertaine, or a Common ſans nombre cannot be diuided betweene Coparceners for that would be a charge to the Tenant of the Soile. (x) The Lord Mountioy ſeiſed of the Mannor of Canford in fee, did by Deed indented and inrolled, bargaine and ſell the ſame to Browne in Fee, in which Indenture this clauſe was contained, Prouided alwayes, and the ſayd Browne did couenant and grant to and with the ſayd Lord Mountioy, his heirs, and aſſignes, that the Lord Mountioy, his heires and Aſſignes might dig for Ore in the lands (which were great waſts) parcell of the ſayd Mannor, and to dig turfe alſo for the making of Allome. And in this caſe three points were reſolued by all the Iudges. Firſt, that this did amount to a grant of an Intereſt and Inheritance to the Lord Mountioy, to digge, &c. Secondly, That notwithſtanding

ding this geant. Browne his heires and assignes might digge also, and like to the case of Common Sauns nomber. Thirdly, that the Lord Mountioy might assigne his whole interest to one, two, or more, but then if there be two or more, they could make no diuision of it, but worke together with one stocke, neyther could the Lord Mountioy, &c. assigne his interest in any part of the wast to one or more, for that might worke a preiudice and a surcharge to the Tenant of the Land, and therefore if such an incertaine Inheritance discendeth to two Coparceners, it cannot be deuided betweene them.

Vide 5. Marie Dier 153.

But then it may be demanded, what shall become of these Inheritances. The answere is, that it appeareth in our Bookes that regularly (y) the eldest shall haue the reasonable Estouers, Common, Pischary, Corody incertaine, &c. and the rest shall haue a contribution, that is, an allowance of the value in some other of the Inheritance, and so of the like. But what if the common Auncestor left no other Inheritance to giue any thing in allowance, what contributton or recompence shall the yonger Coparceners haue. It is answered, that if the Estouers or Pischary or Common be incertaine, then shall one Coparcener haue the Estouers, Pischary, or Common, &c. for a time, and the other for the like time: as the one for one yeere and the other for another, or more, or lesser time, whereby no preiudice can grow to the Owner of the soyle. Or in case of the Pischary, the one may haue one fish, and the other the second, &c. or one may haue the first draught, and the second the second draught, &c. And if it be of a Parke, one may haue the first Beast, and the second, the second, &c. And if of a Mill, one to haue the Mill for a time, and the other the like time, or the one, one toll dish, and the other, the second, &c. And this appeareth to bee the ancient Law, for it is said. (z) Sunt aliæ res hæreditariæ quæ veniunt in partitionem quæ cum diuidi non possunt conceduntur vni, ita quod aliæ cohæredes alibi de communi hæreditate habeant ad valorem sicut sunt viuaria Piscariæ, parci, vel saltem quod partem habeant pro defectu, sicut secundam piscem tertium vel quartum, vel secundum tractum, tertium vel quartum. Item in parcis secundam, terciam aut quartam.

(y) 2. E. 2. dower 123. 13. E. 2. quar. Imp. 170. Fleta vbi supra. Vide Mirror. ca. 2 §. 17

(z) Bracton lib. 2. 76. Britton cap. 71. 72. Fleta lib. 5. cap. 9.

But now let vs turne our eye to Inheritances of Honour and Dignity. And of this there is an ancient Booke Case (*) in 23. H. 3. tit. partition 18 in these words. Note, if the Earledome of Chester discend to Coperceners it shall bee deuided betweene them aswell as other Lands, and the eldest shall not haue this Seigniory and Earledome entire to her selfe, Quod nota, adiudge per totam Curiam. By this it appeareth that the Earledome (that is, the possessions of the Earledome) shall bee deuided, and that where there bee more Daughters then one, the eldest shall not haue the Dignity and Power of the Earle, that is to be a Countesse. What then shall become of that Dignity. The answere is, (a) that in that case the King who is the Soueraigne of Honour and Dignity, may for the incertainty conferre the Dignity vpon which of the Daughters he please. And this hath beene the vsage since the Conquest as it is said.

(*) 23. H. 3. tit. partition 18.

(a) 3. H. 3. tit. prescription.

But if an Earle that hath his Dignity to him and his heires dieth, hauing issue one Daughter, the Dignity shall discend to the Daughter, for there is no incertainty, but only one Daughter, the Dignity shall discend vnto her and her Posterity as well as any other Inheritance, and this appeareth by many Presidents, and by a late Iudgement giuen in Sampson Leonards Case, who married with Margaret the only sister and heire of Gregorie Fines Lord Dacre of the South, and in the case of William Lord Ros.

But there is a difference betweene a dignity or name of Nobility and an Office of Honour. For if a man hold a Mannor of the King to be high Constable of England, and dye hauing issue two Daughters, the eldest daughter taketh husband, he shall execute the Office only, and before marriage it shall be exercised by some sufficient Deputy, and all this was resolued by all the Iudges of England, in the case of (b) the Duke of Buckingham. But the dignity of the Crowne of England is without all question descendible to the eldest daughter alone and to her posterity, and so hath it beene declared by Act of Parliament. (*) For Regnum non est diuisibile. And so was the Discent of Troy.

(b) 11. Eliz. Dier 285. the Duke of Buckinghams Case.

(*) 25. H. 8. cap. 22.

Præterea sceptrum Ilione quod gesserat olim,
Maxima natarum Priami———

Virgil. Æneid.

(b) If a Castle that is vsed for the necessary defence of the Realme discende to two or more Coparceners, this Castle might bee diuided by Chambers and Roomes as other Houses bee, but yet for that it is Pro bono publico & pro defensione Regni, it shall not be diuided, for as one sayth, Propter ius gladij diuidi non potest. And another saith, (*) Pur le droit de lespee que ne soeffre diuision en auenture que la force del realme ne defaille pax tamen. But Castles of habitation for priuate vse, that are not for the necessary defence of the Realme ought to bee parted betweene Coparceners aswell as other Houses, and wiues may thereof bee endowed, as hath beene said in the Chapter of Dower.

(b) Bracton lib. 2. fol. 76. Fleta lib. 5. cap. 9.

(*) Britton 186, 187.

Vide Sect. 39.

If there be two Coparceners of certaine Lands with warrantie, and they make partition

of the Land, the warranty shall remayne, because they are compellable, to make partition. (c) But otherwise it was of Joyntenants at the Common Law, as shall bee said hereafter in his proper place. (d) Thomas de Eberston seised of the Mannor of Eberston, within the Forrest of Pickering, had kept time out of mind, a Woodward for keeping of the Woods parcell of that Mannor, and had the barke of all the Trees felled in the said Woods by any of the Forresters of that Forrest as belonging to his Mannor (which he could not haue without a Prescription.) Thomas of Eberston infeoffed two of the said Mannor, betweene whom partition was made, so as one of them had the owne haise in seuerality, and the other the other haise. Robert Wyerne afterwards had the one haise, and Thomas Thurnise the other, and they in the Eyre of Pickering claymed to keepe a Woodward within the said Woods, and the barke aforesaid, and the truth hereof and the vsage being specially found by the Forrestors, Verderors, and Regardors, Willoughbie, Hungerford, and Hanburie, Justices Itinerants within that Forrest gaue iudgement as followeth. Ideo consideratum est quod prædict' Robertus & Thomas habeant Woodwardum & Corticem in bosco prædicto de quercubus prædictis sibi & hæredibus suis imperpetuum. Saluo semper iure, &c.

(c) 29.E.3.garrant.170.
(d) Itin.Pickering. 8.E.3.Ret.34.

Sect. 242.

¶ AVxy si home seisie de tenements en fee simple, ou en fee taile, deuy sauns issue de son corps engender, & les tenements discendont a ses soers, els sont Parceners, come est auantdit. Et en meine le maner, lou il nad pas soers. mes les tenements discendõt a ses aunts, els sont Parceners, &c. Mes si home nad forsque vn file, el ne poit estre dit Parcener, mes el est appelle file & heire, &c.

ALso if a man seised of Tenements in Fee simple or in Feetayle, dieth without issue of his bodie begotten, and the Tenements discend to his Sisters, they are Parceners as is aforesaid. And in the same manner, where he hath no Sisters but the Lands discend to his Aunts, they are Parceners, &c. But if a man hath but one Daughter, shee shall not be called Parcener, but shee is called Daughter and Heire, &c.

¶ *Ou en fee taile.* **This must be intended of an estate taile made** to the Father and to the heires of his body, for otherwise if the state Tayle were made to a man and to the heires of his body, his Sisters cannot inherit. And not only Daughters shall be Coparceners, but Sisters, Aunts, great Aunts, &c.

¶ *File & heire, &c.* **Here by** (&c.) **is implyed Sister and heire,** Aunt and heire, great Aunt and heire, and so vpward.

Sect. 243.

¶ BY this Section, and the (&c.) in the end of it. It is to be vnderstood that there are two kind of partitions betweene Coparceners, the one in deed or expresse, and the other in Law or Implicite. Of partitions in deed or expresse, some bee voluntary whereof Littleton enumerates foure Manners, and one compulsary, that is by Writ of Partition.

¶ E Test assauoir, que partition enter parceners poit estre fait en diuers maners. Un est, quãt els agreeont de faire partition, & font partition de les Tenements, sicome si soient deux parceners

AND it is to bee vnderstood, that partition may be made in diuers manners. One is when they agree to make partition, and do make partition of the tenements. As if there bee two Parceners to deuide between them

a deuider enter eux les Tenements en deux parts, chescun part per soy en seueraltie, & ô egal value. Et si sont 3. Parceners a deuider les tenements en trois parts per soy en seueraltie, &c.

the tenements in two parts, each part by it selfe in seueraltie, and of equall value. And if there bee three Parceners, to deuide the tenements in three parts by it selfe in seueraltie, &c.

The first partition in deed betweene Coparceners, is that which Littleton here speaketh of, viz. Quant els agreont & font partition de les tenements, &c. chescun part per soy en seueralty & de egall value, &c. If Coparceners make partitions at full age, and vnmarried, and of sane memorie of Lands in Fee simple, it is good & firme for euer, albeit the values bee vnequall, but if it be of lands entayled, or if any of the Parceners bee of non sane memorie, it shall bind the parties themselues but not their Issues vnlesse it be equall. Or if any be Couert, it shall bind the husband, but not the wife or her heires. Or if any be within age it shall not bind the Infant as shall be said more fully here after. The second partition followeth in the next Section. And here the (&c.) implyeth further, that if there be foure Parceners, then foure parts, If fiue, fiue parts and so forth. It further implyeth, that all this must be in seueralty; whereof and with what limitations this is to be vnderstood it hath beene declared before. *Vide Sect.* 241.

Section 244.

¶ VN auter partition est, a eslier per agreement enter eux, certeine de lour amies, de faire partitiõ des terres ou teneñts en le forme auantdit. Et en tiels cases apres tiel partition, le eigne fille prymerment esliera vn des partes issint diuides, que el voit auer pur sa part, & donques la second fille procheine apres luy auter part, & donques le tierce soer auter part, donques le 4. auter part, &c. si issint soit que soient plusors soers, &c. si ne soit auterment agree enter eux. Car il poit estre agree enter eux, que vn auera tiels teneñts, & vn auter tiels teneñts, &c. sans ascũ tiel primer election, &c.

A Nother Partition there is, *viz.* to choose by agreement betweene themselues certaine of their Friends to make partition of the Lands or Tenements in forme aforesaid. And in these Cases after such partition, the eldest Daughter shall choose first one of the parts so deuided which she will haue for her part, and then the second Daughter next after her another part, and then the third Sister another part, then the fourth another part, &c. if so bee that there be more Sisters, &c. vnlesse it bee otherwise agreed betweene them. For it may be agreed betweene thẽ that one shall haue such Tenements, and another such Tenements, &c. without any primer election.

¶ D*onques le* 4. *auter part, &c.* here the (&c.) implyeth the fifth Sister, and after her the first, and so forth. 31. Ass. 26. bright!

¶ *Car il poet estre agree inter eux que vn auera tiels tenements, & vn auter tiels tenements, &c.*

Here by this (&c.) is implyed diuers rules of Law proving the conclusion of Littleton in this Section. viz. modus & conuentio vincunt legem. Pacto aliquid licitum est, quod sine pacto non admittitur. Quilibet potest renunciare iuri pro se introduct' But with this limitation that these Rules extend not to any thing, that is against the Common Wealth, or common right. For conuentio priuatorum non potest publico iuri derogare.

Sect. 245.

¶ *Enitia pars.* It is called in old bookes * Æiſnetia which is deriued of the French word Eiſne or eldeſt, as much to ſay as the part of the eldeſt, for Bracton ſaith, Quod Eiſnetia ſemper eſt præferenda propter priuilegium ætatis, ſed eſto quod filia primogenita relicto nepote vel nepte in vita patris vel matris deceſſerit, præferenda erit ſoror antenata tali nepoti vel nepti quantum ad Eiſnetiam quia mortem parentum expectant. And herewith agreeth Fleta alſo, Quod nota, whereby it appeareth that Ænitia pars is perſonall to the eldeſt, and that this prerogatiue or priuiledge diſcendeth not to her iſſue, but the next eldeſt after ſhall haue it, (f) And here is a diuerſity to be obſerued betweene this caſe of a partition in deede by the act of the parties, (for there the priuiledge of election of the eldeſt daughter ſhall not diſcend to her iſſue) And where the law doth giue the eldeſt any priuiledge without her act, there that priuiledge ſhall diſcend. As if there be diuers Coparceners of an Aduowſon * & they cannot agree to preſent, the Law doth giue the firſt preſentment to the eldeſt, and this priuiledge ſhall diſcend to her iſſue, nay her Aſſignee ſhall haue it, and ſo ſhall her husband that is Tenant by the Curteſie haue it alſo.

¶ *Donques il eſt dit leigne ſoer eſlier pluis darreine, &c.* By this and the &c. in the end of this Section is implyed the rule of Law is Cuius eſt diuiſio, alterius eſt electio. And the reaſon of the Law is for auoyding of partiality.

Ipſæ etiam Leges cupiunt vt Iure regantur.

which might apparantly follow if the eldeſt might both diuide and chooſe. Now followeth the third partition in Deede.

Sect. 246.

¶ VN auter partition ou allotment eſt, ſicome ſoient quater parceners & apres le partition de les terres fait, cheſcun part del terre ſoit per ſoy ſolement eſcript en vn petit eſcrouet, & ſoit couert tout en cere, en le maner dun petit pile, iſſint que nul poit veier leſcrouet, & donque ſoient les 4. piles de cere mis en vn bõnet a garder, en les maines dun indifferent home, &

ANother partition or allotment is, as if there be foure parceners and after partition of the lands be made, euery part of the land by it ſelfe is written in a little ſcrowle, and is couered all in waxe in manner of a little ball, ſo as none may ſee the ſcrowle, and then the 4. balls of waxe are put in a hat to bee kept in the hands of an indifferent man, and then the eldeſt daughter ſhall firſt

donqs

* *Bract. lib 2.77. Fleta, lib. 5.ca.9. Britton, ca.72.*

(f) *45.E.3. fines 41. 19.E.3. quar. imp. 59. 18.E.2 ibid. 176. 5.H.5.10. 38.H.6.9. Doct. & Stud. 116.117. Vid. Bracton. 238.249.*

* *5.H.7.8. 34.H.6.40. 11.H.4.54. 20.E.3. quar. imp. 63. 34.E.3. Ibid. 198. 15.E.3. Dar. Preſentment 11. 19.E.3.20.21. 21.E.3.21. F.N.B. 32.*

donqꝫ leigne file primermẽt mettra ſa maine en le bonnet, quel prendra vn pile de cere oueſqꝫ leſcrouet deins m̃ le pile pur ſa part, & donqꝫ le ſecond ſoer mettra ſa maine en le bonnet & prendra vn auter, le tierce ſoer le 3. pile, & le 4. ſoer le 4. pile, &c. & en ceo cas coueient cheſcun de eux luy tener a ſa chance & allotment.

put her hand into the Hat and take a ball of waxe with the ſcrowle within the ſame ball for her part, And then the ſecond ſiſter ſhall put her hand into the hat and take an other, the 3. ſiſter the 3. ball, and the 4. ſiſter the 4. ball. And in this caſe euery one of them ought to ſtand to their chance and allotment.

Quare - if the eldest Sister would relinquish her certain Choice & leave it to chance ——

¶ A *Lotmẽt.* Of this partition by Lots ancient Authors * write that in that caſe Coparceners Fortunam faciunt iudicem: And Littleton here tearmeth it chance, for in the end of this Section he ſaith, that in this caſe euery of them ought to hold her ſelfe to her chance, & of this kinde of diuiſion you ſhall reade in holy Scripture, where it is ſaid, Dedi vobis poſſeſsionem quam diuidetis ſorte.

The &c. in the end of this Section implyeth that if there be more coparceners there muſt be more balls according to the number of the parceners.

* *Fleta lib.* 5. *ca.* 9. *Bracton, lib.* 2. 75. *Britton ca.* 72. *Vid Numbert ca.* 26. *verſe* 54. 55. & *ca.* 33. *verſe* 54. *Of diuiſion by lotts.*

Sect. 247.

¶ Item, vn auter partition il y ad, ſicome ſont quater Parceners, & ils ne voilent agreer a partition deſtre fait enter eux, donque lun poit auer bẽ De partitione facienda enuers les autres trois: ou deux d eux poient auer bẽ De partitione facienda enuers les auters deux, ou trois de eux poient auer bẽ De partitione facienda enuers le quart, a lour election.

ALſo there is another partition, As if there bee foure parceners, and they will not agree to a partition to bee made betweene them, then the one may haue a Writ of *Partitione facienda* againſt the other three, or two of them may haue a Writ of *Partitione facienda* againſt the other two, or three of them may haue a Writ of *Partitione facienda* againſt the fourth at their election.

¶ HEre followeth the fourth Partition in Deede. Littleton hauing ſpoken of voluntary Partitions, or Partitions by conſent; Now he ſpeakes of a Partition by the compulſarie meanes of Law where no Partition can bee had by conſent. Now of what inheritance partition may bee made by the Writ of Partitione facienda may partly appeare by that which hath beene ſaid. Moreouer it is to be obſerued that the words of the Writ De partitione facienda be * Quod cum eædem A. & B. inſimul & pro indiuiſo teneant tres acras terræ cum pertinen', &c. And note that this word (Tenet) in a Writ doth alwayes imply a Tenant of a freehold. And therefore (g) if one Coparcener maketh a Leaſe for yeares, yet a Writ of Partition doth lye. But if one or both make a Leaſe for life, a Writ of Partition doth not lye betweene them, becauſe Non inſimul & pro indiuiſo tenent, they doe not hold the freehold together, and the Writ of partition muſt be againſt the Tenant of the freehold. (h) If one Coparcener diſſeiſe another during this diſſeiſin a Writ of partition doth not lye betweene them for that Non tenent inſimul & pro indiuiſo.

* 3. *E.* 3. 47. 48.

(g) 21. *E.* 3. 57. *F.N.B.* 62. *g.* 28. *H.* 6. 2. 11. *H.* 4. 3. 4. *H.* 7. 10. *b.*

(h) 4. *H.* 7. 9. 11. *Aſſ.* 23.

But there be other Partitions in deede then here hath beene mentioned. (i) For a Partition made betweene two Coparceners that the one ſhall haue and occupie the land from Eaſter vntill the firſt of Auguſt only in ſeuerality by himſelfe, and that the other ſhall haue and occupie the land from the firſt of Auguſt vntill the Feaſt of Eaſter yearely to them and their heires, this is a good partition. Alſo if two Coparceners haue two Mannors by diſcent,

(i) *Temps. E.* 1. *Partition* 21. *F.N.B.* 62. *I.*

and they make partition, That the one ſhall haue the one Mannor for one yeare, and the other the other Mannor for this yeare, and ſo alternis vicibus to them and their heires, this is a good Partition. The ſame Law is if the partition bee made in forme aforeſayd, for two or more yeares, and each Coparcener haue an eſtate of Inheritance, and no Chattell, albeit either of them alternis vicibus haue the occupation but for a certaine terme of yeares.

Of Partitions in Law, ſome be by act in Law without iudgement, and ſome be by iudgement, and not in a Writ de Participione facienda. And of theſe in order.

(k) 36.H.6.7.

(k) If there be Lord, three Coparceners Meſneo, and Tenant, and one Coparcener purchaſe the Tenancie, this is not onely a partition of the Meſnaltie, being extinct for a third part, but a diuiſion of the Seigniorie Paramount, for now he muſt make ſeuerall Auowries.

(l) 37.H.6.8.43.E.3.1.

(l) If one Coparcener make a Feoffement in fee of her part, this is a ſeuerance of the Coparcenarie, and ſeuerall Writs of Præcipe ſhall lie againſt the other Coparcener and the Feoffee.

(m) 17.E.3.14.15.

(m) If two Coparceners be, and each of them taketh huſband and haue Iſſue, the wiues die, the Coparcenarie is diuided, and here is a partition in Law.

(n) 12.E.3.Iudgm.162. 7.aſſ.10.7.E.3.49.10.aſſ.17 12.Aſſ.5.17.10.E.3.40.43. 28.Aſſ.35.23.Aſſ.18. 20.E.3.Aſſ.62. 3 E.3.48 b. 19.H.6.45.7.H.6.4.3.Ed.4. 10.

* Bract.li.4.fo.216.b.

(o) 3.E.3.48. 21.Ass.tit. Nuper ob.22. 4.H.7.10. 30.E.1.Nup.ob.18. F.N.B.9.b.

* Brit.fo.112.4.

(p) Li.6.fo.12.& 13. Morrices caſe, accorde.

(n) If two Coparceners be, and one diſſeiſe the other, and the Diſſeiſee bringeth an Aſſiſe, and recouer, it hath been ſayd, That ſhe ſhall haue iudgment to hold her moitie in ſeueralty. And this ſeemeth (ſay they) verie antient, and thereupon vouch Bracton, * Si res fuerit communis locum haberi, poterit communi diuidendo iudicium. And (o) ſo (ſay they) if the one Coparcener recouer againſt another in a Nuper obijt, or a Rationabili parte, the iudgement ſhal be, That the Demandant ſhall recouer and hold in ſeueraltie. But Britton is to the contrarie, for he ſaith, * Et ſi aſcun des Parceners ſoit enget ou diſturbe de ſa ſeiſin per ſes auters Parceners, vn, ou pluſors, al diſſeiſee viendra aſſiſe per ſeuerall pleint ſur ſes Parceners & recouera, mes nemy a tener en ſeueraltie, mes en common ſolonque ceo que auant le fiſt, &c. (p) And this ſeemeth reaſonable, for he muſt haue his iudgement according to his Plaint, and that was of a mottie, and not of any thing in ſeueraltie, and the Sheriffe cannot haue any Warrant to make any partition in ſeueraltie or by Meets and Bounds.

Section 248.

Bract.fo.66.&c.Brit.71.&c. Brit.ca.72 Flet.li.5.ca.9.

NOte the firſt iudgment in a Writ of Partition. Whereof Littleton here ſpeaketh, is, Quod partitio fiat inter partes prædictas de tenementis prædictis, cum pertinentijs, after which Iudgement, by this &c. viz. Tenements, &c. is implied, That a Writ ſhall be awarded to the Sheriffe, Quod aſſumptis tecum 12. liberis & legalibus hominibus de Viceneto tuo, per quos rei veritas melius ſciri poterit, in propria perſona tua accedas ad tenementa prædicta cum pertiñ, & ibidem per eorum ſacramentū in præſentia partium prædictarum per te præmuniend' ſi intereſſe voluerint, prædicta tenementa cum pertiñ per ſacramentū bonorum & legalium hominum prædictorum habito reſpectu ad verum valorem earundem in duas partes equales partiri & diuidi, & vnam partem partium illarum, &c.

The laſt &c in this Section is euident.

Ockam cap. Quid ſit liber iudiciarius.

40.E.3.45.9.aſſ.2.8.aſſ.35. 49.E.3.2.Regiſt.F.N.B.16.

¶ *Iudgement*, Iudiciū quāt iudgement ſra done ſur tiel brief, le iudgment ſerra tiel q̄ partition ſerra fait enter les parties, & que le Vicount en ſon proper perſon aliera a les terres & tenements, &c. & que il per l' ſerement de xij. loyalx homes de ſon Bayliwicke, &c. ſerra partition enter les parties, et que lun part de meſmes les Terres & Tenements ſoient Aſſignes al plaintif, ou a lun des plaintifs, et vn auter part a vn auter Parcener, &c. nient ſeaſant

And when iudgement ſhal be giuē vpon this Writ, the iudgment ſhal be thus, That partition ſhall be made between the parties, & that the Sheriffe in his proper perſon ſhall go to the lāds and tenements, &c. & that hee by the otah of 12 lawful men of his Bailiwicke, &c. ſhall make partition betweene the parties, & that the one part of the ſame Lands & tenements ſhall bee aſſigned to the pl', or to one of the plaintifs, & another part to another parcener, &c. not making mention in the

ſant mention en le iudgement de leigne ſoer pluis q̄ ō puiſñ.

Iudgement, of the eldeſt ſiſter, more than of the youngeſt.

cium eſt quaſi iuris dictum, ſo called, becauſe ſo long as it ſtands in force, pro veritate accipitur, and cannot bee contradicted: And thereupon Antiquitie called that excellent Booke in the Exchequer, Domeſday, Dies Iudicii, Sicut enim diſtricti & terribilis examinis illa nouiſſima ſententia nulla tergiuerſationis arte valet eludi, &c. ſic ſententia eiuſdem libri inficiari non poteſt, vel impune declinari ob hoc nos eundem librum iudiciarium nominamus, &c. quod ab eo ſunt, & prædicto iudicio non licet vlla ratione diſcedere. By Littleton it appeareth, That the formes of Judgements, pleas, and other legall proceedings, doe conduce much to the right vnderſtanding of the Law, and of the reaſon thereof, as here Littleton rightly collecteth, vpon the forme of the iudgement that the Sheriffe ſhall deliuer to them ſuch parts as he thinkes good, and that the eldeſt Coparcener ſhal haue no election when partition is made by the Sheriffe. And it is to be obſerued, that there be two Judgements in a Writ of Partition: Of the former Littleton ſpeaketh in this place, And when partition is made by the oath of twelue men, and aſſignement and allotment thereof, and ſo returned by the Sheriffe, then the latter iudgment is, Ideo conſideratum eſt, quod partitio prædicta firma & ſtabilis imperpetuū teneatur, and this is the principall iudgement. (q) And of the other before this be giuen, no Writ of Error doth lie.

(q) *Lib.11.fol.40. Hill.39.Eliz. Rot.327. in Banke le Roy inter Anſ Conutes de Warr. et le Seignior Berkley.*

¶ *Shireue* is a word compounded of two Saxon words, viz. Shire, and Reue. Shire, Satrapia, or Comitatus, commeth of the Saxon Verbe Shiram, i. Partiri, for that the whole Realme is parted and diuided into Shires: And Reue is Præfectus, or præpoſitus; ſo as Shireue is the Reue of the Shire, Præfectus Satrapiæ, Prouinciæ, or Comitatus. And he is called Præfectus, becauſe he is the chiefe Officer to the King within the Shire; for the words of his Patent be, Commiſſimus vobis cuſtodiam Comitatu noſtri de, &c. And he hath a threefold cuſtodie, triplicem cuſtodiam, viz. Firſt, Vitæ Iuſtitiæ, for no ſuit begins, and no Proceſſe is ſerued but by the Sheriffe. Alſo he is to returne indifferent Juries for the triall of mens liues, liberties, lands, goods, &c. Secondly, Vitæ legis, hee is after long ſuits and chargeable, to make execution, which is the life and fruit of the Law. Thirdly, Vitæ Reipublicæ, He is Principalis Conſeruator pacis within the Countie, which is the life of the Commonwealth, Vita Reipublicæ pax.

He is called before Sect.234. Viſcount, in Latyne, Vicecomes, i. Vice Comitis, that is, in ſtead of the Earle of that Countie, who in antient time had the regiment of the Countie vnder the King. For it is ſayd in the Mirror, * That it appeareth by the ordinance of antient Kings before the Conqueſt, That the Earles of the Counties had the cuſtodie or gard of the Counties, and when the Earles left their cuſtodies or gards, then was the cuſtodie of Counties committed to Viſcounts, who therefore (as it hath beene ſayd) are called Vicecomites, and Ockam cap. Quid centuſ, &c. Porro Vicecomes dicitur, quod vicem Comitis ſuppleat

Vide the ſecond part of the Inſtitutes W.1.cap.10.
(*) *Mirror cap.1.§.3.*

Ockam cap. Quid Centur. &c.

Marculphus ſaith, This office is, Iudiciaria dignitas. Lamptidius, That it is Officium dignitatis. Forteſcue ſaith, Quod Vicecomes eſt nobilis officiarius. And ſee there, and obſerue well his honourable and ſolemne election and creation at this day. But to confirme all that hath bin ſaid touching this point, and to conclude the ſame, among the Lawes of Edward the Confeſſor I find it thus recorded, Verum quod modo vocatur Comitatus olim apud Britones temporibus Romanorum in Regno iſto Britanniæ vocabatur conſulatus, & qui modo vocantur Vicecomites tunc temporis Vice conſules vocabantur; ille vero dicebatur viceconſul qui conſule abſente ipſius vices ſupplebat in iure & in foro. Herein many things are worthie of obſeruation: Firſt, for the antiquitie of Counties. Secondly, That which wee called Comitatum, the Romanes more Latinely called Conſulatum. Thirdly, whom the Saxons afterwards called (as hath beene ſayd) Shireue or Earle, the Romans called Conſul. Fourthly, That the Sheriffe was deputy of the conſul or earle, & therfore the Romans called him Viceconſul, as we at this day cal him Vicecomes. Fiftly, That the Sheriffe in the Romans time, and before, was a Miniſter to the Kings Courts of Law & Juſtice, & had then a Court of his own, which was the County Court, then called Curia Conſulatus, as appeareth by theſe words, Ipſius vices ſupplebat in iure & in foro. Sixtly, That this Realme was diuided into Shires and Counties, and thoſe Shires into Cities, Burroughs, and Townes, by the Brittains. So that King Ælfreds diuiſion of Shires and Counties, was but a renouation or more exact deſcription of the ſame. Laſtly, the conſequence that will follow vpon theſe things being ſo antient, (as in the time of, and before the Romans) the ſtudious Reader will eaſily collect. And afterwards, fol.135 amongſt the Lawes of the ſame King it appeareth, That thoſe whom the Saxons ſometimes called (and now we call) Ældermen, or Eorles, the Romans called Senatores, Et ſimiliter olim apud Britones temporibus Romanorum in regno iſto Britanniæ vocabantur ſenatores qui poſtea temporibus Saxonū vocabantur Aldermani, non propter ætatem, ſed propter ſapientiam & dignitatem cum quidam adoleſcentes eſſent iuriſperiti tamen & ſuper hoc experti.

Forteſcue cap.24. 12.R.2.cpa.

Lambert fol.129.12.

Cæſar poliebro Huntingdon polidor inter leges. Malmucii. Hooker lib.2.

¶ *De*

℄ *De ſon Baylivicke.* **It appeareth before, that the Enqueſt muſt** be De vicineto, of the place where the lands doe lie, and not generally de Baliua tua By this it appeareth, That the Sherife is Balivus, and his Countie called Baliua, and therefore it is good to be ſeene, what Balivus originally ſignified, and whereof it is derived.

Flet.lib.2.cap.67. Baylife is a French word, and ſignifies an Officer concerning the adminiſtration of Juſtice of a certaine Prouince, and becauſe a Sherife hath an office concerning the adminiſtration of Juſtice within his Countie or Bayliwicke, therefore he calleth his Countie, Baliua ſua, for example, when he cannot find the Defendant, &c. he returneth, Non eſt inuentus in Baliua mea. I haue heard great queſtion made, what the true expoſition of this word Balivus is. In the Statute of Magna Charta cap. 28. the letter of that Statute is, Nullus Balivus de cætero ponat aliquem ad legem manifeſtam nec ad iuramentum ſimplici loquela ſua ſine teſtibus fidelibus ad hoc inductis. And ſome haue ſayd, That Balivus in this ſtatute ſignifieth any Judge, for the Law muſt be waged and made before the Judge. And this Statute (ſay they) extends to the Courts of common Pleas, Kings Bench, &c. For they muſt bring with them Fideles teſtes, &c. and ſo hath been the vſage to this day.

Bracton lib.3.tract.2.cap.33. nu.3. Idem lib.3.fo.121.b.

Brakt.li.3.156.b. Brit fo.56. Flet.li.2.ca.63.

But I haue peruſed a verie antient and learned reading vpon this Statute, and the Reader taketh it, That at the Common Law before this Statute, he that would make his Law in any Court of Record, muſt bring with him Fideles Teſtes. And this opinion herein is warranted by Glanuile, who wrote in the raigne of Henrie the ſecond. But the Reader holdeth, That in the Courts which were not of Record, as the Countie Court, the Hundred Court the Court Baron, &c. there the Def. without any faithfull witneſſes, might before this Stat. haue made his Law: for remedie whereof this Act was made, and therefore (ſaith he) the ſtatute extendeth to the Judges of ſuch Courts as are not of Record. In 10. H. 4. it is holden, That if a Lord that hath a Franchiſe in a Leet, doth not enquire of things enquirable, and puniſh them, the Sherife ſhall enquire in his Turne, Et ſi le Vicount ne fare en ſon Torne, le Baylie le Roy enquirer quant il vient, ou autrement ſera inquiſe per Iuſtice en Eire. Where Baylie le Roy is vnderſtood Iuſtice le Roy. And in the Mirror * it is holden, That the Statute doth extend to euerie Juſtice, Miniſter of the King, Steward, &c. and all comprehended vnder this word Baylife.

Glanu.li.1.ca.9.

10.H.4.4.

** Mir.ca.5.§.2. Vi.Brakt. fo.409. Flet.li.2.ca.63.56.*

The chiefe Magiſtrates in diuers antient Corporations are called Baylifs, as in Ipſwich, Yarmouth, Colcheſter, &c. And Baylife in French, is Diœcetes Nomarcha, in Engliſh, a Batlife or Gouernor. But of this thus much ſhall ſuffice.

Sect. 249.

Brit.fo.185.b.ace. Brakt.l.2. fo.71.&c. Flet.li.5.ca.9.

℄ *South ſon Seale, &c.* Note, the partition made and deliuered by the Sherife and Iurors, ought to bee returned into the Court vnder the Seale of the Sherife, and the ſeals of the twelue Iurors, for the words of the Judiciall writ of Partition, which doth command the Sherife to make partition, are, Aſſumptis tecum 12. &c. (ſo as there muſt be twelue) & partitionem inde, &c. ſcire facias Iuſticiarijs, &c. ſub ſigillo tuo, & ſigillis eorum per quorum ſacramentum partitionem illam feceris, &c.

℄ E℄ de la partition que l' Vicount ad iſſint fait, il ferra notice as Juſtices ſouth ſon Seale, & les Seales d' chelcun de les 12. &c. Et iſſint en c' caſe poies veier que leigne ſoer naura my la primer election, mes le Vicount luy aſſignera ſa part que el auera, &c. Et poit eſtr' que le Vicount doit aſſigner primerm't vn part a le plus puiſn, &c. & darreinement al eigne, &c.

AND of the partition which the Sherife hath ſo made, hee ſhall giue notice to the Iuſtices vnder his Seale, and the ſeales of euerie of the 12. &c. And ſo in this caſe you may ſee, that the eldeſt ſiſter ſhall not haue the firſt election, but the Sherife ſhall aſſigne to her her part which ſhee ſhal haue, &c. And it may be that the Sherife will aſſigne firſt one part to the youngeſt, &c. and laſt to the eldeſt, &c.

And this is the reaſon wherefore in this caſe the partition which they make vpon oath, ought to be returned vnder their Seales: and the reaſon of that is for the more ſtrengthening of the partition

tition by the 12. and that the Sheriffe ſhould not returne what partition he would. Now after all this, this (&c.) viz.12.&c. doth imply, that the principall iudgement vpon the partition ſo returned is, Ideo conſideratum eſt per Curiam quod partitio firma & ſtabilis imperpetuum teneatur, the latter two (&c.) are euident. *Lib.11.fol.40.in Metcalfes Caſe*

Section 250.

¶ Et nota q̄ partition per agreement parenter parceners, poit eſtre fait per la ley enter eux, auxibien per parol ſans fait, come per fait.

AND note that partition by agreement betweene Parceners may bee made by Law betweene them, aſwell by paroll without Deed, as by Deed.

¶ Here it appeareth that (r) not only Lands and other things that may paſſe by Liuerie without Deed, but things alſo that doe lie in grant, as Rents, Commons, Aduowſons and the like that cannot paſſe by grant without Deed, whether they be in one Countie or in ſeuerall Counties may be parted and deuided by Paroll without Deed. (f) But a partition betweene Ioyntenants is not good without Deed, albeit it be of Lands and that they bee compellable to make partition by the Statutes of 31.H.8.cap.10. and 32.H.8 cap.32 becauſe they muſt purſue that Act by Writ, de partitione facienda, & a partition betweene ioyntenants without Writ remayns at the Common Law which could not be done by Paroll. And ſo it is and for the ſame reaſon of Tenants in Common. But if two Tenants in Common be, & they make partition by Paroll, & execute the ſame in ſeuerally by Liuerie this is good, and ſufficient in Law. And therefore where Bookes ſay, that Ioyntenants made partition without Deed, it muſt be intended of Tenants in common, and executed by Liuerie.

(r) 3.E.4.9.10.9.E.4.38. 11.H.4.2. 9.H.4. Partition 13. 21.E.3.38.

(f) *Vide Sect.290.* 3.H.4.1. 19.H.6.25.28.H.6.2. 3.E.4.9.10. 47.E.3.22. 47.*Aſſ*.8. 19.H.6.1. 17.E.3.46. 30.*Aſſ*.8. *Lib.4.fol.73.Li.6.fol.12.13.* 2.H.7.5. *Dier* 18.*Eliz*.358. 31.H.8.*Dyer* 46. 2.*Eliz*. *Dyer* 179. 28.H.8.*Dyer* 29. 1.*Mar.Dyer* 98.

Nota, betweene Ioyntenants there is a twofold priuitie, viz in eſtate and in poſſeſſion, betweene Tenants in Common, there is priuitie only in poſſeſſion, and not in eſtate, but Parceners haue a threefold priuitie, viz. in eſtate, in perſon, and in poſſeſſion.

Section 251. & 252.

¶ Item ſi deux meaſes diſcendont a deux Parceners, & lun meaſe vault per an 20. s. lauter forſque 10. s. per an, en ceſt cas partition poit eſtre fait enter eux en tiel forme, ceſtaſcauoir, que vn parcener auera lun meaſe, & que lauter parcener auera lauter meaſe, & ceiny que auer le meaſe, que eſt de value de 20 s. & ſes heires, payeront vn annual rent

ALſo if two Meſes diſcend to two Parceners, and the one Meaſe is worth twenty ſhillings *per annum*, and the other but ten ſhillings *per annum*. In this caſe partition may bee made betweene them in this manner, to wit, the one Parcener to haue the one Meaſe, and the other Parcener the other Meaſe. And ſhe which hath the Meaſe worth 20. ſhillings *per annum*, and her heires ſhal pay

¶ *Per parol.* Nota, Here (t) a Rent may be granted for ouertie of partition without Deed, euen as a Rent in caſe of a Leaſe for yeares, for life, or a gift in tayle may bee reſerued without Deed, and ſo may a Rent be aſſigned to a woman out of the Land whereof ſhee is Dowable, &c. without Deed, but albeit an exchange for Lands in the ſame Countie may be without Deed, yet (u) a Rent granted for egalitie of the ſame exchange cannot be without Deed, and the cauſe of the difference is apparant, for Coparcencrs are in by diſcent, and compellable to make partition.

(t) 8.E.3.16. 21.*Aſſ.p.*1. 21.E.3.38. 11.H.43.61. 45.E.3.21. 2.H.6.14. 21.H.6.11. 1.*Mar.Dyer* 91.

¶ *Le Rent, &c.* (w) The ſame Law is of Common of Eſtouers, or a Corodie, or a Common

of Paſture, &c. or a way granted vpon the partition by the one Coparcener to the other. All which and the like albeit they lye in grant, yet vpon the partition may they be granted without deed.

¶ *Iſſuant hors de meſme le meaſe, &c.* (x) For if it bee granted out of other Lands then diſcended to the Coparceners there muſt be a Deed. (z) But if the Rent be granted generally (out of no land in certaine) for oweltie of partition, pro reſiduo terræ, it ſhall bee intended out of the purpartie of her that granteth it.

(x) 1. *Marie Dier* 91.

(z) 29. *Aſſ.* 23. 29. *E.* 3. 9. b. *Pl. Com.* 34.

(a) If there bee three Coparceners and they make partition, and one of them grant twentie ſhillings per annum out of her part to her two ſiſters, and their heires, for Egalitie of partition, the Grantees are not iopntenants of this Rent, but the Rent is in nature of Coparcenary, and after the death of the one Grantee, the moity of the rent ſhall diſcend to her iſſue in courſe of Coparcenary, and not ſurviue to the other, for that the Rent doth come in recompence of the Land, & therefore ſhall enſue the nature thereof, and if the grant had beene made to them two of a Rent of twenty ſhillings, viz. to the one ten ſhillings, and to the other ten ſhillings, yet ſhall they haue the Rent in courſe of Coparcenary, and ioyne in action for the ſame.

(a) 15. *H.* 7. 14. 29. *Aſſ.* 23. 29. *E.* 3. 9. b.

(b) If one Coparcener be married, and for oweltie of partition the husband and wife grant a Rent to the other two out of the part of the Feme Couert, this partition being equall, ſhall charge the part of the Feme Couert for euer.

(b) 29. *Aſſ.* 23. 29. *E.* 3. 9. 27. *E.* 3. 10.

(c) If two Coparceners by Deed indented alien, both their parts to another in fee, rendring to them two and their heires a Rent out of the Land, they are not iopntenants of this Rent, but they ſhal haue the Rent in courſe of Coparcenary, becauſe their right in the Land out of which the Rent is reſerued, was in Coparcenary.

(c). 38. *E.* 3. 26. b.

¶ *Purront diſtreiner de common droit, &c.* That is, (e) in this caſe the Law doth giue a diſtreſſe, leſt the Grantee ſhould be without remedie, for the which vpon the partition ſhe hath giuen a valuable recompence in Land, which diſcended, &c. And ſo in the caſe of Dower aboue mentioned.

(e) 1. *Marie Dyer* 91. 8. *E.* 3. 16. *and other the Bookes aboueſaid.*

de v. s. iſſuant hors de meſme le meaſe a lauter parcener, & a ſes heires a touts iours, pur ceo que cheſcun de eux aũoit oweltye en value.

a yeerely rent of fiue ſhillings, iſſuing out of the ſame Meaſe to the other Parcener and to her heires for euer, becauſe each of them ſhould haue equalitie in value.

Sect. 252.

¶ Et tiel partition fait per parol eſt aſſets bone, & meſme le Parcener q̃ auera le rent & ſes heires, purront diſtreiner de common droit, pur le rent en le dit meaſe de le value de 20. s. ſi le rent de 5. s. ſoit aderere en aſcun temps en quecunque mains q̃ meſme le meaſe deuiendra, coment que ne fuit vnques aſcun eſcripture de ceo fait enter eux ỏ tiel rent.

AND ſuch partition made by paroll is good enough, and that Parcener who ſhal haue the rent and his heires may diſtreine of common right for the Rent in the ſaid meaſe, worth twentie ſhillings, if the rent of 5. ſhillings be behind at any time, in whoſe hands ſoeuer the ſame meaſe ſhall come, although there neuer were any writing of this made betweene them for ſuch a rent.

Sect. 253.

¶ *Terres & Tenements, &c.* here (&c.) implyeth a Caution, viz. that they bee ſuch Lands

¶ Et meſm̃ le maner eſt, de touts maners de terres & tenements

IN the ſame manner it is of all manner of Lands and Tene-

ments, &c. lou tiel rent eſt reſerue a vn, ou a diuſ Parceners ſur tiel partition &c. Mes tiel rent neſt pas rent ſeruice, mes eſt rent charge de cõmon droit ewe & reſerue pur egaltie de partition.

ments, &c. where ſuch rent is reſerued to one or to diuers parceners vpon ſuch partition, &c. but ſuch rent is not Rent ſeruice but a rent charge of common right had and reſerued for egaltye of partition.

and tenements out of which a Rent for egaltye of partition may be granted, where of ſufficient hath bene ſaid before.

¶ *Reſerue al vn.* Here reſeruation is taken for a grant, and if it be vſed vpon the partition, doth amount in this caſe to a grant, which is worthy the obſeruation.

Sect. 254.

¶ Et nota que nulles ſont appelles parceners p̄ le common ley, mes females, ou les heires de females que veignont a terres & tenements per diſcent. Car ſi ſoers purchaſe terres ou tenements, de ceo ils ſont appelles ioyntenants, & nemy parceners.

And note that none are called parceners by the Common law, but females or the heires of females which come to lands or tenements by diſcent: for if ſiſters purchaſe lands or tenements of this they are called ioyntenants and not parceners.

This needes no explanation.

Sect. 255.

¶ Item ſi deux Parceners de terr̄ en fee ſimple, font partition enter eux, & la part de vn vault pluis q̄ le part d̄ lauter, ſi els fueront al temps de la partition de pleine age ſ. de 21 ans, donq̄ la partition, touts dits demurrera, & ne ſera vnques defeat. Mes ſi les tenements (dont els font partition) ſoyent a eux en fee taile, & le part que lun ad eſt

Alſo if two parceners of land in fee ſimple make partition between themſelues, and the part of the one valueth more then the part of the other, if they were at the time of the partition of full age, s. of 21. yeares, then the partition ſhall alway remaine and bee neuer defeated. But if the tenements (whereof they make partition) be to them in fee taile, and the part of the one

¶ *Donques le partition touts dits demurrera, &c.* Hereby it appeareth that the inequality of the value ſhall not impeach a partition made of lands in fee ſimple betweene Coparceners of full age, no more then it ſhall doe in caſe of an exchange. *9. H. 6. 5. and other the bookes above-ſaid.*

¶ *Ils ſont concludes durant lour vies.* This inequall partition doth ſo conclude the parceners themſelues, as ſhe that hath the inequall part ſhall not auoyde it during her life.

¶ *Concludes.* This word is derued of Con and Claudo, and in this ſence ſignifieth to cloſe or ſhut vp her mouth that ſhee cannot ſpeake to the contrary.

Husband & wife tenants in

11 *Ass.*p.23.

in ſpeciall tayle of certaine lands in fee haue iſſue a daughter, the wife dyeth, the huſband by a ſecond wife hath iſſue another daughter both the daughters enter (where the eldeſt is only inheritable) and make partition, the eldeſt daughter is concluded during her life to impeach the partition, or to ſay that the youngeſt is not heire, and yet ſhe is a ſtranger to the taile, but in reſpect of priuity in their perſons the partition ſhall conclude, for a partition betweene meere ſtrangers in that caſe is voide, but the iſſue of the eldeſt ſhall auoide this partition as iſſue in taile.

See after the Chapter of Garr.

(g) 21.E.3.34.35. 2.*Ed. Baſtards* 19. 11.*Aſſ.*23. 30.*Aſſ.*7. 17.E.3.59.

(g) I.S. ſeiſed of Lands in fee hath iſſue two daughters, Roſe and Anne, baſtards eigne, and Mulier puiſne and dieth. Roſe and Anne doe enter and make partition. Anne and her heires are concluded for euer.

melieux en annual value, que eſt la part de lauter, coment q̃ els ſont concludes durant lour vies a defeater la partitiõ, vncore ſi le parcener q̃ ad le meinder part en value ad iſſue & deuy, liſſue poit diſagreer a la partition, & enter et occupier ẽ cõmon lauter part que fuit alotte a ſa Aunt, & iſſint lauter poit enter & occupier en common lauter part alotte a ſa ſoer, &c. ſicome nul partition vſt eſte fait.

is better in yearly value then the part of the other, albeit they bee concluded during their liues to defeate the partition, yet if the parcener which hath the leſſer part in value hath iſſue and die, the iſſue may diſagree to the partition, and enter and occupie in common the other part which was alotted to his Aunt, and ſo the other may enter and occupie in cõmon the other part allotted to her ſiſter, &c. as if no partition had beene made.

Section 256

(*) 42.*Aſſ.*22. 8.E.4.4. 9.E.3.38. 15.E.4.20.F.N.B 62. 29.*Aſſ.*23.9.H.6.5. 43.*Aſſ.*14.

¶ *Els & lour barons.* Here it appeareth that the wife muſt be partie to the partition, and ſo are the bookes * to be intended that ſpeake of this matter.

(h) *Vid.*2.E.2.*Coll in vita* 170.

¶ *Et defeatera le partition.* Note the partition ſhall not be defeated for the ſurpluſage only to make the partition equall, but here it appeareth that it ſhall be auoyded for the whole. But of this more ſhall be ſaid hereafter in this chapter, Sectione 264. (h) And though the partition be vnequall, yet is not the partition voyde, but voydable, for if after the deceaſe of the huſband, the wife entreth into the vnequall part, and agreeth thereunto, this ſhall binde, and therefore Littleton

¶ Item ſi deux parceners de tenemẽts ẽ fee preigne barons, et els et lour barons font partition enter eux, ſi la part lun eſt meinder en anual value q̃ la part lauter, durant les vies lour barons la partition eſtoyera en ſa force. Mes coment que il eſtoyera durant les vies les barons, vncore apres la mort le baron, celuy feme q̃ ad le meinder part poit enter en le part ſa

ALſo if two parceners of lands in fee take husbands, and they and their husbands make partition betweene them, if the part of the one bee leſſe in value then the part of the other during the liues of their husbands the partition ſhall ſtand in its force. But albeit it ſhal ſtand during the liues of their husbands, yet after the death of the husband, that woman which hath the leſſer part may enter into

ſoer

ſoer come eſt auantdit, et defeatera la partition.

her ſiſters part as is aforeſaid, and ſhall defeate the partition.

vſeth the word (Defeatera) which prouoketh it to bee voydable.

Sect. 257.

¶ MEs ſi le partitiõ fait penter les barons fuit tiel, que cheſcun part al temps dallotment fait, fuit de egall annuall value, donque il ne poit apres eſtre defeat en tiels caſes.

BVt if the partition made betweene the husbands were thus, that each part at the time of the allotment made was of equall yearely value, then it cannot afterwards bee defeated in ſuch caſes.

¶ *Perenter les barons.* This is miſtaken, for the originall is Parenter eux, that is, betweene the Barons and Fems, and not, as it is here betweene the Barons, therefore this error would be hereafter reformed.

¶ *Al temps del allotment.* Hereby it appeareth, that if the parts at the time of the partition be of equal yearely value, neither the wiues nor their heires ſhall euer anoyde the ſame, and the reaſon hereof is, for that the husbands and wiues were compellable by Law to make partition, and that which they are compellable to doe in this caſe by Law, they may doe by agreement without proceſſe of Law. If the annuall value of the land be equall at the time of the partition and after become vnequall by any matter ſubſequent, as by ſurrounding, ill husbandrie or ſuch like, yet the partition remaines good.

9.H.6.5. And other the bookes aboueſaid.

Iudicis officium eſt vt res ita tempora rerum,
Quærere, quæſito tempore tutus eris.

But if the partition be made by force of the Kings writ, and iudgement thereof giuen, it ſhall binde the Fem-couerts for euer, albeit the parts be not of equall annuall value becauſe it is made by the Sheriffe by the oath of twelue men by Authority of Law. And the iudgement is that partition ſhall remaine firme and ſtable for euer as hath beene ſaid. (a) But a partition in the Chancery where one Coparcener is of full age and ſueth Liuery, and one other is within age and hath an vnequall part allotted to her, this ſhal not binde her at full age, for in a writ directed to the Eſcheator to make partition there is a Salvo iure, And there is no iudgement vpon ſuch a partition. But if ſuch a partition be equall it ſhall binde, ſo that a part of the land holden In Capite be allotted to euery of the Coparceners, for to that end there is an expreſſe Prouiſo in the writ. (b) And this partition may bee auoyded either by Scire fac' in the Chancery, or by a writ De partitione facienda at the Common Law at her full age.

(a) F.N.B.256.259.260 261.262.263. *9.H.6.6. 21.E.3.31.*

(b) *Vide 21.E.3.31.*

Sect.258.

¶ ITem ſi deux parceners ſont, et le puiſne eſteant deins lage de 21. ans, et partition eſt fait enter eux, iſſint que la purpartie que eſt allot al puiſne ẽ ô meindre value q̃ la purpartie lauter, en ceſt caſe le

ALſo if two Coparceners be, and the yongeſt being within the age of twenty one yeres, partition is made betweene them, ſo as the part which is allotted to the youngeſt, is of leſſe value than the part of the

¶ AS before in the caſe of the Fem-couert, (c) ſo it is in the caſe of the Enfant, for if the partition be equall at the time of the allotment, it ſhall binde him for euer, becauſe he is cõpellable by Law to make partition, and he ſhall not haue his age in a Partitione faciendo,

(c) 43.*Aſſ* 14. *9.H.6.5.6. 7.E.3.13. 8 E.3.24. 10.H. 4.5.31.Aſſ* 16. *21.H.6.25.*

da, and though the partition be vnequal, and the Enfant hath the leſſer part, yet is not the partition voyd, but voidable by his entry, for if hee take the whole profits of the vnequal part, after his full age the partition is made good for euer. And therfore Littleton here giueth him a caueat, That in that caſe he take not the whole profits of his vnequal part, neither ſhall an vnequall partition in the Chancerie bind an Infant as appeareth before. But a partition made by the Kings Writ de Partitione faciendo, by the Sheriffe by the oath of twelue men, and iudgement thereupon giuen, ſhall bind the Enfant, though his part bee vnequall, Cauſa qua ſupra.

le puiſne durant l' tẽps de ſon nonage, et auxy quaunt el vient a pleine age, ſ, de 21. ans, poit enter en la purpartie a ſa ſoer allot & defeatera la partition. Mes bien ſoy gard tiel Parcener quant el vient a ſa plein age, que el ne preigne a ſon vſe demeſne tours les profits des terres ou tenements que a luy fuer allots. Car donques el ſoy agreea a le partition a tiel age, en quel caſe la partition eſtopera et demurra en ſa force: Mes peraduentur les pfits d' la moitie el poit prender, relinquitant les profits d' lauter moitie a ſa ſoer.

other; in this caſe the youngeſt during the time of her nonage, and alſo when ſhee commeth to full age, s. of 21. yeares, may enter into the part allotted to her ſiſter, and ſhall defeat the partition: but let ſuch parcener take heed when ſhee comes to her full age, that ſhee taketh not to her owne vſe all the profits of the lands or tenements which were allotted vnto her, for then ſhee agrees to the partition at ſuch age, in which caſe the partition ſhall ſtand and remaine in it's force: but peraduenture ſhe may take the profits of the moitie, leauing the profits of the other moitie to her ſiſter.

Sect. 259.

¶ THe Law hath prouided for the ſafetie of a mans or womans eſtate, that * before their age of twentie one yeares they cannot bind themſelues by any Deed, nor alien any land, goods, or chattels.

*Vid. Sect. 402, 403.

¶ *Age de 21. ans.* Before this age a man or woman is called an Enfant.

¶ *Fait.* Factum, Anglicè, a Deed, and ſignifieth in the Common Law, an Inſtrument conſiſting on three things, viz. Writing, Sealing, and Deliuerie, comprehending a bargaine or contract betweene partie and partie, man or woman. It is called of the Ciuilians, Literarum obligatio.

*Bro. fo 65, 66. & 101. Flet. li. 3. ca. 14.

¶ *Feoffement.* Of this word ſufficient hath bin

¶ CEſt aſcauoir que quant il ẽ dit, que males ou females ſont de pleine age, ceo ſerra entendue d' age de 21. ans, car ſi deuant tiel age, aſcun fait ou feoffement, grant, releaſe, confirmation, Obligation, ou auſ ſcripture ſoit fait per aſcun de eux, &c. ou ſi aſcun deins tiel age, ſoit Baylife ou receiuer a aſcun home, &c. tout ſeruc pur nient, & poit eſte auoyde.

AND it is to bee vnderſtood, that when it is ſayd, That males or females bee of full age, this ſhall be intended of the age of 21. yeares, for if before ſuch age, any deed or feoffement, graunt, releaſe, confirmation, Obligation, or other writing bee made by any of them, &c. or if any within ſuch age be Baylife or Receiuer to any man, &c. all ſeruice for nothing, and may be auoyded. Al-

Auxy

Auxy home deuaunt le dit age, ne ſera my iure en vn Enquest, &c. ſo a man before the ſayd age ſhall not bee ſworne in an Enqueſt,&c.

ſayd before in the firſt Chapter of the firſt booke.

¶ *Grant.* Conceſſio is in the Common law a conueyance of a thing that lies in grant, and not in Liuerie, which cannot paſſe without Deed, as Aduowſons, Seruices, Rents, Commons, Reuerſions, and ſuch like. Of this alſo ſufficient likewiſe hath beene ſayd in the firſt Chapter of the firſt booke. *Lib.3.fol.63.in Lucelua Colledge Caſe.*

¶ *Releaſe, Confirmation,&c.* **Of theſe ſhall be ſpoken hereafter in** their proper places and Chapters.

¶ *Obligation* **is a word of his owne nature of a large extent, but** it is commonly taken in the Common Law, for a Bond containing a penaltie with condition for payment of money, or to doe or ſuffer ſome act or thing, &c. and a Bill is moſt commonly taken for a ſingle Bond without condition.

¶ *Ou auter ſcripture ſoit fait per aſcun de eux,&c.* **Here by this** (&c.) is implied ſome exceptions out of this generalitie, (d) as an Infant may bind himſelfe to pay for his neceſſarie meat, drinke, apparell, neceſſarie phyſicke, and ſuch other neceſſaries, and likewiſe for his good teaching or inſtruction, whereby he may profit himſelfe afterwards: but if he bind himſelfe in an Obligation or other writting, with a penaltie for the payment of any of theſe, that Obligation ſhall not bind him. (e) Alſo other things of neceſſitie ſhall bind them, as a preſentation to a Benefice, for otherwiſe the Laps ſhall incurre againſt him. Alſo if an Infant be an Executor vpon payment of any debt due to the Teſtator, hee may make an acquittance, but in that caſe a releaſe without payment is voyd, and generally whatſoeuer an Infant is bound to doe by Law, the ſame ſhall bind him, albeit he doth it without ſuit of Law. But of this common learning this little taſt ſhall ſuffice.

(d) 18.E.4.2. 21.H.6.31. *Lib.9.fol.87.Pruchons. Caſe.*

(e) 8.E.4.4. 9.H.6.5 17.E.3.9. 29.*Aſſ.*25. 2.*Maynes. Diet.*104.165.

¶ *Baylife ou Receiuer al aſcun home,&c.* **By this** (&c.) **many things** are implied, as that by Baylife is vnderſtood a ſeruant that hath adminiſtration and charge of lands, goods, and Chattels, to make the beſt benefit for the owner, againſt whom an Action of Account doth lie for the profits which he hath raiſed or made, or might by his induſtrie or care haue reaſonably raiſed or made, his reaſonable charges and expences deducted (f) But one vnder the age of twentie one yeares ſhall not be charged in any ſuch account, becauſe by intendment of Law, before his full age he hath not ſkill and abilitie to raiſe or make any ſuch improuement and profit.

Flota Lib.2.cap.64.& cap.67 Britton fol.62.70. Fleta Lib.2.cap.64. 41.E.3.39. 46.E.3.Account 40. 2.R.2.ibidem 45. 6.R 2.ibid.3.E.3.10.

(f) 13.E.3.*Infant* 9.11.E.3. *Accounts* 121. 21.E.3.8. 10.H.4.14. 2.H.4.13. *Regiſt.*135.

An account againſt a Receiuer, is when one receiueth money to the vſe of another, to render an account, but vpon his account he ſhall be allowed his expences and charges. (g) And therefore a man cannot charge a Baylife as a Receiuer becauſe then the Baylife ſhould loſe his expences and charges.

(g) 43.E.3.31. 46.E.3.3.b. 4.H.6.27.

In an account againſt a Receiuer, the Plaintife muſt declare by whoſe hands the Defendant receiued the money, which he ſhall not doe in the caſe of a Baylife. (h) But in ſome caſe in an Action of Account againſt one as Receptor denariorum, hee ſhall haue allowance of his expences and charges, and alſo ſhall account for the profit he receiued, or might reaſonably receiue, and this was prouided by Law in fauour of Merchants, and for aduancement of trade and traffique.

(h) 30.E.1.*Account* 127. 47.E.3 22. 10.*Aſſ.*7.16. *Brall.li.5. fo.334.Brit.f.62. Fle.li.2.c.64.& 51.5.E.3.1. Lib.Intrat.*17,18,19.

As if two joynt Merchants occupie their ſtocke, goods, and merchandizes in common to their common profit, one of them naming himſelfe a Merchant, ſhall haue an account againſt the other naming him a Merchant, and ſhall charge him as Receptor denariorum ipſius B. ex quacunque cauſa & contractu ad communem vtilitatem ipſorum A. & B. prouenien' ſicut per leges mercatoriam rationabiliter monſtrare poterit.

(i) If there be two Joyntenants or Tenants in Common of lands, and the one make the other his Bailife of his moitie, he ſhall haue an Action of Account againſt him as Baylife: And ſo are the Bookes to be intended, that ſpeake of an Action of Account in that caſe.

(i) 45.E.3.10. 3.E.3.27. 39.E.3.27.47.E.3.22. *F.N.B.*118.

So as there be but three kinds of writs of Account, viz. againſt one as Gardeine, whereof Littleton hath ſpoken before in the Chapter of Socage. The ſecond againſt one as Baylife: And the third, as Receiuer, as here it appeareth. (k) For a man ſhall not bee charged in an Account as Surueyor, Controller, Apprentice, Reue, or Heyward. And to maintaine an Action of Account, there muſt be either a priuitie in deed by the conſent of the partie, for (l) againſt a Diſſeiſor or other wrong doer no account doth lie, or a priuitie in Law ex prouiſione legis, made by the Law, as againſt a Gardein, &c. whereof ſufficient hath beene ſpoken in the Chapter of Socage.

(k) 13.E.3.*Account* 76. 41.E.3.*ibidem* 34. 8.E.3.46. 8.E.4.6.b. *F.N.B.*119.d.

(l) 2. *Mar. B. Account* 89. *F.N.B.*117. *Pl.Com.*542 2.H.4.12. 33.H.6.2. 4.H. 7.6.&c.

¶ *Ne*

¶ *Ne serra iure en vn Enqueſt, &c.* By this (&c.) is implied a maxime in Law, (m) Quod minor iurare non potest. For example, (n) An Infant cannot make his Law of Non ſummons: (o) And therefore the default ſhall not grieue him, for ſeeing the meanc to excuſe the default is taken away by Law, the default it ſelfe ſhall not preiudice him. But yet this rule hath an exception, That (p) an Infant when hee is of the age of twelue yeares, ſhall take the Oath of Allegeance 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, (q) An Infant cannot vpon his oath make his law in an Action of Debt. (r) And the husband and wife of full age for the debt of the wife, before the couerture ſhall make their Law.

(m) *Bracton lib.5.fo.340.b.*
(n) *13.E.3. Ley 50.*
(o) *26.E.3.63. 2. Maria Dier 104.105.*
(p) *Vid. decem Cap. de Homage et Cap. de Fealtie Sect. 85,91. Bract lib.2.fo.124. Britton fo.73.74. et fol.19. Fleta lib.1.cap.27.*
(q) *11.H6.40. 1.H.7.25. 15.E.4.2.*
(r) *46.E.3.10. 9.E.4.24. 15.E.4.2. 21.H.3.23.*

Section 260.

¶ *A terre en fee ſimple eſt allot a la file puiſne.* It is firſt to be obſerued vpon this whole caſe, That the fee ſimple Land is allotted to the yongeſt daughter, and the land entailed to the eldeſt. This partition Prima facie is good, and herein the partition differeth from the eſchange where in the eſchange the eſtates muſt bee equall.

But yet this partition by matter ſubſequent may become voidable, (as Littleton here putteth the caſe) the eldeſt Coparcener hath by the partition, and the matter ſubſequent barred her ſelfe of her right in the fee-ſimple lands, inſomuch as when the youngeſt ſiſter alieneth the fee ſimple Lands and dieth, and her Iſſue entreth into halfe the lands entailed, yet ſhall not the eldeſt enter into halfe of the lands in Fee ſimple vpon the Alienee, for by the alienation, the priuitie of the ſtate is deſtroyed.

¶ *Le puiſne file alien la terre en fee ſimple, &c.* The ſame Law it is, if the youngeſt daugh-

¶ Item ſi terres ou Tenemts ſoyent dones a vn home en le taile, quel ad tant des terres en fee ſimple, et ad iſſue deux files, et deuie, & ſes deux files font partition entr eux, 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 partition fait, la puiſne file alienaſt ſa terre en fee ſimple a vn auter en fee, & ad iſſue fits ou file & deuie, liſſue poit bien entrer en les Tenemẽts tailes & eux tener & occupier en purpartie ouesque ſon Aunt. Et ceo eſt pur deux cauſes: vn eſt, pur ceo que liſſue ne poit auer aſcun remedie de la terre alien p ſa mere, pur ceo que la terre fuit a luy en fee ſimple, & pur tant que il eſt vn de les heires en taile, & nad my aſcun recompence de ceo que a luy affiert de les Tenements tailes, il eſt reaſon

ALſo if Lands or Tenements be giuen to a man in taile, who hath as much land in fee ſimple, and hath iſſue two daughters and die, & his two daughters make partition betweene them, ſo as the Land in Fee-ſimple is allotted to the younger daughter, in allowance for the lands and Tenements in Taile allotted to the elder daughter, if after ſuch partition made, the yonger daughter alieneth her land in fee ſimple, to another in fee, & hath iſſue a ſon or a daughter & dies, the iſſue may wel enter into the lãds in taile & hold and occupie them in purpartie with her aunt. And this is for two cauſes: one is, for that the iſſue can haue no remedie for the land ſold by the mother, becauſe the land was to her in fee ſimple, and in as much as ſhe is one of the heirs in taile, & hath no recõpence of that which belongeth to her of the lands in taile, it is reaſon

reaſon que el eit ſa purparty ô les tenſts tailes, & noſmement quant tiel partition ne fait aſcun diſcontinuance.

¶ Mes le contrary eſt tenus M.10.H.6.8. que le heire ne poit enter ſur l'Parcener que ad la terre taile, mes eſt mis a Formdon. *

that ſhee hath her portion of the Lands tayled, and namely when ſuch partition dothnot not make any diſcontinuance.

¶ But the contrary is holden *M.*10.*H.*6.8.that the heire may not enter vpon the parcener who hath the intailed land,but is put to a *Formedon.* *

ter had made a gift in tayle, for the Reuerſion expectant vpon an eſtate tayle is of no account in Law, for that it may bee cut off by the tenant in tayle. Otherwiſe it is of an eſtate for life or yeares. If in this caſe the youngeſt Daughter alien part of the Land in Fee ſimple, and dieth ſo as a full recompence for the land entayled diſcends not to her iſſue, ſhee may waiue the taking of any profits thereof and enter into the Land entayled for the Iſſue in tayle ſhall neuer bee barred without a full recompence, though there bee a warrantie in Deed, or in Law diſcended. If on the other ſide the eldeſt Coparcener alien the land entayled and dyeth, her Iſſue ſhall haue a Formdon alone for the whole Land entayled, for ſo long as the partition continueth in force,ſhe is only enheritable to the whole Land entayled.

¶ *Et nad my aſcun recompence.* This is intended, as it appeareth of a full recompence.

¶ *Tiel partition ne fait aſcun diſcontinuance.* And the reaſon thereof is for that it paſſeth not by Liuery of ſeiſin, but the partition is in truth leſſe then a grant, for that it maketh no degree but each Coparcener is in by diſcent from the common Anceſtor. *See more of this in the Chapter of diſcontinuance. Section.*

¶ *Mes le contrary eſt tenus, &c.* This is no part of Littleton, and is contrary to Law as appeareth by Littleton himſelfe, and beſides the caſe intended is not truly vouched, for it is not in 10.H.6.but in 20.H.6. and yet there it is but the opinion of Newton,Obiter,by the way. Vide F. tit.part.1. 20.H.6.14.

Section 261.

VN auter cauſe ē, pur ceo q̄ il ſerra ret̄ la folly del eigne ſoer que el voit ſuffer ou agree a tiel partition, ou el puiſſoit auer ſi el voile, la moitie de la terre en fee ſimple, & ſon moitie des tenem̄ts en le taile, pur ſay pur party, & iſſint eſtre ſure ſans dammage.

ANother reaſon is for that, it ſhall be accounted the folly of the eldeſt ſiſter that ſhee would ſuffer or agree to ſuch a partition,where ſhe might if ſhee would haue had the moity of the Land in Fee Simple, and a moity of Lands entailed for her part,&ſo to be ſure without loſſe.

¶ *VN auter cauſe, &c.* This is another reaſon to proue that by the partition the eldeſt Daughter hath concluded her ſelfe as is aforeſaid.

¶ *Son moitie des terres en le tayle.* For if a Writ of Partition had beene brought, the eldeſt ſhould not haue bin cōpelled to take the whole eſtate in tayle, for the preiudice that might after enſue, but might haue challenged the one moity of the Lands in Tayle, and another moity of the Lands in Fee ſimple,and this ſhe might doe ex prouiſione legis. But when ſhee will not ſubmit her to the policie and prouiſion of the Law, but betake herſelfe to her owne policie and prouiſion, there the Law will not ayde her, as here by Littleton it manifeſtly appeareth. And ſo it is in the other caſe. (*) As if a man be ſeiſed of three Mannors of equall value in fee & taketh wife, and chargeth one of the Mannors with a Rent Charge, and dyeth, ſhe may by the prouiſion of the Law take a third part of all the Mannors and hold them diſcharged, but if ſhee will accept the entire Manno: charged, it is holden that ſhe ſhall hold it charged. (*) 26.E.3.dower 133. 17.E.2.tit.dower 164. 18.H.6.27.

*Dier.*1.*Mar.*98.

A partition of Lands intayled betweene Parceners, if it be equall at the time of the partition ſhall bind the iſſues in tayle for euer, albeit the one doe alien her part.

But here it may be demanded, that ſeeing Littleton ſayth, that it ſhall bee taken to bee the folly of the eldeſt Parcener, &c. what if ſo be the eldeſt did not know of the eſtate tayle eyther in reſpect of the antiquitie thereof, or for want of hauing of the euidence, or for any other cauſe, what folly can be imputed to her?

The anſwer is, That it is preſumed in Law, that euery one is Conuſant of her right and title to her owne Land; and on the other ſide it ſhould be arrected great folly in her to be ignorant of her owne title. And therefore the reaſon of Littleton doth firmely hold.

Section 262.

BEfore it appeareth that when the priuitie of the eſtate is deſtroyed by the feoffment of one Coparcener, that vpon euiction of a moity by force of an entayle againſt the other ſhee ſhall not enter vpon the alienee. But in this caſe that Littleton here putteth when the priuity of the ſtate remayneth, and the part of the one is euicted, (*) ſhee ſhall enter and hold in Coparcenarie with her other Coparcener, and ſo it is in the caſe of an eſchange. By reaſon of the (&c.) in the end of this Section there may two queſtions bee iuſtly demanded; what if the whole eſtate in part of the purpartie of one Parcener be euicted by a title paramont? whether is the whole partition auoyded, for that Littleton here putteth the caſe that the whole purpartie of the one is defeated?

(*) 15.*E.*4.3.*a.per Littleton. Lib.*4.*fol.*121.122. *Baſtards Caſe.*

The ſecond queſtion is whether if but part of the ſtate of one Coparcener bee euicted, as an eſtate in tayle, or for life leauing a reuerſion in the Coparcener, whether that ſhall auoyde the partition in the whole?

To the firſt it is anſwered, that if the whole eſtate in part of the purparty bee euicted, that ſhall auoid the partition in the whole, be it of a Manor, that is entire, or of acres of ground, or the like that bee ſeuerall, (n) for the partition in that caſe implyeth for this this purpoſe both a warranty and a condition in Law, and either of them is entire, and giueth an entry in this caſe into the whole. And ſo hath

(n) 13.*E.*4.3. 42. *Aſſ.*22.

CAuxy ſi home ſoit ſeiſie en fee dun carue de terre per iuſt title, & diſſeiſiſt vn enfãt deins age dun auter carue, & ad iſſue deux files, & morust ſeiſi daumbideux carues, lenf. adonqꝫ eſteant deins age, & les files entront & font partition, iſſint q̃ lun carue eſt allotte al purparty lun, come per caſe al puiſne en allowãce dauter carue que eſt allotte a le purpartie de lauter, ſi puis lenf. enter en le carue dont il fuit diſſeiſiſt ſur l' poſſeſſion la Parcener que ad meſme le carue, donqꝫ ñ le Parcener poit entrer en lauter carue que ſa ſoer ad, & tener en Parcenary oueſqꝫ luy: Mes ſi le puiſne aliena ñ la carue a vn auter en fee ſimple deuant lentrie lenf. & puis lenf. enter ſur le poſſeſſion lalienee, donque

ALſo if a man bee ſeiſed in fee of a carue of Land by iuſt title, and hee diſſeiſe an Infant within age, of an other Carue, and hath iſſue two Daughters, and dieth ſeiſed of both Carues, the Infant being thẽ within age, and the daughters enter and make partition, ſo as the one Carue is alloted for the part of the one, (as per caſe to the youngeſt in allowance of the other carue which is allotted to the purpartie of the other, if afterward the Infant enter into the Carue whereof hee was diſſeiſed vpon the poſſeſſion of the Parcener which hath the ſame Carue, then the ſame Parcener may enter into the other Carue which her Siſter hath, and hold in Parcenarie with her. But if the yongeſt alien the ſame Carue to another in fee before the entry of

que el ne poit enter en lauter Carue, pur ceo que per son alienation el ad luy tout ousterment dismisse dauer aſcun pt de les tenements cõe Parcener. Mes ſi le puisne deuant lentrie lenfant fait de ceo vn leas pur terme dans, ou pur terme de vie, ou en fee tayle, ſauant la reuerſion a luy, & puis lenfant enter, la parauenture auterment eſt, pur ceo que el ne ſoy ceo que fuit en luy, dismisse de tout mes ad reſerue a luy le Reuerſion & le fee, &c.

the Infant, and after the Infant enter vpon the poſſeſſion of the Alienee, then ſhe cannot enter into the other Carue, becauſe by her alienation ſhee hath altogether diſmiſſed her ſelf to haue any part of the Tenements as Parcener. But if the youngeſt before the entrie of the Infant make a Leaſe of this for terme of yeares, or for tearme of life, or in Fee Tayle ſauing the reuerſion to her, and after the Infant enter there peraduenture otherwiſe it is, becauſe ſhe hath not diſmiſſed herſelfe of all which was in her, but hath reſerued to her the reuerſion, & the fee, &c.

it bœn lately reſolued (o) both in the caſe of exchange and of the partition.

(o) *Baſtards caſe. Lib.* 4. *fol.* 121.

To the ſecond, if any eſtate of frœhold be euicted from the Coparcener in all or part of her purpartie, it ſhall be auoyded in the whole. As if A. be ſeiſed in fee of one acre of land in poſſeſſion, and of the reuerſion of another expectant vpon an eſtate for life and hee diſſeiſe the Leſſee for life who makes continuall clayme. A. dyeth ſeiſed of both Acres, and hath Iſſue two Daughters, partition is made, ſo as the one Acre is alloted to the one, and the other Acre to the other, the Leſſees enter, the partition is auoyded for the whole, and ſo likewiſe hath (p) it bœne lately reſolued. (q) Yet there is a diuerſitie betweene the warrantie, and the condition which the Law createth vpon the partition where one Coparcener taketh benefit of the condition in Law ſhe defeateth the partition in the whole.

(p) *Baſtards caſe, vbi ſupra.* (q) *Vide* 5. *E.* 3. *tit. Voucher,* 249.

But when ſhe voucheth by force of the warranty in Law for part, the partition ſhall not be defeated in the whole, but ſhee ſhall recouer recompence for that part. And therein alſo there is another diuerſitie betweene a recouerie in value by force of the warrantie vpon the eſchange and vpon the partition: for vpon the eſchange he ſhall recouer a full recompence for all that he loſeth, But vpon the partition ſhe ſhall recouer but the moitie or haife of that which is loſt, to the end that the loſſe may be equall.

Many other diuerſities there be betweene eſchanges and partitions, for there are more and greater priuities in caſe of partition in perſons, bloud, and eſtates, than there is in eſchanges, all which were too tedious to rehearſe in this place, ſeeing ſo much as hath bœne ſaid, herein is ſufficient for the explanation of the caſes of partition which Littleton hath put.

18. *E.* 2. *tit. old* 191. 19 *H.* 6. 26.

¶ *Donques el ne poet enter en lauter carue, &c.* By this is alſo approued that which hath bœne often ſaid before, that when the whole priuitie betweene Coparceners is deſtroyed, there ceaſeth any recompence to bee expected eyther vpon the condition in Law or warrantie in Law by force of the partition.

¶ *Perſon alienation il ad luy tout ousterment diſmiſſe dauer aſcun part de les tenements come parcener.* Hereupon it followeth, that if one Parcener maketh a feoffement in Fee, and after her feoffee is impleaded and voucheth the Feoffor, (r) ſhe may haue ayde of her Coparcener to deraigne a warrantie Paramount, but neuer to recouer pro rata againſt her by force of the warrantie in Law vpon the partition, for Littleton here ſayth, that by her alienation ſhee hath diſmiſſed herſelfe to haue any part of the Land as Parcener. And without queſtion as Parcener ſhee muſt recouer pro rata, vpon the warrantie in Law againſt the other Parcener.

(r) 41. *E.* 3. 24. 11. *H.* 4. 22. 23. 14. *E.* 3. *aid.* 24.

And yet in ſome caſe the Feoffee of one Coparcener ſhall haue ayde of the other Parceners to Deraigne the Warranty paramount, and therefore (a) if there bee two Coparceners and they make partition, and the one of them enfeoffes her ſonne and heire apparant and dyeth the ſonne is impleaded, albeit he be in by the feoffment of his mother, yet ſhall he pray in ayde of

(a) 43. *E.* 3. 23. *Pl. Com.* 4. *E.* 3. 15. 5. *E.* 3. 7. 38. *E.* 3. 17. *&c.*

(b) 32 E.1.tit. Aid 171. 3.E.2 ibid.163.

the other Coparcener to haue the Warranty Paramount; and the reaſon (b) of the granting of this aide is for that the warranty betweene the mother and the ſonne is by law annulled, and therefore the Law giueth the ſonne albeit he be in by feoffment to pray in aide of the other parcener, to deraigne the Warranty Paramount, wherein is to be obſerued the great equity of the Common Law in this caſe:

Ipſæ etenim leges cupiunt vt iure regantur.

(*)2.H.6.14.

(*) But if a man be ſeiſed of lands in fee and hath iſſue two daughters and make a gift in taile to one of them and die ſeiſed of the reuerſion in fee which diſcends to both ſiſters, and the Donee or her iſſue is impleaded, ſhe ſhall not pray in ayde of the other Coparcener either to recouer Pro rata, or to Deraigne the Warranty Paramount, for that the other ſiſter, is a ſtranger to the ſtate taile whereof the eldeſt was ſole Tenant, and neuer partition was or could be thereof made.

¶ *Mes ſi le puiſne deuant lentrie lenfant fait de ceo vn leaſe,&c. ou en fee taile ſauant le reuerſion a luy,&c.* This (vpon that which hath beene ſaid) needeth no explanation. Only this is to be obſerued, that albeit it is in the power of tenant in taile to cut off the reuerſion, yet if the infant enter before it be cut off, the Law hath ſuch conſideration of this reuerſion, that ſhee that loſeth it ſhall enter into her ſiſters part, and hold with her in Coparcenary for that the priuity betweene them was not wholly deſtroyed.

Sect. 263.

¶ Item ſi ſoiēt trois ou quater parceners, &c. q̄ font partition enter eux, ſi le part dun parcener ſoit defeat p tiel loyal entrie, el poit enter et occupier lauk terres ouesq̄ touts les auters parceners, et eux compell de faire nouel partition de lauters terres, enter eux, &c.

ALſo if there be three or foure Coparceners, &c. which make partition betweene them, if the part of the one parcener bee defeated by ſuch lawfull entrie, ſhe may enter and occupie the other lands with all the other parceners, and compell them to make new partition betweene them of the other lands, &c.

¶ *Nter eux,&c.* This (&c.) implyeth that ſo it is betweene the ſuruiuing Parceners and the heires of the other, or betweene the heires of Parceners all being dead.

Sect. 264.

¶ *Le baron ſoy tient eins cōe tenant per le curteſie.* This is no ſeuerance of the ſtate in Coparcenary, (b) for the other Coparcener and the Tenant by the Curteſie ſhall be ioyntly impleaded, for he doth continue the ſtate of Coparcenary as the other Parcener did.

(b)24.E.3.29.31.E.3.Brief 339. 9.E.4.13. 19.H.6.26. 3.H.6.36. 3.H.6.Aſſ.1. 37.H.6,8. 21.E.3.14.

¶ *Vers le tenant*

¶ Item ſi ſont deux parceners, et lun prent baron, et le baron et ſa feme ont iſſue enter eux, et la feme deuy, et la baron ſoy tient eyns en le moity com̄ tenant per le curteſie, en ceo cas le parcener q̄ ſuruesquiſt, et le tenant per le curteſie bien potent faire partition

ALſo if there bee two parceners and the one taketh husband and the husband and wife haue iſſue betweene them and his wife dieth, and the husband keepes himſelfe in as tenant by the curteſie, In this caſe the parcener which ſuruiuing

tition enter eux, &c. Et ſi le tenant per le curteſie ne voit agreer al partition deſtre fait, donques le parcener que ſuruesquiſt poit auer ẽuers le Tenant per le curteſie, breife De partitione facienda, &c. et luy cõpeller de faire partition. Mes ſi le tenant per le curteſie voile auer partition enter eux deſtre fait, et le parcener que ſuruelquiſt ne voit ceo auer, donque le tenant per le curteſie nauera aſcũ remedy pur auer partition, &c. Car il ne poit auer breife de Partitione facienda, pur ceo que il neſt parcener, car tiel breife giſt pur parceners tantſolement. Et iſſint poyes veyer que bẽ de Partitione facienda giſt enuers tenant per le curteſie, et vncore il meſme ne poit auer tiel breife.

ueth, and the tenant by the curteſie may well make partitiõ between them, &c. And if the tenant by the curteſie will not agree to make partition then the parcener which ſuruiueth may haue againſt the tenant by the curteſie a Writ *De partitione facienda, &c.* & compel him to make partition. But if the tenant by the curteſie would haue partition to be made between them and the parcener which ſuruiueth will not haue this, then the tenant by the curteſie cãnot haue any remedy to haue partition, &c. For hee cannot haue a writ of *Partitione faciẽda*, becauſe he is no parcener. For ſuch a Writ lyeth for parceners only. And ſo you may ſee that a writ of *Partitione fac'* lyeth againſt tenant by the curteſie, and yet he himſelfe cannot haue the like Writ.

per le Curteſie briefe de partitione faciendа, &c. Here by the &c. is implyed that albeit that the Tenant by the Curteſie be an eſtranger in blood yet the (c) Writ De partitione fac. clearly lyeth againſt the tenant by the Curteſie, becauſe hee continueth the eſtate of Coparcenary. (c) 3.E.3.47. 9.E.3.13. 16.E.3.Aid 129. 19.E.3. ibid.144.

If two Coparceners be, and one doth alien in fee they are Tenants in common, and ſeuerall Writs of Præcipe muſt be brought againſt them, and yet the Parcener ſhall haue a Writ of partition againſt the Alienee at the Cõmon Law, which is a farre ſtronger caſe then the caſe put of Tenant by the Curteſie. 28.E.3.5.

℄ *Tiel briefe giſt pur Parceners tantſolement.* Hereby it appeareth that neither the Tenant by the Curteſie, nor (much leſſe) the Alienee of a Coparcener ſhall haue a Writ of Partitione fac' at the Common Law, for Littleton ſaith here, that ſuch a Writ lyeth only for Parceners, * but it may be brought by a Parcener againſt ſtrangers as it appeareth before. But a Nuper obijt and a Rationabile parte doe lye only betweene two Coparceners on both ſides. (*) 3.E.47.48.

If three Coparceners be and the eldeſt doth purchaſe the part of the youngeſt, the eldeſt hauing one part by diſcent, and the other by purchaſe ſhall haue a Writ of Partition at the Common Law againſt the other middle ſiſter; Et ſic de ſimilibus And ſo it is in a farre ſtronger caſe, if there be three Coparceners and the eldeſt taketh husband, and the husband purchaſe the part of the youngeſt the husband for his part is a ſtranger and no Parcener, and yet he and his wife ſhall haue a Writ of partition againſt the middle ſiſter at the Common Law, becauſe he is ſeiſed of one part in the right of his wife who is a Parcener. Dier 1.Marie 98. F.N.B.62. Regiſt.

℄ *Pur auer Partition, &c.* Here by this (&c) is included all others that be ſtrangers in blood, whether they come to their eſtates by Purchaſe or by act in Law. Since Littleton wrote; by the Statutes (d) one Joyntenant or Tenant in common may haue a Writ of Partition againſt the other, and therefore at this day the Alienee of one Parcener may haue a Writ of Partition againſt the other Parcener, becauſe they are Tenants in common: and the like had beene attempted in former Parliaments (*) but preuailed not vntill theſe later Statutes. (d) 31.H.8.cap.1. 32 H.8. cap.32. Vid.Sect.290. (*) Rott.Parl.1.R.2 nu.82.

(e) The Tenant by the Curteſie ſhall haue a Writ of Partition vpon the Statute of 32.H.8. (e) Brooke tit.Partition 41.

32.H.8.ca.32. for albeit he is neither Joyntenant nor Tenant in Common, for that a Præcipe lieth against the Parcener and Tenant by the Courtesie as hath beene layd, yet hee is in equall mischiefe as another Tenant for life.

(f) Mich.7.et 8. Eliz. Rendlows inter Wotton et Cooke. Dier 3. Maria 128.A. et 7.Eliz.243.

(f) If there be three Coparceners and a stranger purchase the part of one of them, he and one other of the Coparceners shall not joyne in a Writ of partition, neither by the Common Law, nor by force of the statute, for the words of the Preamble of the statute be (And none of them by the Law doth or may know their severall parts, &c. and cannot by the lawes of this Realme make partition thereof, without other of their mutuall assents, &c.)

Now in this case the one of the Plaintifes, viz. the Parcener may haue a Writ of Partition at the Common Law, and the other Parcener being a purchaser may haue it by the stat. and therefore they shall not joyne in one Writ.

Chap.2. Parceners by Custome. Sect.265.

See before all the Antient Authours of the Law concerning Gaulkind vbi supra. Lambert verbo Terra exscripta

(g) 5.E.4.8.b. 21.E.4.56.b Plo. Com 129.b. in Buckleis Case. Vi. Sect.8. versus finem.

Mes il couient en le Declaration de faire mention de le custome. Wel said Litl. (g) That he in his Declaration must make mention of the Custome, as to say, That the land is of the Custome of Gaulkind, but hee shall not prescribe in it. And so is it of Burgh English, and these two varie in that point from other Customes, for the Law, when they are generally alledged, taketh knowledge of these two.

(h) Bracheseire. Hereford.

In (h) Domesday it is thus sayd, Duo fratres tenuerunt in paragio quisque habuit aulam suam, & potuerint ire quo voluerint.

Auxy tiel custome est en auters lieux Angleterre. Of this sufficient hath beene said before.

(i) Lamb. verbo Wellsmen. Silvester Giraldus.

North Gales. Wales, Wallia, It commeth (i) of the Saxon word Wealh which signifieth Peregrinus, or exter⁹, for the Saxõs so called them, because in troth they were strangers to them, being the remaine of the old and antient Brittons, a wise and warlike Nation inhabiting in the west part of England. These men haue kept their proper Language for aboue these thousand yeares past, and they to this day call vs Englishmen, Saisons, (that is) Saxons. And the like custome as our Author heere saith was in North Wales, was also in Ireland, for there the Lands also (which is one marke of the antient Brittons) were of the nature of Gaulkind: but where by their Brehon Law the Bastards

Parceners p le custome sont lou hõe seisie en fee simple, ou en fee taile de terres ou tenements q̃ sont de tenure appel Gauelkind deins l' Coũtie de Kent, & ad issue diuers fits & deuie, tielx terres ou tenements discenderõt a touts les fits per le custome, & ouelment enheriterõt & ferront ptition enter eux per le custome. sicome females ferront, & hẽe de Partitione facienda gist en ceo cas, sicome enter females, mes il couient en la declaration de faire mention ỏ le custom. Auxy tiel custome est en auters lieux Dengleterr̃. Et auxi tiel custome est en North Gales, &c.

Parceners by the Custome are, where a man seised in Fee simple, or in Fee tayle of Lands or Tenements which are of the Tenure called Gaulkind within the Countie of Kent, and hath issue diuers sonnes and die, such Lands or Tenements shall discend to all the sons by the Custome, and shal equally inherit and make partition by the custome, as females shall doe, and a writ of Partition lieth in this case as between females, but it behooueth in the Declaration to make mention of the Custome. Also such Custome is in other places of England, and also such custome is in North-Wales, &c.

ſta rds inherited with their legitimate ſons, as to the Baſtards that cuſtome was abolished. And agreeing with Littleton in this poynt, ſee an old Statute.* Aliter vſitatum eſt in Wallia, quam in Anglia, quo ad ſucceſſionem hæreditatis, eo quod hæreditas partibilis eſt inter hæredes maſculos, à tempore cuius non extitit memoria partibilis extitit, Dominus Rex non vult quod conſuetudo illa abrogetur, ſed quod hæreditates remaneant partibiles inter conſimiles hæredes ſicut fieri conſueuit, & fiat partitio illius ſicut fieri conſueuit

Vid. Sect. 212.
* *Stat. Walliæ, an.* 12. *E.* 1.

¶ *Parceners per le Cuſtome, &c.* **Well ſayd** Littleton, **By the Cuſtome, for ſonnes are Parceners in reſpect of the cuſtome of the Fee or Inheritance, and not in reſpect of their perſons, as daughters and ſiſters, &c. be.** (h) Et ſunt participes quaſi partem capientes, &c. ratione ipſius rei quæ partibilis eſt, & non ratione perſonarum, quæ non ſunt quaſi vnus hæres, & vnum corpus, ſed diuerſi hæredes, vbi tenementum partibile eſt inter plures cohæredes petentes qui diſcendunt de eodem ſtipite & ſemper ſolent diuidi ab antiquo.

(h) *Brak. li.* 5. *fo.* 428. *Brit. ca.* 71. *Flet. lib.* 5. *cap.* 9.

Sect. 266.

¶ Item il y ad aut partiē quel eſt dauter nature et dauter forme que aſcuns des partitions auauntdits ſont. Sicome home ſeiſie de certaine Terres ē fee ſimple, ad iſſue deux files et leigne eſt mary, et le piere done parcel de ſes terres a le baron oue ſa file en frankmariage, et morust ſeiſie ō le remnant, le quel remnant eſt de pluis greinder value per an, q̄ ſont les Terres dones en Frankmariage.

ALſo there is another partition which is of another nature, and of other forme, then any of the partitions aforeſaid be. As if a man ſeiſed of certaine Lands in Fee-ſimple, hath iſſue two daughters, and the eldeſt is married, and the father giueth part of his Lands to the husband with his daughter in Frankmarriage, and dieth ſeiſed of the remnant, the which remnant is of a greater yerely value than the lands giuen in Franke-marriage.

¶ *Dona parcel de ſes terres a le Baron oue ſa file en frankmarriage.*

Here it appeareth, That a gift in frankmarriage may be made after marriage, as hath beene ſayd in the Chapter of Fee tayle.

¶ *Le quel rēnant eſt de pluis greinder value per an, &c.* **Admit** that the lands giuen in Frankmarriage are of greater value than the lands diſcended in Fee ſimple, **Shall the other ſiſter haue any remedie againſt the Donees? it is plaine ſhe ſhall not, becauſe it is lawfull for a man to diſpoſe of his owne lands, at his will and pleaſure.**

Sect. 267.

¶ En cel caſe le baron ne le fēe auera riens pur lour purpartie de le dit remnant, ſinon que ils voile mitter lour tres dones en frankmariage en Hotchpot oueſque le rem-

IN this caſe neither the husband nor wife ſhall haue any thing, for their purpartie of the ſayd Remnant, vnleſſe they wil put their lands giuen in Franke-marriage, in *Hotchpot*, with the remant of the

¶ *En cel caſe le Baron ne le Feme auera riens pur lour purpartie, &c.* (i) **This gift in Frankmarriage ſhall** Prima facie **be intended a ſufficient aduancement, and therefore the remnant ſhall diſcend to the other Coparcener, only with this proviſion in Law, Tacite annexed, that if the donee**

(i) 8. *H.* 3. *brene* 880. 34. *E.* 1. *auper Obits* 15. *adiudge* 4. *E.* 3. 49. 10. *Aſſ. p.* 14. *Vid.* 10. *E.* 3. 38. *et* 30. *Aſſ.* 7 *Brak. Lib.* 2. *fol* 77. *Lib.* 5. *fol.* 428. *Britton ca.* 72 *Fleta Lib.* 6. *cap.* 47.

næs will put the Land into Hotchpot, then ſhe ſhall out of the remnant make vp her part equall, but the Donæs muſt doe the firſt act, and in the meane time the whole fee ſimple land diſcends to the other. And this is warranted heere by Littleton, viz. That the Donæs ſhall haue nothing for the purpartie of the remnant, vnleſſe they will put their lands giuen in Frankemarriage, in Hotchpot, ſo as the Donæs muſt doe the firſt act, and more expreſſely after in this Chapter, where he directly ſaith, That the other Siſter ſhall enter into the remnant, & them to occupie to her owne vſe, vnleſſe the husband and wife will put the Lands giuen in Frankemarriage, into Hotchpot. And herewith agreeth Fleta, who ſaith, Cum dicat tenens excipiendo, quod non tenetur petenti reſpondere quia A. participem habet, &c. replicari poterit a petente quod prædict A. tenet quandam partem in maritagium de communi hæreditꝫ, nec vult illud in partem ponere. And here are three things (that I may ſpeake once for all) to be obſerued. Firſt, That in this ſpeciall caſe where there be two daughters, one of them onely ſhall inherit the lands in fee ſimple. Secondly, That in this caſe there lieth no writ of Partition, becauſe non tenent inſimul & proindiuiſo. Thirdly, If the Parcener to whom the land in fee ſimple diſcended, will not put the lands in Hotchpot, then may the Donæs enter into the fee ſimple lands, and hold them in Coparcenarie with her.

nant de la terre oueſq; ſa ſoer. Et ſi iſſint ils ne voilent fayre, donq̃s le puiſne poet tener & occupier m̃ le remnanc, & prendra a luy les profits tãtſolement. Et il ſemble que ceſt parol (Hotchpot) **eſt en Engliſh,** A Pudding, **car en tiel** Pudding **neſt communement miſe vn choſe tantſolem̃t, mes vn choſe oueſq; autꝛs choſes enſemble. Et pur ceo il conuient en tiel caſe de mitter les Terres dones en frankmarriag, oueſque les autꝛs terres en** Hotchpot, **ſi le Baron & ſa feme voilent auer aſt pt en les autꝛs tꝛs.**

land with her ſiſter. And if they wil not doe ſo, then the youngeſt may hold and occupie the ſame remnant, and take the profits onely to her ſelfe. And it ſeemeth that this word *(Hotchpot)* is in Engliſh, A Pudding, for in this Pudding is not commonly put one thing alone, but one thing with other things together. And therefore it behooueth in this caſe to put the lands giuen in Frankemarriage with the other Lands in *Hotchpot*, if the husband and wife will haue any part in the other Lands.

(k) *Glanuill Lib.7.cap.5. Bracton Lib.2.fol.60. Fleta Lib.2.cap.5. Magna Carta cap.18.3. F.N.B.222. 30.E.3 25. 31.E.3.Reſp.60. 31.Aſſ.14. 17.E.2.Detinew 17.E.3.17. 1.E.2.Detinew 56. 31.H.8.tit. Rationab.parte. Bonorum.6.*

* *Lamb.f.119.68.*

(l) *Regiſt.142. 34 E.1. Detinew 60. 1 E.4.6. 7.E.4.21. 43.E.3.38.*

(m) *3.E.3.Detinew. 156. 40.E.3.18.*

And it ſeemeth by our old Bookes, (k) That by the antient Law there was a kind of reſemblance hereof concerning goods. Si autem poſt debita deducta & poſt deductionem expenſarum quæ neceſſariæ erunt, id totum quod hunc ſuperfuerit diuidatur in tres partes, quarum vna pars relinquatur pueris ſi pueros habuerit defunctus. Secunda, Vxori ſi ſuperſtes fuerit, & de tertia parte habeat teſtator liberam diſponendi facultatem: ſi autem liberos non habeat, tunc medietas defuncto, & alia medietas vxori: ſi autem ſine vxore deceſſerit liberis exiſtentibus, tunc medietas defuncto, & alia medietas liberis tribuatur: ſi autem ſine vxore & liberis, tunc id totũ defuncto remanebit. And by the Law before the Conqueſt it * was thus prouided, Siue quis in curia, ſiue morte repentine fuerit inteſtatꝰ mortuus, dominus tamen nullam rerum ſuarum partem (præter eam quæ iure debetur) herioti nomine ſibi aſſumito, verum eas iudicio ſuo vxori liberis & cognatione proximis iuſtè pro ſuo cuique iure diſtribuito.

But it appeareth by the Regiſter, (l) and many of our Bookes, That there muſt be a cuſtome alledged in ſome Countie, &c. to inable the wife or children to the writ De rationabile parte bonorum, and ſo hath it beene reſolued in Parliament. (m) But ſuch children as bee reaſonably aduanced by the father in his life time with any part of his goods, ſhall haue no further part of his goods, for the words of the writ be, Nec in vita patris promoti fuerunt.

Note, the cuſtome of London is, That if the father aduance any of his children with any part of his goods, that ſhall barre them to demand any further part, vnleſſe the father vnder his hand, or in his laſt will doe expreſſe and declare, That it was but in part of aduancement, and then that child ſo partly aduanced, ſhall put his part in Hotchpot, with the Executors and Widow, and haue a full third part of the whole, accounting that which was formerly giuen vnto him as part thereof. And this is that in effect, which the Ciuilians call Collatio bonorum.

¶ *Et il ſemble que ceſt Parol* (*hotchpot*) *eſt en Engliſh*, a Pudding, *&c.* Littleton both here and in other places ſearcheth for the ſignification of words, in all Arts a thing moſt neceſſary, for ignoratis terminis ignoratur & ars vide for Etymologies, Sect.95.119. 135.154.164.203.234. &c.

¶ *Hutſpot* or *Hotſpot*, is an old Saxon word, and ſignifieth ſo much as Littleton here ſpeakes. And the French vſe Hotchpot for a commixtion of diuers things together. It ſignifieth here metaphorically in pattem poſitio. In Engliſh we vſe to ſay Hodgepodge, in Latine Farrago or Miſcellaneum.

Vide Britt. cap.72. 4.E.3 49. 6.E.3.30. 10 E.3.38. 24.E.3.27. F.N.B.262. Regiſt.320. Fleta lib.6.ca.47. Mich 10.E.1, coram Rege Hereford. in theſaur.

The reſidue of this Section needeth no explication.

Sect. 268.

¶ ET ceſt terme (Hotchpot) neſt forſq; vn terme ſimilitudinarie, & eſt a tant adire, ceſtaſcauoir, de mitter les terrs en Frankmarriage & les auters terres en fee ſimple enſemble, & ceo eſt a tiel entent de conuſter le value de touts les terres, ſ. de les terres dones en Frankmarriage, & de le remnant que ne fueront dones, & donq; partition ſerra fait en le forme que enſuiſt. Sicome mittomus que home ſoit ſeiſie de 30. acres de terre en fee ſimple cheſcun acre de value de 12. d. per an, & que il ad iſſue deux files, & lun eſt couert d baron, & le pier dona 10. acres de les 30. acres a le baron, oue ſa file en Frankmarriage, & mozuſt ſeiſie de l remnant, donques lauter ſoer entra en le remnant, ſ. en les 20. acres, & eux occupier, a ſon vſe demeine ſinon que le baron et ſa feme voile mitter les 10. acres dones en Frankmarriage, oue les 20. acres en Hotchpot, ceſtaſcauoir, enſemble, & donque quant le value de cheſcun acre eſt conus ceſtaſcauoir, que cheſcun acre vault per an, & eſt aſſeſſe, ou enter eux agree, que cheſcun acre vault p an 12. d. donques le partition ſerra

AND this tearme (*Hotchpot*) is but a tearme ſimilitudinary, & is as much to ſay, as to put the lands in Frankmarriage, and the other Lands in Fee ſimple together, and this is for this intent, to know the value of all the Lands *ſcz.* of the Lands giuen in Frankmarriage, and of the remnant which were not giuen, and then partition ſhal be made in forme following. As put the caſe that a man be ſeiſed of 30. Acres of Land in Fee ſimple, euery Acre of the value of 12. pence by the yeare, and that hee hath iſſue two Daughters, and the one is Couert baron, and the Father giues 10. Acres of the 30. Acres to the Huſband with his Daughter in Frankmarriage, and dyeth ſeiſed of the remnant, then the other ſiſter ſhall enter into the remnant, *viz.* into the 20. Acres, and ſhall occupie them to her owne vſe, vnleſſe the husband and his wife will put the 10. Acres giuen in Frankmarriage, with the 20. Acres in Hotchpot, that is to ſay, together and then when the value of euery Acre is knowne, to wit, what euery Acre valueth by the yeare, and is aſſeſſed or agreed betweene them, that euery Acre is worth by the yeare 12. pence. Then the partition ſhall be

ſerra fait en tiel fozme, ceſtaſca-uoir le baron & ſa feme aueront ouſtre les 10. acres dones a eux en Frankmarriage 5. acres en ſeueraltie de les 20. acres & lauter ſoer auera le remnant, ſ. 15. acres de l'ꝑs 20. acres pur ſa purpartie, iſſint que accomptant les 10. acres que le baron & ſa feme ount per le done en Frankmarriage, et les auters 5. acres de les 20. acres, le baron et ſa feme ont autant en annual value, que lauter ſoer ad.

made in this manner, *viz.* the Husband and Wife ſhall haue beſides the 10. acres giuen to them in Frankmarriage 5. Acres in ſeueraltie of the 20. Acres, and the other ſiſter ſhall haue the remnant, *ſciz.* 15. Acres of the 20. Acres for her purpartie, ſo as accounting the 10. Acres which the Baron and Fem haue by the gift in Frankmarriage, and the other 5. Acres of the 20. Acres, the husband and wife haue as much in yearly value as the other ſiſter.

Bract. lib. 2 fol. 77. lib. 5. fol. 428. Britt. c. p. 72. & Fleta lib. 6. cap. 47.
4. E. 3. 49. 10. E. 3. 37.
(n) 10. E. 3. 37. 10. Aſſ. 14.
4. E. 3. 49.
(o) 29. Aſſ. 23.

¶ AND herewith in expreſſe tearmes agreeth Bracton, Britton, and Fleta, and all the bookes aboueſaid and many others. And it is worthy the obſeruation (n) that after this putting into Hotchpot, and partition made, the Lands giuen in Frankmarriage, are become as the other Lands which diſcended from the common Anceſtor, and of theſe Lands if ſhe be impleaded (o) ſhe ſhall haue aide of the other Parcener as if the ſame Lands had diſcended. So the Coparcener that hath a Rent granted to her for oweltie of partition, as is aforeſaid, hath the Rent, as if it had diſcended to her from the common Anceſtor.

Section 269.

¶ ET iſſint touts foits ſur tiel partition, les terres dones en Frankmarriage demurgent a les donees & a lour heires ſolonq; le fozme de le done. Car ſi lauter Parceñ aũoit riens de ceo que eſt done en Frankmarriage, de ceo enſueroit inconuiens, & choſe encounter reaſon, que la ley ne voit ſuffer. Et la cauſe pur que les terres dones en Frankmarriage ſerront mis en Hotchpot, eſt ceo, quant home done terres ou tenements en Frankmarriage oue ſa file, ou oue auter coſin, il eſt entendus per la ley que tiel done fait per tiel Parol (Frankmarriage) eſt vn auancement, & pur auancement de ſa file, ou de ſon auter coſin, & noſnement quant

AND ſo alwayes vpon ſuch partion the Lands giuen in Frankmarriage remayne to the Donees and to their heires according to the forme of the gift, for if the other Parcener ſhould haue any of that which is giuen in Frankmarriage: of this would enſue an inconuenience, and a thing againſt reaſon, which the Law will not ſuffer. And the reaſon why the Lands giuen in Frankmarriage ſhal bee put in Hotchpot, is this when a man giueth Lands or Tenements in Frankmarriage with his Daughter, or with his other Couſin, it is intended by the Law that ſuch gift made by this word (Frankmarriage) is an aduancement, and for aduancement of his Daughter, or of his Couſin, and namely, when

quant le donor et ſes heyres naueront aſcun rent ne ſeruice de eux, ſinon que ſoit fealty, tanque le quart degree ſoit paſſe, &c. Et pur tiel cauſe la ley eſt que el auera riens de les auters terres ou tenemẽts diſcendus, a lauter parcener, &c. ſinon que el voille mitter les terrs dones ẽ frankmariage en Hotchpot, come eſt dit. Et ſi el ne voille mitter les terres dones en frankmariage en Hotchpot, donque el nauera riens del remnant pur ceo que ſerra entendu per la ley que el eſt ſufficientment auance, a que auancemẽt el ſoy agree & luy tient content.

the donor and his heires ſhall haue no rent nor ſeruice of them but fealty vntill the fourth degree be paſt. And for this cauſe the Law is that ſhe ſhall haue nothing of the other lands or tenements diſcended to the other parcener, &c. vnleſſe ſhee will put the lands giuen in frankmariage in Hotchpot as is ſaid. And if ſhe will not put the lands giuen in frankmariage in Hotchpot, then ſhe ſhall haue nothing of the remnant, becauſe it ſhall be intended by the Law, that ſhe is ſufficiently aduanced, to which aduancement ſhee agreeth and holdes her ſelfe content.

¶ *DE ceo enſueroit enconuenience & choſe encounter reaſon que la ley ne voet ſuffer.*

Quod eſt inconueniens aut contra rationem non permiſſum eſt in lege. Hereby it appeareth, as it hath beene often noted, (o) that an argument ab inconuenienti aut ab eo quod eſt contra rationem, is forcible in Law. (p) Nihil enim quod eſt inconueniens eſt licitum.

Regula.
(*o*) *Vid. Sect.* 138.139.238. 440.478 488.722.
(*p*) 40. *Aſſ.*27.

¶ *Tanque le* 4. *degree ſoit paſ, &c.* Hereby (&c.) is implyed how the degrees ſhall be accounted, whereof ſufficient hath beene ſaid before.

*Sect.*20.

Sect. 270.

¶ MEſm̃ la ley eſt perenter les heires de les donees en frankmariage, et les auters parceners &c. ſi les donees en frankmariag̃ deuiõt deuãt lour auncester, ou deuant tiel partition, &c. quant a mitter en Hotchpot, &c.

THe ſame Law is between the heirs of the donees in frankmariage, and the other parceners, &c. if the donees in frankmariage die before their anceſtor or before ſuch partition, &c. as to put in Hotchpot, &c.

¶ BY theſe thꝛee (&c.) in this Section is implied that if either the Donees die before the Anceſtor, or ſurviue the Anceſtor and die before ſuch a partition, or if the Donees and all the Parceners die before ſuch partition vpon the putting into Hotchpot, their iſſues ſhall haue the ſame benefit to put the lands into Hotchpot, for that benefit is heritable, and diſcendible to the iſſues.

Sect. 271.

¶ ET nota que dones en fankmariage fueront per

ANd note that gifts in frankmariage were by the Cõmon

¶ *Continue, &c.* By this (&c.) is to be vnderſtood that before the Statute 13 Edw. 1 was a fee ſimple, and ſince

ſince the ſtatute a fee taile. So as it is true, that (q) the gifts doe continue (as our Author here ſaith) but not the eſtates. For the eſtate is changed as at large appeareth in the Chapter of eſtates in taile. And albeit our Author here ſaith that ſuch gifts haue

(q) 13.H.411. 31.E.3.Gard 116.

la common ley deuant le Statute de Weſtm̃ ſecond, et tout temps puis ad eſte vſe et continue, &c.

Law before the Statute of Weſtm. ſecond and haue beene alwayes ſince vſed and continued,&c.

beene alwayes ſince vſed and continued, yet now they be almoſt growne out of vſe, and ſerue now principally for Moote caſes and queſtions in Law that therupon were wont to riſe.

Sect. 272.

¶ The lands giuen in frankmariage, & the lands in Fee ſimple muſt moue from one and the ſame Anceſter, for the lands giuen in Frankmariage are in reſpect of the aduancement accounted in Law as hath beene ſaid, as if the ſame had diſcended from the ſame Anceſtor who died ſeiſed of the fee ſimple lands, and there is no reaſon to barre the Donee of her full part of the fee ſimple lands that diſcended from another Anceſtor from whom ſhe had no ſuch aduancement.

¶ *Nemy per le donor, &c.* Here (&c.) implieth no more but that Donor that made the gift of Frankmariage, the other two (&c.) in this Section neede no explanation.

¶ Item, tiel mitter en Hotchpot.&c. eſt lou les auters terres ou tenements q̃ ne fuer̃ dones en frankmariage diſcendont de les donors en frankmariage tantſolement, car ſi les terres diſcenderont a les files per le pier le donor, ou per le mere le donor, ou per le frer̃ l' donor, ou auter anceſtor, et nemy per le donor,&c. la autrement eſt, car en tiel cas el a quel tiel done en frankmariage eſt fait auera ſa part ſicome nul tiel done en frankmariage vſt eſte fait, pur ceo q̃ el ne fuit auanc̃ per eux,&c. eins per vn auter,&c.

ALſo ſuch putting in Hotchpot, &c. is where the other lands or tenements which were not giuen in frãkmariage diſcend from the donors in frankmariage only, for if the lands ſhall diſcend to the daughters by the father of the donor, or by the mother of the donor, or by the brother of the donor or other anceſter, and not by the donor &c. there it is otherwiſe, for in ſuch caſe, ſhee to whom ſuch gift in frankmariage is made ſhal haue her part as if no gift in frankm: had beene made becauſe that ſhe was not aduanced by them, &c. but by another, &c.

Sect. 273.

¶ By this Section & the (&c.) Herein ſome haue gathered that the value of the lands ſhall be accounted as they were at the time of the gift in

¶ Item, ſi home ſeiſie de 30 acres de terre cheſcun acre de ouel annual value eiant iſſue deux files cõe eſt auantdit, et dona 15. acres de

ALſo if a man bee ſeiſed of 30. acres of land euery acre of equall annuall value, and haue iſſue two daughters as aforeſaid, and giueth 15. acres

ceo

ceo a le baron oue ſa file en frankmariage, & moruſt ſeiſie de les auters 15. acres, en ceſt caſe lauter ſoer auera les 15. acres iſſint diſcẽdus a luy ſole, et le baron et ſa feme mitteront en tiel cas les 15. acres a eux Dones en frankmariage en Hotchpot, pur ceo q̃ les tenemẽts Dones ẽ frankmariage ſont de auxy grand et de bone annual value, come les auters terres diſcendus, &c. Car ſi les terres Dones en frankmariage ſont de tant egal annual value, que le remnant ſont, ou de pluis value, en vaine et a nul entent tielx tenemẽts Dones en frankmariage ſerra mis en Hotchpot, &c. pur ceo que el ne poit riens auer de les auters terres diſcendus, &c. car ſi el aũoit aſcun parcel de les tenements diſcendus, donques el auera pluis de annual value que ſa ſoer &c. que la ley ne voit, &c. Et ſicome eſt parle ẽ les caſes auantdits de deux files ou de deux parceners, en m̃ le maner eſt en ſemblabl̃ cas lou ſont pluſoꝛs ſoers ou pluſoꝛs parceners, ſolonq̃ ceo q̃l caſe & l̃ matter eſt, &c.

hereof to the husband with his daughter in frankmariage, and dies ſeiſed of the other 15. acres. In this caſe the other ſiſter ſhall haue the 15. acres ſo diſcended to her alone, and the husband and wife ſhall not in this caſe put the 15. acres giuen to them in frankmariage into Hotchpot, becauſe the tenements giuen in frankmariage are of as great and good yearely value as the other lands diſcended, &c. for if the lands giuen in frankmariage bee of equall or of more yearely value then the remnant, in vaine and to no purpoſe ſhall ſuch tenements giuen in frankmariage bee put in Hotchpot, &c. for that ſhee cannot haue any of the other lands diſcended, &c. for if ſhee ſhould haue any parcell of the lands diſcended, then ſhe ſhall haue more in yearly value then her ſiſter, &c. which the Law will not, &c. And as it is ſpoken in the caſes aforeſaid of two daughters or of two parceners; in the ſame manner it is in like caſe where there are more ſiſters or more parceners according as the caſe and matter is, &c.

frankmariage, but it is cleere that the value ſhall bee accounted as it was at the time of the partition, for if the Donor purchaſe more land after the gift, or if the land giuen in Frankmariage be by the act of God decayed in value, or if the remnant of the lands in fee ſimple be improued after the gift, or è conuerſo the Law ſhall adiudge of the value as it was at the time of the partition (vnleſſe it bee by the proper act or default of the parties) as hath beene ſaid before in the former Chapter. And ſome haue collected vpon this Section that the reuerſion in fee of the lands giuen in Frankmariage ſhall only diſcend to the Donee, for otherwiſe the other ſiſter ſhal haue more benefit, then the Donee which ſhould bee againſt the reaſon of our Author.

¶ *In vaine & a nul entẽt, &c.* For it is a maxime in Law Lex non præcipit in vtilia, quia inutilis labor ſtultus.

Regula. Vid. Sect. 194. 578. Lib. 5. fo. 89.

Sect. 274.

ET eſt aſcauoire, que Terres ou tenemẽts dones en frankmariage ne ſerra miſe en Hotchpot, forſque ou Terres diſcende en fee ſimple, car de terre diſcendus en fee taile Partition ſerra fait, ſicome nul tiel done en frãkmarriage vſt eſte fait.

AND it is to be vnderſtood, that Lands or Tenements giuen in Frankmarriage ſhall not bee put in *Hotchpot* but where Lands diſcend in Fee ſimple, for of Lands diſcended in Fee taile partition ſhall bee made, as if no ſuch gift in Frankemarriage had been made.

31. *Aſſ. pla.* 14. ¶ For of Lands intailed, the Donee in Frankmarriage ſhall haue as much part as the other Coparcener, becauſe ouer and beſides the Land giuen in Frankmarriage, the Iſſue in Taile claimeth per formam doni, and both of the Parceners muſt equally inherit by force of the gift, & voluntas Donatoris, &c. obſeruetur.

Sect. 275.

¶ ITem nuls Terres ſerra miſe en Hotchpot oue aũs ſinon terres que fueront done en frankmariage tantſolement: Car ſi alcun Feme ad alcuns auters terres ou tenemẽts per alcun auter done en le tayle, el ne vnques mittera tiel Terre iſſint done en Hotchpot, mes el auera ſa purpartie de le remnãt diſcendus, &c. ſ̃ a tant que lauter Parcener auera ỏ ñi l' remnant.

ALſo no Lands ſhall bee put in *Hotchpot* with other Lands, but Lands giuen in Frankmarriage onely: for if a woman haue any other Lands or Tenements by any other gift in taile, ſhe ſhall neuer put ſuch Lands ſo giuen in *Hotchpot*, but ſhe ſhall haue her purpartie of the remnant diſcended, &c. *(videlicet)* as much as the other Parcener ſhall haue of the ſame remnant.

13. *E.* 2. *tit. Taile* 26. 6. *E.* 3. 30. *b.* 4. *E.* 3. 49. 50. ¶ For if the Anceſtor infeoffeth one of his daughters of part of his Land, or purchaſe lands to him and her and their heires, or giueth to her part of his lands in Taile ſpecial or generall, ſhe notwithſtanding this ſhall haue a full part in the remnant of the lands in Fee ſimple, for the benefit of putting, &c. into Hotchpot, is onely appropriated to a gift in Frankmarriage, (quia maritagium cadit in partem) which ſhall be (as is aforeſayd) accounted as parcell of his aduancement.

Bract. li. 2. *fo* 77.

Sect. 276.

¶ ITem vn auter Partition poet eſte fait inter parceñs, que variaſt de les Partitions auantdits. Sicome y ſõt trois Parceners, & le puiſñ voet auer partition, & les aũs deux ne voillont, mes voilent tener en parcenarie ceo que a eux affiert

ALſo another partition may be made betweene Parceners, which varieth from the Partitions aforeſayd. As if there bee three Parceners and the youngeſt will haue partition, and the other two will not, but will hold in parcenarie that which to them belon-

ert ſans partē, en cē caſe ſi vn pt ſoit alot en ſeñalty al puiſne ſoer ſolonq; ceo que el doit auer, donques les auters poient tener le remnant en parcenarie, & occupier en common ſans partition ſi els voilent, & tiel partition eſt aſſets bone. Et ſi apres leigne ou le mulnes Parcener voile fayre partition inter eux, ô ceo que ils teignont ils teignont, ils poient ceo bien faire quant a eux pleiſt. Mes lou partition ſerra fait per force de Briefe de Partitione facienda, la autermēt eſt car la couient que cheſcun Parcener auera ſa part en ſeueraltie, &c.

geth, without partition: in this caſe if one part be allotted in ſeueraltie to the youngeſt ſiſter, according to that which ſhee ought to haue, then the others may hold the remnant in parcenarie, and occupie in Common without Partition, if they will, and ſuch partition is good enough. And if afterwards the eldeſt or middle parcener will make partition betweene them of that which they hold, they may well do this when they pleaſe. But where partition ſhall bee made by force of a Writ of *Partitione facienda*, there it is otherwiſe, for there it behoueth that euerie parcener haue her part in ſeueraltie, &c.

¶ Pluis ſerē dit des parceñs en le Chapter de Joyntenants, & auxy en le Chapter de Tenāts in Common.

More ſhall bee ſaid of parceners in the Chapter of Ioyntenants, and alſo in the Chapter of Tenants in Common.

¶ HEre it is to be obſerued, That this partition is good by conſent. for Conſenſus tollit errorem, but if t be by the Kings Writ, then euerie Parcener muſt haue his part. And here you may ſee what modus & conuentio vincunt legem. *24 H.3.tit.Partis.19. Regula.*

¶ *En ſeueraltie, &c.* Here by this (&c.) is implied another kind of ſeueraltie than our Author hath mentioned, and that is, That the one Parcener ſhall haue the land in ſeueraltie from the feaſt of Eaſter, vntill the gule of Auguſt, (that is, the firſt of Auguſt) and the other in ſeueraltie from thence vntill the feaſt of Eaſter, or the like, & ſic alternis vicibus to them and their heires imperpetuum, whereof ſufficient hath beene ſpoken before.

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*Chap.*3. Of Ioyntenants. *Sect.*277.

¶ Iointeñts ſont, ſicome home ſeiſie de certain Terrs ou Tenements, &c. & enfeoffe deux, trois, quater, ou pluſors, a auer & teñ a eux pur term de lour vies, ou a terme dauter vie, p force de quel feoffmt ou leaſe ils ſont ſei-

IOyntenants are, as if a man bee ſeiſed of certaine Lands or Tenements, &c. and infeoffeth two, three, foure, or more, to haue and to hold to them for term of their liues, or for terme of anothers life, by force of which feoffement or

¶ THIS agreeth not with the Original, for it ſhould bee, Ioynt̄ ſont ſicōe hōe ſeiſie de certaine terres ou tenements, &c. & ent enfeoffe deux ou trois, ou quater, ou pluſors a auer & tener a eux & a lour heires ou leſſa a eux pur terme de lour vies, ou pur terme dauter vie, per force de quel feoffement, ou leaſe, &c. The error may eaſily bee perceiued by that which is in print, viz. By force of which feoffement or leaſe, &c. ergo there muſt bee *Bract.li.4 fo.262. Brit.ca.35. & fo 212. Flet.lib.3.ca.4.10. & li.6.cap.47.*

be feoffment and leaſe ſpoken of before.

There be alſo Ioyntenants by other conueyances than Littlet. here mentioneth as by Fine, Recouerie, Bargaine, and Sale, Releaſe, Confirmation, &c. So there be diuers other limitations than Littleton heere ſpeaketh of: As if a Rent charge of ten pounds be granted to A. and B. to haue and to hold to them two, viz. to A. vntill he be married, and to B vntill he be aduanced to a Benefice, they bee Ioyntenants in the meane time, notwithſtanding the ſeuerall limitations: and if A die before marriage, the rent ſhall ſurmiue, but if A. had married, the rent ſhould haue ceaſed for a moitie, & ſic è conuerſo on the other ſide.

ſies, tiels ſont Ioyntenants.

leaſe they are ſeiſed, theſe are Ioyntenants.

Littleton hauing ſpoken of one kind of Tenants pro indiuiſo, viz. of Parceners, commeth now to another, viz. Ioyntenants, and firſt of Ioyntenants of Freehold. If an Alien and a ſubiect purchaſe lands in fee, they are ioyntneants, & the ſurmuorſhip ſhall hold place, Et nullum tempus occurrit Regi, vpon an office found.

7.E.4.9. 11.H.4.26.

¶ *Ioyntenants*, So called becauſe the lands or tenements, &c. are conueyed to them ioyntly, coniunctim feoffati, &c. or, qui coniunctim tenent, and are diſtinguiſhed from ſole or ſeuerall Tenants, from Parceners, and from Tenants in Common, &c. and antiently they were called Participes, & non hæredes. And theſe Ioyntenants muſt ioyntly implead and ioyntly be impleaded by others, which propertie is common betweene them and Coparceners, but Ioyntenants haue a ſole qualitie of ſurmuorſhip, which Coparceners haue not. Littleton hauing now ſpoken of Parceners and of Ioyntenants of right, doth next ſpeak of Ioyntenants by wrong.

Plow.lib.6.in.47. Bract.lib.5.fol.435.a.

Section 278.

¶ IT is to bee obſerued, That ſome Diſſeiſours, be Tenants of the land and ſome be no Tenants of the Lands, and of both theſe kinds Littleton here ſpeaketh.

¶ *&c.* In the firſt &c. nothing is implied but foure or fiue, or more, but in the latter (&c. many things be to be vnderſtood, as of Diſſeiſors that be no Tenants, ſome are Coadiutors, whereof Littleton here ſpeaketh, ſome Councellors, Commanders, &c. when the diſſeiſin is not to bee done to any of their vſes. Alſo if A. diſſeiſe one to the vſe of B. who knoweth not of it, and B. aſſent to it, in this caſe till the agreement A. was Tenant of the land, and after agreement B. is Tenant of the land, but both of them be Diſſeiſors: for omnis cæ titrabitio retrotrahitur et mandato equiparatur. And it is worthie of the obſeruation, and implyed alſo in the latter (&c.) that ſeeing Coadiutors, Councellors, Commanders, &c. are all Diſſeiſors, that albeit the Diſſeiſor which is Tenant dieth, yet the Aſſiſe lieth againſt the Coadiutor, Councellor, Commander, &c. and Tenant of the land, though he be no diſſeiſor.

5o.E.3.2. 17.Aſſ.14. 14.Aſſ.12. 8.Aſſ.p.30. 10.E.3.47. 10.Aſſ.22. 2 1.H.8.tit.Diſſeiſ.b.77. 28.Aſſ.21. 27.Aſſ.30. 12.E.4.9. 7.E.4.7.b. 38.aſſ.7. 21.H.7.35. 29 Aſſ 59. 21.H.8 25. 35.H.6.61. 21.E.4.46. 25.E.4.15. F.N.B.179.g.

Iтem ſi deux ou trois, &c. diſſeiſont vn auſ dascun terres ou Tenements a lour vſe demeſne: donques les Diſſeiſours ſont Ioyntenants. Mes ſils diſſeiſõt vn auter al vſe dun de eux, donques ils ne ſont Ioyntenants, mes celuy a que vſe le diſſeiſin eſt fait eſt ſole tenant, & ls auters nont riens en le tenancie, mes ſont appels coadiutors a le diſſeiſin, &c.

Alſo if two or three &c. diſſeiſe another of any lands or tenements to their owne vſe, then the diſſeiſors are Ioyntenants. But if they diſſeiſe another to the vſe of one of them, then they are not Ioyne-Tenants, but he to whoſe vſe the Diſſeiſin is made, is ſole Tenant, and the others haue nothing in the Tenancie, but are called Coadiutors to the Diſſeiſin, &c.

(a) The Demandant and others in a Præcipe did diſſeiſe the Tenant to the vſe of the others, and the writ did not abate, for the Demandant was a Diſſeiſor, but gained no tenancie in the land, for that he was but a Coadiutor.

(a) 50.E.3.2.

A man diſſeiſeth Tenant for life to the vſe of him in the reuerſion, and after he in the reuerſion agreeth to the diſſeiſin, it is ſaid, That he in the reuerſion is a Diſſeiſor in fee, for by the diſſeiſin made by the ſtranger, the reuerſion was diueſted, which (ſay they) cannot bee reueſted by the

agreement

agreement of him in the Reuerſion, for that it maketh him a wrong doer, & therefore no relation of an eſtate by wrong can helpe him.

¶. *Coadiutor.* Coadiutor eſt qui auxiliatur alteri; and is deriued a coadiuuando. Anglicè, a fellow helper.

Sect. 279.

¶ ET nota q̄ diſſeiſin eſt p̄o permēt lou vn home entra ē aſcun terres ou tenements lou ſon entre neſt pas congeable, & ouſta celuy que ad Franktenement, &c.

AND note that diſſeiſin is properly where a man entreth into any Lands or Tenements where his entry is not congeable, & ouſteth him which hath the Freehold, &c.

¶ This deſcription of a diſſeiſin and the (&c.) in this place is vnderſtood only of ſuch Lands and Tenements whereinto an entry may bee made, and not of Rents, Commons, &c. whereof ſufficient hath beene ſaid before in the Chapter of Rents, and ſo in effect Littleton deſcribed it before the Edition of his Booke. And note here that euery entry is no diſſeiſin, vnleſſe there bee an ouſter alſo of the Freehold. And therefore Littleton doth not ſet downe an entrie only but an ouſter alſo, as an entry and a claymer, or taking of profits, &c.

3.E.4.2.34.Aſſ.11.12. 26.Aſſ.17.41.Aſſ.10.24.E. 3.31.Pl.Com.8. Parſon de Heny Lane. 7.Aſſ.10. 11.Aſſ.25. 12.E.3.tit.Aſſ.88.45.Aſſ.9. Aſſ.19.39.Aſſ.1. 18.E.2. Aſſ.374.

Now as there be Ioyntenants by diſſeiſin, ſo are there Ioyntenants by Abatement, Intruſion, and Vſurpation, all which are included in the latter, &c.

Sect. 280.

¶ ET eſt aſcauoir que la nature de ioyntenancie eſt q̄ celuy que ſurueſquiſt auera ſolement lentier tenancie ſolonq̄ tiel eſtate que il ad, ſi le ioynture ſoit continue, &c. Sicome ſi trois Ioyntenants ſont en Fee ſimple, & lun ad iſſue & deuie, vncore ceux que ſurueſquont aũont les tenements entier, & iſſue nauera riens. Et ſi le 2. ioyntenant ad iſſue & deuie, vncore le tierce que ſurueſquiſt auera les tenemēts entier, & eux auera a luy & a ſes

AND it is to be vnderſtood, that the nature of ioyntenancie is, that hee which ſuruiueth ſhall haue only the entire tenancie according to ſuch eſtate as he hath, if the ioynture be continued, &c. As if three ioyntenants bee in Fee Simple, and the one hath iſſue, and dyeth, yet they which ſuruiue ſhall haue the whole tenements, and the iſſue ſhall haue nothing. And if the 2d ioyntenant hath iſſue and dye, yet the third which ſuruiueth ſhall haue the whole tene-

¶ *Si le ioynture ſoit continue, &c.*

Here by this (&c.) many points of Learning are to bee obſerued, as that it is proper to ioyntenants only to haue Lands by Surviuor, for no Surviuor of other Tenants pro indiuiſo ſhall haue the whole by Surviuor, but only ioyntenants, and this is called in Law Ius accreſcendi. Omnes feoffati ſunt ſimul habendi & tenendi nec totum nec partem ſeparatam nec per ſe, ſed vt quilibet eorum totum habeat cum alijs in communi, & cum vnus moriatur non diſcendit aliqua pars hæredi morientis nec ſeperata nec in cõmuni ante mortem omnium ſed pars illa communis per ius accreſcendi accreſcit ſuperſtitibus de perſona ad perſonam vſque ad vltimum ſuperſtitem. But although Surviuorſhip bee proper to Ioyntenants, yet it is not proper quarto modo (that is) omni, ſoli & ſemper, for there may bee

Bracton lib.4. fol.262. b. Britton cap.35. Fleta lib.3. ca.4.& ca.10.49.E.3.fol.5.6

Ioyntenants, though there be not equall benefit of Suruiuor on both sides. As if a man letteth Lands to A. and B during the life of A. if B. dyeth A. shall haue all by the Suruiuor, but if A. dyeth B. shall haue nothing.

Two or more may haue a Trust or an Authoritie committed to them ioyntly, and yet it shall not suruiue. But herein are diuers diuersities to be obserued: First, there is a diuersitie betweene a naked Trust or an Authoritie, and a Trust or Authoritie ioyned to an estate or interest. Secondly, there is a diuersitie betweene Authorities created by the partie for priuate causes, and Authoritie created by Law for execution of Iustice. As for example, (b) if a man deuise that his two Executors shall sell his Land, if one of them dye the Suruiuor shall not sell it, but if he had deuised his Lands to his Executors to be solde there, the Suruiuor shall sell it, which diuersitie is implyed by our Author, for hee sayth, that he, that suruiueth shall haue the entire Tenancie.

If a man make a letter of Attorney to two, to doe any act, if one of them dye, the Suruiuor shall not doe it, but if a Venire facias be awarded to foure Coroners to impannell and returne a Iury, and one of them dye, yet the other shall execute and returne the same.

If a Charter of feoffement (c) be made, and a Letter of Attorney to foure or three ioyntly and severally to deliuer seisin, two of them cannot make liuery, because it is neither by them foure or three ioyntly, nor any of them severally: but if the Sheriffe vpon a Capias directed to him make a Warrant to foure or three ioyntly or severally to arrest the Defendant, two of them may arrest him, because it is for the execution of Iustice (d) which is pro bono publico, and therefore shall be more fauourably expounded, then when it is only for priuate, and so hath it beene adiudged, Iura publica ex priuato promiscuè decidi non debent.

¶ *Et deuie.* Note there is a naturall death and a ciuill death, and Littletons Case is to be intended of both, and therefore (e) if two Tenants be, and one of them entreth into Religion, the Suruiuor shall haue the whole.

heires a touts iours Mes autrement est de Parceners. Car si trois parceners sont, & deuant aſcun partition fait lun ad, iſſue & denie, ceo que a luy affiert diſcendra a ſez coheires iſſint q̄ ils aueront ceo per diſcent, & nemy per ſuruiuor, come ioyntenants aueront, &c.

ments to him and to his heires for euer, but otherwise it is of Parceners, for if three Parceners bee, and before any partitiō made the one hath issue and dyeth, that which to him belongeth shall discend to his issue, and if such Parcener die without issue, that which belongeth to her shal discend to her coheires so as they shall haue this by discent & not by suruiuour, as Ioyntenants shall haue, &c.

b) 39. Ass. p. 17. 30. H. 8. tit. deuise 8. Dyer 3. Eliz. 190. 49. E. 3. 16. 2. Eliz. Dyer 177. 23. Eliz. Dyer 371. 4. Eliz. Dyer 210. 10. H. 4. 2. & 3. 14. H. 4. 34. 39. H. 6. 42. 31. Ass. 20. 33. H. 8. ioynt. Br. 62. 30. H. 8. conditions Br. 190.

(c) 38. H. 8. Dyer 62. 27. H. 8. fol. 6.

(d) Pasch. 45. Eliz. in the Kings Bench betweene King Hobbes.

(e) 21. R. 2. iudgment. 263.

Sect. 281.

¶ E Come le ſuruiuor tient lieu enter iointenants, en meſme le maner il tient lieu enter eux queux ont ioynt eſtate ou poſſeſſion oue auter de chattel real ou perſonal. Si come ſi leas de terres ou tēts ſoit fait a pluſors pur terme des ans, celuy q̄ ſuruiſquiſt de les leſſees auera les tenements a luy entier, durant l' terme, per force de meſme le leas. Et ſi vn chiual ou vn auter

AND as the suruiuour holds place betweene ioyntenants, in the same manner it holdeth place betweene them which haue ioynt Estate or Possession with another of a Chattell, reall or personall. As if a Lease of Lands or Tenements bee made to many for tearme of yeares, hee which suruiues of the Lessees, shall haue the Tenements to him only during the terme by force of

ter chattel perſonall ſont done a pluſoꝛs, celuy que ſuruesquiſt auera le chinal ſolement.

the ſame leaſe. And if a Horſe, or any other chattell perſonall be giuen to many, hee which ſuruiueth ſhall haue the Horſe only.

¶ HEreby it is manifeſt that Suruiuoꝛ holdeth place, regularly aſwell betweene Ioyntenants of Goods and Chattels in poſſeſſion oꝛ in right, as Ioyntenants of Inheritance oꝛ Freehold.

¶ *Chattell*, oꝛ Catell, **whereof commeth the woꝛd vſed in Law** (f) Catalla and is as Littleton here teacheth twofold, viz. reall and perſonall, and putteth examples of both.

(f) *Regiſt. Origin.* 139. 244. *Bract. lib.* 2. 39. *H.* 6. 35. *Stanford. Pr.* 45.

Section 282.

¶ EN meſme le maner eſt de debts & duties &c. car ſi vn obligation ſoit fait a pluſoꝛs pur vn debt, celuy q̃ ſuruesquiſt auera tout le det ou dutie. Et iſſint eſt dauters Couenants & Contracts, &c.

IN the ſame manner it is of debts and duties, &c. for if an Obligation be made to many for one debt, hee which ſuruiueth ſhall haue the whole debt or dutie. And ſo is it of other Couenants and Contracts, &c.

¶ NOw hee ſpeaketh of Debts, Duties, Couenants, Contracts, &c.

¶ *Dets & Duties, &c.* **Here by force of** this (&c.) an exception is to bee made of two ioynt Merchants, for the Wares, Merchandizes, Debts, oꝛ Duties that they haue as ioynt-merchants oꝛ Partners ſhal not ſuruiue, but ſhall goe to the Executoꝛs of him that deceaſeth, and this is per legem Mercatoriam, which (as hath beene ſaid) is part of the Lawes of this Realme for the aduancement and continuance of Commerce and Trade which is pro bono publico, for the rule is, That Ius accreſcendi inter Mercatores pro beneficio commercij locum non habet.

F. N. B. 117. E. 38. E. 3. 7.

And to the latter (&c.) in this Section the like exception muſt be made.

Section 283.

¶ ITem, aſcũs ioyntenants poient eſtre que poient auer ioint eſtate, et eſtre iointenãts pur terme de lour vies, et vncoꝛe ils ont ſeuerall enheritances. Sicõe terres ſoient dones a deux homes et a lez heires de lour deux coꝛps engendꝛes, en ceſt caſe les donees ont ioint eſtates pur terme de lour deux vies, et vncoꝛe ils oũt

ALſo there may bee ſome ioyntenants which may haue a ioint eſtate, & be ioynttenants for terme of their liues, & yet haue ſeuerall inheritances. As if lands be giuen to two men and to the heires of their two bodyes begotten, In this caſe the donees haue a ioint eſtate for terme of their two liues, and yet they haue ſeuerall inheritances, for if one of

¶ *Ils ont ioynt eſtate pur terme de lour deux vies, &c.* **Note, albeit** they haue ſeuerall Inheritances in tayle, and a particular eſtate for their liues, yet the Inheritance doth not execute, and ſo breake the Ioyntenancie, but they are ioyntenants for life, and tenants in Common of the Inheritance in tayle.

Vide Sect. 296.

¶ *Sicome home & fem poient auer, &c.* **Here a diuerſitie is implyed, when the** eſtate of Inheritance is limited by one conueyance, as

Vide Wolſcotes caſe. Lib. 2. *fol.* 60. 61.

as in this case it is, there are no seuerall estates to drowne one in another, But when the states are deuided in seuerall conueyances their particular estates are distinct and deuided, and consequently the one drowneth the other: As if a Lease be made to two men for terme of their liues, and after the Lessor granteth the reuersion to them two, and to the heires of their two bodyes the ioynture is seuered, and they are Tenants in common in possession. And it is further implied that in this case of Littleton there is no diuision betweene the estate for liues, and the seuerall inheritances, for in this case they cannot conuey away the inheritances after their decease, for it is deuided only in supposition and consideration of Law, and to some purposes the inheritance is said to be executed, as shall bee said hereafter.

Vid.12.E.4.26.

(f) *39.H.6.2.b.* If a man make a Lease for (f) life, and after granteth the reuersion to the Tenant for life, and to a stranger and to their heires, they are not ioyntenants of the reuersion, but the reuersion is by act of Law executed for the one moitie in the Tenant for life, and for the other moity he holdeth it still for life the reuersion of that moitie to the grantee.

(g) *Westminst. 2. cap. 1. vbi supra.* And so it is, if a man maketh a lease (g) to two for their liues, and after granteth the reuersion to one of them in fee, the ioynture is seuered, and the reuersion is executed for the one moity, and for the other moity there is Tenant for life the reuersion to the Grantee.

Ibidem. 7.H.6. If Lessee for life granteth his estate to him in the reuersion and to a stranger, the ioynture is seuered, and the reuersion executed for the one moitie by the act of Law.

seuerall inheritances, car si lun des donees ad issue, et deuy, lauter que surueſquist auera tout p le suruiuor pur terme de sa vie, et si celuy que surueſquist auxy ad issue, et deuy, donques l'issue del vn auera lun moitie, et lissue del auter auera lauter moitie ō la terre, et ils tiendront la terre enter eux ē common, et ne sont pas iointenāts, mes sont tenants en common. Et la cause pur q̄ tielx donees en tiel cas ont ioint estate pur terme de lour vies, est p̄ ceo que al commencement les fres fuerōt dones a eux deux, les queux parolx sās pluis dire font ioint estate a eux pur terme de lour vies. Car si home voit lesser tre a vn auter p fait ou sāns fait, nient feasant mention q̄l estate il aueroit, et de ceo fait liuerie de seisin, en ceo case le lessee ad estate pur terme de sa vie, et illint entant que les terres fueront dones a eux, ils ont ioint estate pur terme de lour vies: et la cause pur q̄ ils aueront seuerall inheritances est ceo, entant que ils ne poiēt aū p nul possibi-

the Donees hath issue and die, the other which suruiueth shall haue the whole by the suruiuor for terme of his life, and if he which suruiueth hath also issue, and die, then the issue of the one shall haue the one moity, and the issue of the other, shall haue the other moity of the land, and they shall hold the land betweene them in Cōmon, and they are not ioyntenants but are tenants in common. And the cause why such Donees in such case haue a ioynt estate for terme of their liues, is, for that at the beginning the lands were giuen to them two, which words without more saying make a ioynt estate to them for terme of their liues. For if a man will let land to another by deed or without deed, not making mention, what estate hee shall haue, and of this make liuery of seisin, in this case the lessee hath an estate for terme of his life, and so in as much as the lands were giuen to them, they haue a ioynt estate for terme of their liues, & the reason why they shall haue seuerall inhe-

lity vn heire enter eux ingender, scome hõe et fem poient auer, &c. donqz la ley voet que lour estate et lour enheritance soit tiel cõe reason voet, solonqz la forme et effect des parolx del done, et ceo est a les heires q̃ lun engendra de son corps p̃ alcun de ses femes, & a les heires q̃ lauter engendra d̃ son corps p̃ alc̃ de ses femes, &c. Issint il couient p̃ necessitie de reason que ils aueront seueralx enheritances. Et en tiel cas si lissue dun des donees apres la mort des donees deuie, issint q̃ il nad alcun issue en vie de son corps engẽdre, donqz le donor ou son heyre poit enter en la moitie come en son reuersion, &c. coment q̃ lauk des donees ad issue en vie, &c. Et la cause est, que entant q̃ les enheritãces sont seueral, &c. le reuersion de eux en ley est seueral, &c. et le suruiuor del issue del auter ne tiendra pas lieu dauer lentierk.

ritances is this; in asmuch as they cãnot by any possibility haue an heire between them ingendred, as a man and woman may haue, &c. the Law will that their estat and inheritance be such as is reasonable, according to the forme and effect of the words of the gift, and this is to the heires which the one shall beget of his body by any of his wiues, and to the heires which the other shall beget of his body by any of his wiues, &c. So as it behoueth by necessity of reason that they haue seueral inheritances. And in this case if the issue of one of the donees after the death of the donees dy, so that he hath no issue aliue of his body begotten, then the donor or his heire may enter into the moity as in his reuersion, &c. although the other donee hath issue aliue, &c. and the reason is, forasmuch as the inheritances bee seueral, &c. the reuersion of them in Law is seuerall, &c. and the suruiuor of the issue of the other shall hold no place to haue the whole.

If a man maketh a Lease for life and granteth the reuersion to two in fee, the Lessee granteth his estate to one of them, they are not ioyntenants of the reuersion, for there is an execution of the estate for the one moity, and an estate for life, the reuersion to the other of the other moity.

Here Littleton hath well resolued a doubt, for of ancient time it hath bene said (h) That when lands haue bene giuen to two women, and to the heires of their two bodyes begotten (which case our Author putteth in the next Section) that the husband hauing issue should be Tenant by the Curtesie liuing the other sister, for that as some held the inheritance was executed, and that the sisters were Tenants in Common in possession, and consequently the husband to be Tenant by the Curtesie, which he could not be if the women had a ioynt estate for terme of their liues: and likewise it was said (i) that the issue of the one should recouer the moity in a Formdone liuing the other sister. But, Verba sunt hæc, and Littleton grounding himselfe vpon good Authority, in Law hath cleered this doubt.

(h) 17.E.3.51.78. 18.E.3.39. 50.E.3. *Statham. tit done.* 50.E.3 *Feoffments & fait.*97.

(i) 43.E.3. *table* 13. 8.*Ass.*33. 24.E.3.29. 7.H.4.16. *Corbets Case. lib.*1.*fo.*8. 84.6. 4.*Maria Dier* 145. *See before in the chapter of Ten. by the curtesie Section.*

¶ *Nient feasant mention quel estate il aueroit.* Here Littleton addeth materially (not making mention of what estate) for (k) if in the premisses lands be letten, or a rent granted, the generall intendment is, that an estate for life passeth, but if the Habendum limit the same for yeares or at will, the Habendum doth qualifie the generall intendment of the premisses: And the reason of this is, for that it is a maxime in Law, That euery mans grant shall be taken by construction of Law most forcible against himselfe. Quæ-libet concessio fortissimè contra donatorem interpretanda est, which is so to be vnderstood that no wrong be thereby done, for it is another maxime in Law Quod legis constructio non facit iniuriam: And therefore if Tenant for life maketh a Lease generally, this shall bee taken by construction

(k) *Pl. Com. in Throgmorton case.*

Regula.

conſtruction of Law, an eſtate for his own life that made the Leaſe, for if it ſhould be a leaſe for the life of the Leſſee, it ſhould be a wrong to him in the reuerſion. And ſo it is if Tenant in taile make a Leaſe generally, the Law ſhall conſtrue this to bee ſuch a Leaſe as hee may lawfully make, and that is for terme of his owne life; for if it ſhould be for the life of the Leſſee, it ſhould be a diſcontinuance, and conſequently the ſtate which ſhould paſſe by conſtruction of law ſhould worke a wrong.

(l) 8.E.3.427.tit.Feoffem. & Faits 73.30.H.8.tit. Ioynt.Br.53. Dyer fo.361. Pl.Com.160.

¶ *Et iſſint entant que les terres fueront dones a eux ils ount ioynt eſtate par lour vies.* **This is plaine, but with this exception, Unleſſe the** Habendum doth otherwiſe limit the ſame. And therefore if a Leaſe be made (l) to two, Habendum to the one for life, the remainder to the other for life, this doth alter the generall intendment of the premiſſes, and ſo hath it beene oftentimes reſolued. And ſo it is if a Leaſe be made to two, habendum the one moitie to the one, and the other moitie to the other, the habendum doth make them Tenants in Common, and ſo one part of the Deed doth explaine the other, and no repugnancie betweene them, Et ſemper expreſſum facit ceſſare tacitum.

Bracton.

¶ *Per nul poſsibilitie.* **Here it is to be obſerued, That where the** Grant is impoſſible to take effect according to the Letter, there the Law ſhall make ſuch a conſtruction as the gift by poſſibilitie may take effect, which is worthie of obſeruation. Benignæ faciendæ ſunt interpretationes cartarum propter ſimplicitatem Laicorum, vt res magis valeat quam pereat.

¶ *Iſſint il couient per neceſsitie de reaſon.* **The reaſon of the Law is** the life of the Law, for though a man can tell the Law, yet if he know not the reaſon thereof, he ſhall ſoone forget his ſuperficiall knowledge: but when he findeth the right reaſon of the law, and ſo bringeth it to his naturall reaſon, that he comprehendeth it as his owne, this will not onely ſerue him for the vnderſtanding of that particular caſe, but of many other. For Cognitio legis eſt copulata & complicata: And this knowledge will long remaine with him, all which is plainely implied by the words, and (&c.) of our Author in this Section.

¶ *Et en tiel caſe ſi liſſue dun des Donees apres la mort des Donees deuie iſſint que il nad aſcun iſſue en vie de ſon corps engendres, donques le Donor ou ſon heire poet enter en le moitie.* **This is miſtaken in the imprinting, and va-** rieth from the originall, which is, Si lun Donee ou liſſue dun des Donees apres la mort des Donees deuie, iſſint que il nad aſcun iſſue, &c. For it is euident, that if the one Donee himſelfe dieth without iſſue, the Inheritance doth reuert for a moitie, and after the deceaſe of the other Donee, the Donor may enter into that moitie, and whether the Iſſue of the one Donee dieth without Iſſue at any time either in the life of the other Donee, or after his deceaſe, it is no materiall, for whenſoeuer no iſſue is remaining of the one Donee, ſo as the ſtate taile is ſpent, the Donor may after the deceaſe of the ſurviuing Donee, enter into that moitie.

Ariſtot.1.Metaphiſ.

¶ *Et la cauſe eſt, que entant que les inheritances, &c.* Littleton **in this** Chapter hath often ſayd, Et la cauſe eſt, which is worthie of obſeruation, for then we are truly ſayd to know any thing, when we know the true cauſe thereof: Tunc vnumquodque ſcire dicimur cum primam cauſam ſcire putamus: Scire autem proprie eſt rem ratione & per cauſam cognoſcere.

Virg.1.Georg.

Fœlix qui potuit rerum cognoſcere cauſas.

And therefore all Students of Law are to applie their principall indeauour to attaine thereunto, all which is implied by the words and ſeuerall &c. in this Section.

Here the cauſe of the entrie of the Donor into a moitie in this caſe is, That in as much as the Inheritance is ſeuerall, the reuerſion is ſeuerall. Therefore vpon the ſeuerall determination of the eſtate in taile, the Donor may enter, and the Law termeth a reuerſion to bee expectant vpon the particular eſtate, becauſe the Donor or Leſſor or their heyres after euerie determination of any particular eſtate, doth expect or looke for to enioy the Lands or Tenements againe.

Dyer 14.El.309.

¶ *Le reuerſion de eux en ley eſt ſeuerall, &c.* **Hereby, and by this** (&c.) is implied, That vpon one ioynt or entire gift or Leaſe there is one ioynt or entire reuerſion, and vpon ſeuerall gifts or Leaſes there be ſeuerall reuerſions. And this is to be vnderſtood of the reuerſion in the Donor or his heires. But albeit the gifts or Leaſes be ſeuerall, yet if the Donors or Leſſors grant the reuerſion to two or more perſons and their heires, they are Ioyntenants of the reuerſion. And ſo it is of a Remainder: and therefore if a gift [illegible] two men and the heires of their two bodies begotten, the remainder to them two and their heires, they are Ioyntenants for life, Tenants in Common of the ſtate taile, and Ioyntenants of the

for

fee ſimple in remainder, for they are Ioynt purchaſers of the Fee ſimple, and the remainder in fee is a new created eſtate, but the reuerſion remaining in the Donor, or his heires, is a part of his antient Fee ſimple.

Sect. 284.

CEt icome eſt dit de males, en meſme le manner eſt lou terre eſt done a deux females, & a les hẽs ô lour deux corps engendres.

And as it is ſayd of Males, in the ſame manner it is where land is giuen to two females, and to the heires of their two bodies engendred.

¶ If a man giueth Lands to two men and one woman, and the heires of their three bodies begotten, In this caſe they haue ſeuerall Inheritances, for albeit it may be ſayd, that the woman may by poſſibilitie marry both the men one after another, yet firſt ſhe cannot marrie them both in præſenti, and the Law will neuer intend a poſſibilitie vpon a poſſibilitie, as firſt to marrie the one, and then to marrie the other. Secondly, the forme of the gift is, To the heires of their three bodies, which is not poſſible, and therefore they ſhall haue ſeuerall Inheritances. And ſo it is, if a gift be made to one man and to two women, mutatis mutandis. In the ſame manner, if a gift in taile be made to a man and his mother, (m) or to a man and his ſiſter, or to him and his Aunt, &c. in this and like caſes, albeit the gift is made to a man and a woman, yet they haue ſeuerall inheritances, becauſe they cannot marrie together, and are within the rule and reaſon of our Author. 44.E.3.tit.Taile.13. (m) 18.E.3.39. 7.H.4.10.

Sect. 285.

ITem ſi terres ſoyent dones a deux, & a les heirs ô lun de eux, ceo eſt bone Joynture, & lun ad franktenemẽt, & lauter ad fee ſimple: Et ſi celuy que ad le fee deuie, celuy que ad le franktenement auera lentiertie per le ſuruiuor pur terme ô ſa vie. En meſme le manner eſt, lou tenements ſont dones a deux & les heires del corps dun de eux engenôs, lun ad franktenemẽt, & lauter ad fee taile, &c.

ALſo if lands be giuen to two and to the heires of one of them, this is a good Ioynture, and the one hath a Freehold, and the other a fee ſimple: And if he which hath the fee dieth, he which hath the freehold ſhal haue the entiertie by ſuruiuour for terme of his life. In the ſame manner it is, where tenements bee giuen to the heires of the body of one of them engendred, the one hath a freehold, & the other a fee taile, &c.

¶ By this Section, and the (&c.) in the end of it, they are Ioyntenants for life, and the Fee-ſimple or eſtate taile is in one of them, and becauſe it is by one and the ſame conueyance, they are Ioyntenants, and the Fee ſimple is not executed to all purpoſes, as hath been ſaid before.

If a fine bee leuied to two, (n) and to the heires of one of them, by force whereof hee is ſeiſed, he that hath fee dieth, and after the Ioyntenant for life dieth, and an eſtranger abates, in this caſe the heire may either ſuppoſe the fee ſimple executed, and haue an aſſiſe of Mortdaunceſter, the words of which writ be, Si R. pater fuit ſeiſitus die quo obijt in dominico ſuo vt de feodo, which cannot bee ſayd of him that hath but a remainder expectant vpon an eſtate for life, but in reſpect that he is ſeiſed of a fee ſimple, and of a ioynt eſtate in poſſeſſion, the words in the writ be true, That he was ſeiſed in Dominico ſuo vt de feodo. Likewiſe the heire may haue a Writ of Right, which alſo in ſome ſort proues the fee ſimple executed, or the heire may haue a Scire facias to execute the fine, by which the heire ſuppoſeth that (n) 42.E.3.9.10. 11.H.4.55 31.E.3.Scire Facias 19. 29.H.8.Mord.B.59. 4.E.3.37. F.N.B.196.& 219. 4.E.3.Itinere Derby. 24.E.3.70.

that the fee was not executed, or hee may maintaine a writ of Intrusion where the heire maketh the like supposition, and shall terme it a Remainder. And yet when land is giuen to two and to the heires of one of them, he in the remainder cannot grant away his fee simple, as hath beene sayd.

Sect. 286.

¶ *Claimer riens per discent de son compaignion, &c.* By which (&c.) is implied, That so it is if one Ioyntenant acknowledge a Recognisance or a Statute, or suffreth a iudgment in an action of Debt, &c. and dieth before execution had, it shall not bee executed afterwards. But if execution be sued in the life of the Conusor, it shall bind the suruiuor, and it is further implied, That both in the case of the Charge and of the Recognisance, Statute, and iudgement, if he that chargeth, &c. suruiue, it is good for euer.

F.N.B.204. E.207. 7.H.6.2. 13.H.7.22. 10 E.3.34. 17.R.2.tit. Charge 15. 5.H.5.8. Vide Sect. 289.

And so it is (o) if a man bee possessed of certain lands for terme of yeares in the right of his wife, and granteth a Rent charge, and dieth, the wife shall auoyd the charge, but if the husband had surmined, the charge is good during the terme.

(o) 9.H.6.52.

If a Villeine purchase lands, and bind himselfe in a Recognisance, if the Lord enter before execution, the Lord shall auoyd the same, as it hath been sayd.

(p) 8.E.3.tit. Execution Statham.

But otherwise it is if he had made a Lease for yeares, for the reason that Littleton here putteth in this Section.

If two Ioyntenants bee of a terme, (q) and the one of them grant to I.S. that if

(q) 14.H.8.22. Pl.Com. 263.b. in Dame Mates Case.

¶ Item si deux ioyntenaunts sont seisies destate en Fee simple, & lun graunt vn rent charge per son fait a vn auter hors de ceo, que a luy affiert, en cest case durant la vie le Grantor, le rent charge est effectuall: Mes apres son decesse l'grant de le rent charge ē void, quant a charger la fre, car celuy que ad la terre per le suruiuor tiendra tout la terre discharge. Et la cause est, pur ceo que celuy que suruesquist clayma & ad la fre per le suruiuor, & nemy ad, ne poet de ceo clayme rien per discent de son compaignion, &c. Mes autrement est de Parceners, car si soient deux Parceners des tenements en fee simple, et deuant ascun partition fait, lun charge ceo que a luy affiert per son Fait, dun rent charge, &c. et puis mourust sans issue, per que ceo que a luy affiert discēd a lauter Parcener, en cest case lauter Parcener tiendra la Terre charge, &c. pur ceo que il vient a cel moitie per discent come heire, &c.

ALso if two Ioyntenants be seised of an estate in Fee simple, and the one graunts a Rent-charge by his Deed to another out of that which belongeth to him: in this case during the life of the Grantor, the Rent charge is effectuall, but after his decease the grant of the Rent charge is voyd, as to charge the land, for hee which hath the land by suruiuor, shal hold the whole land discharged. And the cause is, for that he which suruiueth claimeth and hath the land by the suruiuor, and hath not nor can claime any thing by discent from his companion, &c. But otherwise it is of Parceners, for if there be two Parceners of Tenements in Fee simple, & before any partitiō made the one chargeth that which to her belongeth by hir Deed, with a Rent charge, &c. & after dieth without issue, by which that which belongeth to her discends to the other parcener, in this case the other parcener shall hold the land charged &c. because she came to this moity by discēt, as heir, &c.

if he pay to him ten pound before Michaelmasse, that then he shall haue his terme, the Grantor dyeth before the day, I. S. payes the summe to his Executors at the day, yet hee shall not haue the tearme, but the Surviuor shall hold place, for it was but in nature of a communication, but if he had made a Lease for yeares to beginne at Michaelmasse, it should haue bound the Surviuor.

And where Littleton putteth the case of a Rent charge, It is so likewise implyed, that if one Ioyntenant granteth a Common of Pasture, or of Turbary, or of Estouers, or a Toxodie or such like out of his part, or a way ouer the Land, this shall not bind the Surviuour: for it is a maxime in Law, that Ius accrescendi præfertur oneribus, and there is another maxime, that Alienatio rei præfertur iuri accrescendi. 45.E.3.13. *Vide Sect* 289.

If one Ioyntenant in Fee simple be indebted to the King, and dyeth, (r) after his decease no extent shall be made vpon the Land in the hands of the Surviuour. (r) 40.*Ass.*36.50 *Ass* 5. F.N.B.149.g. *Pl.Com.*321.

If a recouery be had against one Ioyntenant who dyeth before execution, the Surviuour shall not auoyd this recouery, because that the right of the moitie is bound by it.

If one Ioyntenant in fee, take a Lease for yeares of an estranger by Deed indented and dyeth, the Surviuour shall not be bound by the Conclusion, because he claymes aboue it, and not vnder it.

Et la cause est pur ceo que celuy que survesquist clayme & ad la terre per survivor, &c. Here againe Littleton sheweth the reason: and the cause wherefore the Surviuour shall not hold the Land charged, is, for that hee claymeth the Land from the first Feoffor, and not by his companion, which is Littletons meaning when he sayth, (that he claymeth by Surviuor) For (t) the surviuing Feoffee may pleade a feoffment to himselfe without any mention of his ioynt Feoffee. And this is the reason, That if two Ioyntenants bee in fee, and the one maketh a Lease for yeares, reseruing a Rent and dyeth, the surviuing Feoffee (t) shall haue the Reuersion by Surviuour, but hee shall not haue the Rent because he claymeth in from the first Feoffor, which is Paramount the Rent. If there be two Ioyntenants in Fee, and the one Ioyntenant granteth a Rent charge out of his part, and after releaseth to his ioynt companion and dyeth, he shall hold the Land charged, for that he is out of the reason and cause set downe by Littleton because he claymeth not by Surviuor, in as much as the release preuented the same. And of this opinion was Littleton himselfe (u) before the Edition of his Booke. But all men agree that if A. B. and C. be Ioyntenants in fee, and A. chargeth his part, and then releaseth to B. and his heires and dyeth, that the (w) charge is good for euer, because in that case B. cannot be in from the first Feoffor, because he hath a ioynt companion at the time of the Release made, and seuerall Writs of Præcipe must be brought against them. And albeit the Release of one Ioyntenant to the residue of the Ioyntenants makes no degree in supposition of Law, neyther is there any seuerall estate betweene them, but the estate of him that releaseth is as it were extinguished and drowned in their estate and possession, so as one Præcipe lyeth against them, yet shall they hold the Land charged as is aforesaid. As if tenant for life grant a Rent charge, and after surrendreth his estate to the Lessor, albeit the estate charged be drowned, and the Lessor is not in by him, yet he shall hold it charged. (t) 14.E.4.1.b. 18.E.3. *breife* 830. 8.E.2. *entrie* 77. 18.E.3.28. 38 E.3.26. 8.H 6.25. *Vide* 46.E.3.77. 35.H.6.39. (u) *Dyer Mich.*2.& 3.*Eliz.* 187. *Lib.*2. *fol.*96. *Vide lib.*6. *fol.*78.79. (w) 33.H.6.5.a. 9.*Eliz. Dyer* 263. (w) 37.H.8 *tit. alienation* Br.31. 10.E.4.3.b. 40.E.3.41.b. 33.H.6.5. 22.H.6.42.b. *per Pole.* 35.E.3. *release* 43. 33.E.3. *auowrie* 195. 14.H.8.2.

¶ *Mes auterment est de Parceners, Car si sont deux Parceners &c.* This is to be intended as well of Parceners by custome as of Parceners by the Common Law, and here is implyed the reason of the diuersitie, for that the Surviuor doth clayme aboue the charge, and the heire by discent vnder the charge.

Section 287.

¶ Item si sõt deux ioyntenants des terres en Fee simple deins vn burgh, lou les terres & tenemẽts sont deuisables per testament. & si lun de les dits deux ioyntenants deuise ceo que a luy affiert per son

ALso if there bee two Ioyntenants of Land in Fee simple within a Borough, where Lands and Tenements are deuisable by Testament, & if the one of the said two Ioyntenants deuiseth that which to him be-

¶ *Per son testament, &c.* Eyther in writing or nuncupatiue according to the custome.

¶ *Et la cause est pur ceo que nul deuise, poet prender effect mes apres le mort le deuisor & per sa mort tout la terr maintenant deuient per la ley a son compagnion, &c.*

&c. **Here both their** claymes commence at one Inſtant, and although an Inſtant. Eſt vnum indiuiſibile tempore quod non eſt tempus nec pars temporis, ad quod tamen partes temporis connectuntur, and that, Inſtans eſt finis vnius temporis, & Principium alterius. Yet in conſideration of Law there is a priorite of time in an inſtant, as here the Suruiuor is preferred before the deuiſe, for Littleton ſayth, that the cauſe is that no deuiſe can take effect till after the death of the Deuiſor, and by his death all the land preſently commeth by the Law to his companion. Whereby it appeareth, that Littleton by theſe words, Poſt mortem & per mortem, though they iumpe at one inſtant, yet alloweth priorite of time in the inſtant which hee diſtinguiſheth by per and poſt. And the reaſon of this priorite is, that the Suruiuour claymeth by the firſt Feoffor (as hath bin ſaid) and therefore in iudgement of Law his Title is Paramount, the title of the Deuiſee, and conſequently the deuiſe void, and the rule of Law is, that, Ius accreſcendi præfertur vltimæ voluntati.

Pl. Com. in Fulmerſtons caſe.

teſtament, &c. & moruſt, ceo deuiſe eſt voide. Et la cauſe eſt pur ceo que nul deuiſe poit prender effect, mes apres la mort le deuiſor, & per ſa mort tout la terre maintenant deuient per la ley a ſon companion, que ſuruiſquiſt per le ſuruiuor, le quel il ne claime, ne ad riens en la terre per my le deuiſor, mes en ſon droit demeſne p le ſuruiuor, ſolonque le courſe de ley &c. & pur cel cauſe tiel deuiſe eſt voide. Mes autrement eſt de Parceners ſeiſies des tenements deuiſables en tiel caſe de deuiſe, &c. Cauſa qua ſupra.

longeth by his Teſtament, &c. and dyeth, this deuiſe is voide. And the cauſe is for that no deuiſe can take effect till after the death of the deuiſor: and by his death al the Land preſently commeth by the Law to his companion, which ſuruiueth by the Suruiuor, the which hee doth not clayme, nor hath any thing in the land by the deuiſor, but in his owne right by the ſuruiuor according to the courſe of Law, &c. and for this cauſe ſuch deuiſe is void. But otherwiſe it is of Parceners ſeiſed of Tenements deuiſable in like caſe of deuiſe, &c. *Cauſa qua ſupra.*

TWo Feme Ioyntenants of a Leaſe for yeares, one of them taketh huſband, and dieth, yet the terme ſhall ſuruiue, for though all Chattels reals are giuen to the huſband, if he ſuruiue yet the Suruiuor betweene the Ioyntenants is the elder title, and after the marriage the feme continued ſole poſſeſſed, for if the huſband dyeth, the feme ſhall haue it, and not the Executors of the huſband, but otherwiſe it is of perſonall goods.

2. H. 5. executors 108.

If a man be ſeiſed of a houſe, and poſſeſſed of diuers heirelomes, that by cuſtome haue gone with the houſe from heire to heire, and by his will deuiſeth away the heirelomes, this deuiſe is void, for as Littleton here ſaith, the will taketh effect after his death, and by his death, the heirelomes by ancient cuſtome are veſted in the heire, and the Law preferreth the Cuſtome before the Deuiſe. And ſo it is if the Lord ought to haue a Herriot when his Tenant dyeth, and the Tenant deuiſeth away all his goods, yet the Lord ſhall haue his Heriot for the reaſon aforeſaid. And it hath beene anciently ſaid, that the Heriot ſhall bee paid before the Mortuarie.

(x) *Fleta lib. 2. cap. 50. Bracton lib. 2. fo. 60. Britton fol. 178.*

(x) Imprimis autem debet quilibet qui teſtauerit, dominum ſuum de meliore re quam habuerit recognoſcere, & poſtea Eccleſiam de alia meliore, &c. Wherein the Lord is preferred, for that the tenure is of him. This dutie to the Lord is very ancient, for in the Lawes before the Conqueſt it is ſaid, Siue quis in curia, ſiue morte repentina fuerit inteſtat' mortuus, Dominus tamen nullam rerum ſuarum partem (præter eam quæ iure debetur herioti nomine) ſibi aſſumito.

Lamb. fol. 119. 68.

In the Saxon tongne it is called Heregeat, as much to ſay (as I take it) as the Lords beſte, for Here is Lord, and geat is beſte. But let vs returne to Littleton.

¶ *Mes autrement eſt de parceners ſeiſes des tenements deuiſable en tiel caſe, del deuiſe, &c.* Cauſa qua ſupra.

The reaſon is euident, for that there is no Suruiuor betweene Coparceners, but the part of the one is diſcendible, and conſequently may be deuiſed.

Sect.

Section 288.

¶ Tẽ il ẽ comũement dit, q̃ chesc̃ iointenãt est seisie de la terr̃ q̃ il tient ioyntment, per my et per tout, et ceo est autant adire, q̃ il est seisie p chescun parcel, et p tout, &c. et ceo est voier, car en chescun parcel, et per chescun parcel, et per touts les terres et tenements il est iointment seisie ouesq̃ son companion.

ALso it is commonly said, that euery ioyntenant is seised of the land which hee holdeth ioyntly *Per my & per tout*, and this is as much to say as he is seised by euery parcel and by the whole, &c. and this is true, for in euery parcell, and by euery parcell, and by all the lands and tenements he is ioyntly seised with his compagnion.

¶ *Item est communemẽt dit, &c.* That is, It is the common opinion, and Communis opinio is of good authority in Lawe, A communi obseruantia non est recedendum, which appeareth here by Littleton. *Vid. Sect.* 697.

¶ *Per my & per tout.* Et sic totum tenet & nihil tenet, s. totum coniunctim, & nihil per se seperatim. And albeit they are so seised (as for example where there be two ioyntenants in fee) yet to diuers purposes each of them hath but a right to a moity, as to enfeoffe, giue, or demise, or to forfeite or lose by default in a Præcipe. If my villeine (y) and another purchase lands to them two and their heires, I may enter into a moytie. *Vid. Bracton lib.* 5 *fo.* 430. *Britton, cap.* 35. *Fleta, lib.* 3. *cap.* 4. 40. *E.* 3 40. 18. *E.* 2. *bre.* 831. 35. *H.* 6. 39. *Vid the second part of the Institutes vpon the* 6. *chapter of the Statute De bigamis. Fleta, lib.* 1. *cap.* 28. 40. *Ass.* 7. 48. *E.* 3. 16.

(y) *Vid.* 6. *E.* 3. 4. 7. *E.* 4. 29. 11. *Eliz. Dier.* 283.

And where all the ioyntenants ioyne in a feoffment, euery of them in iudgement of Law doe giue but his part. If an Alien and a subiect purchase lands ioyntly, the King vpon office found shall haue but a moitie. And Littleton afterwards in this chapter saith that one ioyntenant hath one moitie in Law, and the other the other moitie. And therefore if two ioyntenants be (z) and both they make a feoffment in fee vpon condition, and that for breach thereof one of them shall enter into the whole, yet he shall enter but into a moitie because no more in iudgement of Law passed from him; and so it is, of a Gift in taile or a Lease for life, &c.

(z) *Pl. Com. in Brownings case, fo.*

Yet euery ioyntenant may warrant the whole, (a) because a man may warrant more then passeth from him

(a) *Vid. the second part of the Institutes vpon the* 6 *chapter of the Statute of Bigamis.*

If two ioyntenants make a feoffment in fee (b) and one of the Feoffors die, the Feoffee cannot plead a feoffment from the survivour of the whole, because each of them gaue but his part, but otherwise it is on the part of the Feoffees, as hath beene said before.

(b) 14. *E.* 4. 5. *and the other bookes aboue said.*

And where two ioyntenants be, the one of them (c) may make the other his Baillife of his moitie, and haue an Action of account against him. And one ioyntenant (d) may let his part for yeares or at will to his companion.

(c) 21. *E.* 3. 60.

(d) 11. *H.* 3. 60. 33.

If two ioyntenants be of certaine lands, and the one of them by Deede indented (e) bargaineth and selleth the lands, and the other ioyntenant dyeth, and then the Deede is inrolled, there shall passe nothing but the moitie which the bargainer had at the time of the bargaine.

(e) 6. *E.* 6 *tit. Faits inroll.* 9. *Br.*

Sect. 289.

¶ Item si deux ioyntenants sont seisies de certain terres en Fee simple, & lun lessa ceo que a luy affiert a vn estranger pur terme de 40. ans, & deuie deuant le term com-

ALso if two Ioyntenants bee seised of certain lands in fee simple, and the one letteth that which to him belongeth to a stranger for terme of fortie yeares, and dieth before the

¶ *Per force de mesm' le dit lease, &c.*

By this (&c.) is implied, That where our Author speaketh of Ioyntenants seised in fee, that so it is if two bee seised for life, and one make a Lease to begin presently, or in

(f) *Vid Sect.* 286. & 660. & *Sect.* 2.

in futuro, and dieth, this Leafe ſhall binde the ſuruiuor, as it hath beene adiudged. (g) And if one Ioyntenant grant veſturam terræ, or herbagium terræ, for yeares, and dieth, this ſhall binde the ſuruiuor, for ſuch an Leſſee hath right in the land. So it is if two Ioyntenants be of a Water, and the one granteth the ſeuerall Piſcharie.

(g) 11.H.4.90. 14.H.8.6. 17.E.4.6.a.9.H.6.52. 21.H.7.29. 14.H.7.4. 18.E.3.Execution 56. 11.El.Dy.285.P.Com.160.a Temps E.1.Aſſ.422.20.H.6 4.7.H.7.13.10.H.7.24.

¶ *Lun leſſa.* The one letteth. If two Ioyntenants be of an Aduowſon, and (h) the one preſenteth to the Church, and his Clerke is admitted & inſtituted, this in reſpect of the priuity ſhal not put the other out of poſſeſſion, but if that Ioyntenant that preſenteth dieth, it ſhal ſerue for a title in a Quare impedit brought by the Suruiuor. But yet if one Ioyntenant or Tenant in Cõmon preſent, or if they preſent ſeuerally, the Ordinarie may either admit or refuſe to admit ſuch a Preſentee, vnleſſe they ioyne in preſentation, and after the ſixe moneths hee may in that caſe preſent by Laps.

(h) 6.E.3.38,39.52. 7.E.3.20.21. 17.Ed.3.37.b. 22.E.3.9.30.E.3.16. 11.H.4.54. 15.E.3.Dar. preſentment.11. 10 E.4.94. 1.H.7.1.b. 2.R.3.Quar.imp. 302. 9.El.Dy.259. 36.H.8.Br.Preſent. 27.H.8.fo.11. 5.H.7.8. 6.E.4.10.b. Doct.& Stud. 116. 34.H.6.40. 20.E.3. Quar.imp.63. F.N.B.34.V.

But if two or more Coparceners bee, (i) and they cannot agree to preſent, the eldeſt ſhal preſent, and if her ſiſter doth diſturbe her, ſhe ſhall haue a Quare impedit againſt her, and ſo ſhall the Aſſigne of the eldeſt, and yet he is tenant in Common with the youngeſt. And in the ſame manner the tenant by the Curteſie of the eldeſt ſhall preſent; but if there be foure Coparceners and the eldeſt and the ſecond preſent, and the other two preſent ioyntly or ſeuerally, the Ordinary may refuſe them all, for the eldeſt did not preſent alone but ſhee and one other of her ſiſters. But now let vs returne to Littleton.

(i) Brac.li.4.fo.238.245. 247. Brid.fo.223.45.Edw.3. Fines 41.18.E.2. Quar.imp. 176. 38 H.6.9.19.E.3.ib. 59.5.H.5.10.F.N.B.34.V

(k) Mes ou deins l'eſme, en ceſt caſe apres ſon deceaſe le Leſſee poet enter et occupier la moitie a luy Leſſe durant le terme, &c. coment que le Leſſee nauoit vnq̃s poſſeſſion de ceo en la vie le Leſſor, per force de meſme le leaſe, &c. Et le diuerſitie perenter le caſe de grant de Rent-charge auantdit, et ceſt caſe eſt ceo, car en grãt de Rent charge p̃ ioyntenaunt, &c. les Tenemẽts demurgent touts foits come ils fueront adeuant, ſans ceo que aſcun ad aſcun dꝛoyt dauer aſcun parcell de les tenements forſque eux meſmes, et les Tenements ſont en tiel plyte, come ils fueront deuant le charge, &c. Mes ou Leaſe eſt fayt per vn Ioyntenant a vn auter per terme des ans, &c. maintenaunt per force de le Leaſe le leſſee ad dꝛoit en meſme la terre, ceſtaſcauoir de tout ceo que a ſon leſſour affiert, et dauer ceo per force de meſme le Leaſe durant ſon terme. Et ceo eſt la diuerſitie.

term beginneth, or within the terme, in this caſe after his deceaſe the Leſſee may enter and occupy the moitie let vnto him during the terme, &c. although the leſſee had neuer the poſſeſſion therof in the life of the Leſſor, by force of the ſame leaſe, &c. And the diuerſity between the caſe of a grant of a Rent charge aforeſayd, and this caſe, is this, for in the grant of a Rent charge by a Ioyntenant, &c. the tenements remaine alwayes as they were before, without this that any hath any right to haue any parcel of the tenements but they themſelues, and the Tenements are in the ſame plight as they were before the charge, &c. But where a leaſe is made by a Ioyntenant to another for terme of yeares, &c. preſently by force of the Leaſe, the Leſſee hath right in the ſame Land, *(videlicet)* of all that which to the Leſſour belongeth, and to haue this by force of the ſame Leaſe, during his terme. And this is the diuerſitie.

Sect. 290.

¶ Tẽ ioyntenãts (ſils voilent) poient faiſ partition enter eux et la partition eſt aſſets bon, mes de ceo faire ils ne ſerront compels per la ley. Mes ſils voylent faiſ partition de lour proper volunt & agreement, le partition eſtoiera en ſa force.

ALſo ioyntenants (if they will) may make partition betweene them, and the partition is good enough, but they ſhall not bee compelled to doe this by the Law, but if they will make partition of their own will and agreement, the partition ſhal ſtand in force.

¶ *Poient faire partition.* But this partition muſt be (k) by Deed as hath beene ſaid before. But ioyntenants for yeares may (l) make partition without Deed.

(k) *Vi. Sect.* 259. 318.

(l) 18. *El. Dyer* 350.

¶ *Ils ne ſerra compell.* This is true regularly, but by the cuſtome of ſome Cities and Boroughs one ioyntenant or tenant in Common may compell his companion by writ of partition grounded vpon the cuſtome to make partition. But ſince Littleton wrote ioyntenants and Tenants in common generally are compellable to make partition by writ framed vpon the Statutes (m) of 31. & 32. H. 8. as before hath beene ſaid. And albeit they be now compellable to make partition, yet ſeeing they are compellable by writ, they muſt purſue the Statutes and cannot make partition by Parol, for that remaines at the Common Law. And by Littletons Authority herein it ſeemeth to me that if one ioyntenant or tenant in Common diſſeiſe another, and the Diſſeiſee bring his Aſſiſe for the mottie, that in this caſe, though the Plaintife prayeth it, yet no iudgement ſhall be giuen to hold in ſeuerallty, for then at the Common Law there might haue beene by compulſion of Law a partition betweene ioyntenants and tenants in Common, and by rule of Law the Plaintife muſt haue iudgement according to his pleint or demaund.

F. N. B. 62. *b.*

(m) 31. *H.* 8. *ca.* 1. 32. *H.* 8. *ca.* 32. *Vi. Sect.* 264. 247. 259. *Mich.* 16. & 17. *El.* 1340. *Inter Harris & Eden adiudge. acc.* 18. *El. Dyer* 350. *b. Vi. before in the Chapter of Partition, many bookes cited concerning this matter.* 3. *E.* 3. 48. *F. N. B.* 9. *b.* 7 *Aſſ.* 10. 7. *E.* 3. 29. 10. *Aſſ.* 17. 10. *E.* 3. 40. 43. 12. *Aſſ.* 15. 17. 12. *E.* 3. *iudgement* 162. 20. *E.* 3. *Aſſ.* 62. 28. *Aſſ.* 35. 23. *Aſſ.* 10. 7. *H.* 6. 4. 19. *H.* 6. 45. 3. *E.* 4. 10. *Vid. Sect.* 247. *Britt. fo.* 112. *Lib.* 6 *fo.* 12. & 13. *Morrices Caſe.*

If two Ioyntenants be (n) of land with warranty, and they make partition by writing the warranty is diſtroyed, but if they make partition by writ of partition vpon the Statute, the warrantie remaines becauſe they are compellable thereunto.

(n) 29. *E.* 3. *fit. Garr.*

Sect. 291.

¶ Item ſi vn ioynt eſtate ſoit fait de fre a le baron & a ſa feſm & a vn tierce perſon, en ceo cas le baron et ſa feſm nont en en ley en lour droit forſque le moity, &c. et le tierce perſon auera tant come le baron et ſa feme ont, ſ. lauter moity, &c. Et la cauſe eſt, pur ceo que le baron et ſa feme ne ſont forſque vn perſon en

ALſo if a ioynt eſtate be made of land to husband and wife, and to a third perſon, in this caſe the husbãd & wife haue in law in their right but the moitie, and the third perſon ſhall haue aſmuch as the huſband and wife, *viz.* the other moity, &c. And the cauſe is, for that the husband and wife are but one perſon in

¶ *Le baron & ſa feme nont en ley en lour droit forſque le moity, &c.* William Ocle and Ioan his wife (o) purchaſed lands to them two and their heires, after William Ocle was attainted of high treaſon for the murther of the Kings father E. 2. and was executed, Ioan his wife furniued him, E. 3. granted the lands to Stephen de Bitterly and his heires. Iohn Hawkins the heire of the ſaid Ioan in a Petition to the King diſcloſeth this whole matter, and vpon a Scire facias againſt the Patentee hath iudgement to recouer the lands,

(o) *Mich.* 33. *E* 3. *Coram Rege Salop. in Theſaur.*

lands, for the reason here yeelded by our Author.

Vi.Sect. 665.

But if an estate be made to a man and a woman and their heires before marriage, and after they marry, the husband and wife haue moyties betweene them, which is implied in these words of our Author, Baron & la feme.

¶ *Forsque vn person en Ley.* Bract. saith (p) vir & vxor sunt quasi vnica persona, quia caro vna & sanguis vnus. It hath bin said, that if a reuersion bee granted to a man and a woman and their heires, and before attornment they entermarrie, and then attornement is made, That the husband and wife shall haue no moities, in this case no more than if a Charter of Feoffement be made to a man and a woman, with a Letter of Attorney to make liuery, they entermarrie, and then Liuerie is made secundum formam chartæ, in which case it is said, that they haue no moities. But certain it is that if a feoffment were made before the stat. of 27. H. 8. of vses to the vse of a man (q) & a woma, & their heires, and they entermarrie, and then the Statute is made, if the husband alien it is good for a moitie, for the Statute executes the possession according to such qualitie, manner, forme, and condition, as they had in the vse, so as though it rest during the couerture, yet the Act of Parliament executes seuerall moities in them, seeing they had seuerall moities in the vse.

(p) *Bract. li.* 5. *fo.* 416. 20. *H.* 3. *Diuers.* 52. *Lib.* 4. *fo* 68. *Tobers case. Pl. Com.* 483. *Nichols case.*

(q) 4. *Mar. Dyer* 149. 3. *Mar. Dyer* 1222. 29. *H.* 8. *Dyer* 32.

(r) 40. *Ass. p.* 7.

If an estate be made to a Villeine and his wife (r) being free, and to their heires, albeit they haue seuerall capacities, viz. the Villeine to purchase for the benefit of the Lord and the wife for her owne, yet if the Lord of the Villeine enter, and the wife suruiueth her husband, she shal inioy the whole land, because there be no moities betweene them.

A man makes a Lease to A. and to a Baron and Feme, viz. to A. for life, to the husband in taile, and to the Feme for yeares, in this case it is sayd, That each of them hath a third part in respect of the seuerallie of their estates.

(s) *Pl. Com.* 483. *Nichols case*

If a Feoffement be made to a man and a woman and their heires with warrantie, (s) and they entermarrie and after are impleaded and vouch and recouer in value, moities shal not be betweene them, for though they were sole when the warrantie was made, notwithstanding at the time when they recouered and had execution, they were husband and wife, in which time they cannot take by moities.

11. *H.* 7.

Albeit Baron and Feme (as Littleton here saith) be one person in Law, so as neither of them can giue any estate or interest to the other, yet if a Charter of Feoffement be made to the wife, the husband as Attorney to the Feoffor may make liuerie to the wife, and so a Feme couert that hath power to sell land by will, may sell the same to her husband, because they are but Instruments for others, and the state passeth from the Feoffee or Deuisee.

(t) 11. *E.* 3. *Cui in vita* 9. 16. *E.* 3. *ibid.* 36. *E.* 3. *ibid.* 20. 35. *Ass. Pl.* 15. 31. *H.* 6. *tit. Ent. Conusable* 54 19. *H.* 6. 45. *F. N. B.* 193. *k.*

If a husband, wife, and a third person purchase lands to them and their heires, (t) and the husband before the Statute of 32. H. 8. cap. 1. had aliened the whole land to a stranger in fee, and died, the wife and the other Ioyntenant were Ioyntenants of the right, and if the wife had

ley, et sont en semblable case, sicome estate soit fait a deux ioyntenants, ou lun ad per force de ioyntur lun moitie en ley, & lauter lauter moitie, &c. En mesme le maner est lou estate est fait a le baron et a sa feme, et as auters deux homes, en tiel cas l baron et sa fem̃ nont forq; la tierce part, et les auters deux homes les auters deux parts, &c. Causa qua supra.

law and are in like case as if an estate bee made to two ioyntenants, where the one hath by force of the ioynture the one moytie in law, and the other the other moitie, &c. In the same manner it is where an estate is made to the husband and wife, and to two other men, in this case the husband and wife haue but the third part, and the other two men the other two parts, &c. *Causa qua supra.*

¶ **Luis serra dit del matter touchant ioyntenancie, en le chapter de Tenants en common, et tenant per Elegit et tenant per statute Merchant.**

More shall bee said of the matter touching ioyntenancy in the chapter of Tenants in Common and tenant by Elegit, and tenant by Statute Merchant.

had died, the other Ioyntenant should haue had the whole right by surui-uor, for that they might haue ioyned in a Writ of Right, and the discontinuance should not haue barred the entrie of the surui-uor, for that he claimed not vnder the discontinuance, but by title paramount aboue the same, by the first feoffement, which is worthie of obseruation. But if the husband had made a feoffement in fee but of the moitie, and he and his wife had died, their moitie should not haue surui-ued to the other.

And for the better vnderstanding of this diuersitie diuers things are worthy of obseruation.

First, That a right of action & a right of entrie may stand in Ioynture, for at the Common law the alienation of the husband was a discontinuance to the wife of the one moitie, and a disseisin of the other, so as after the death of the husband, the wife hath a right of Action to the one moitie, and the other Ioyntenant a right of entrie into the other, but they are Ioyntenants of the right, because they may ioyne in a Writ of Right. *Vi. Sect.* 302.

Secondly, That a right of Action or a bare right of entrie cannot stand in ioynture with a Freehold or Inheritance in possession, and therefore if the husband make a feoffement of the moitie, this was a discontinuance of that moitie, * and the other Ioyntenant remained in possession of the Freehold and Inheritance of the other moitie, which for the time was a seuerance of the Ioynture, and so are all the bookes which seemed to varie amongst themselues, clearely reconciled. * *Vi. the Statute of* 32 *H* 8. *c. it is no discontinuance at this day.*

If two Ioyntenants be of a rent, and the one of them disseise the Tenant of the Land, (u) this is a seuerance of the Ioynture for a time, for the moitie of the rent is suspended by vnitie of possession, and therefore cannot stand in Ioynture with the other moitie in possession. And this is to be obserued, That there shall neuer be any surui-uor, vnlesse the thing be in ioynture at the instant of the death of him that first dieth: for the rule is, Nihil de re accrescit ei qui nihil in re quando ius accresceret habet. (u) *Pl. Com.* 419 *m. Eratob-bridges case.*

Also if a man deuiseth lands to two, to haue and to hold to the one for life, and the other for yeares, they are no Ioyntenants, for a state of Freehold cannot stand in Ioynture with a terme for yeares: and a reuersion vpon a freehold cannot stand in ioynture with a Freehold and Inheritance in possession, as shall be sayd in the next Chapter. Neither can a Seisin in the right of a politique capacitie, stand in Ioynture with Seisin in a naturall capacitie, as shall be sayd hereafter. 46. *E.* 3, 21. 19. *H* 6. 45. 37. *H.* 8. 8. 3. *E.* 4. 19.

If two Femes be ioyntly seised, and they take Barons, and the Barons ioyne in an alienation and die, the wiues are Ioyntenants of the right, and may ioyne in a Writ of Right, and yet they may haue seuerall Writs of Cui in vita at their election, but when they haue recouered in those seuerall Writs, they shall be Ioyntenants againe. But if the Barons had aliened seuerally, this had beene a seuerance of the Ioynture for a time, for the reason aboue said.

If two Ioyntenants, the one for life, and the other in fee, lose by default, the one shall haue a Writ of Right, and the other a Quod ei deforcear, and yet when they haue seuerally recouered, they shall be Ioyntenants againe. So it is if two Ioyntenants be disseised, and an Assise is brought, and the one is summoned and seuered, and the other recouer the moitie, and after another Assise is brought, and he that recouereth is summoned and seuered, and the other recouer, albeit they seuerally recouer, yet they are Ioyntenants againe.

And in all cases where the Ioyntenants pursue one ioynt remedie, and the one is summoned and seuered, and the other recouer, he that is summoned and seuered shall enter with him: but where their remedies be seuerall, there the one shall not enter with the other, till both haue recouered, and the same Law is of Coparceners. If lands (w) be demised for life, the remainder to the right heires, of I.S. and of I.N. I.S. hath Issue and dieth, and after I.N. hath Issue and dieth, the Issues are not Ioyntenants, because the one moitie vested at one time, and the other moitie vested at another time. And yet in some cases there may be Ioyntenants, and yet the estate may rest in them at seuerall times. *Vid. Lit cap. Remitter, the last case.* 10. *H* 6. 10 31 *H* 6. *tit. Entre congeable* 46. *E.* 3. 21. *b.* 3. *E.* 4. 10. 37 *H.* 6. 8. (w) 24. *E.* 3. 29. 18. *E.* 3. 28. 38. *E.* 3.

If a man (x) make a Feoffement in fee to the vse of himselfe and of such wife as hee should afterwards marrie, for terme of their liues, and after he taketh wife, they are Ioyntenants, and yet they come to their estates at seuerall times. (x) 17. *El. Dyer Brents case.*

And so it is if I disseise one to the vse of two, and the one agrees at one time, and the other at another, yet they are Ioyntenants.

In this Section are three (&c.) the first and second are at large explained before, the last is intended where more parties take than three.

Chap. 4.

Chap.4. Of Tenants in Common. Sect.292.

¶ Tenants en Common ſont ceux, que ont terres ou tenemẽts en Fee ſimple, Fee taile, ou pur terme de vie, &c. les queux ont tielx terres ou Tenements per ſeuerall titles, & nemy per ioynt title, et nul de eux ſcauoit de ceo ſon ſeuerall, mes ils doient per la Ley occupier tiels terres ou tenements en commõ, & pro indiuiſo aprender les profits en common. Et pur ceo que ils auiendront a tielx terres ou tenements per ſeuerall titles et nemy per vn ioynt title, et lour occupation et poſſeſſion ſerra p la ley percenter eux en common, ils ſont appels Tenaunts en common. Sicome vn home enfeoffa deux Joyntenants en fee, et lun de eux alien ceo que a luy afficrt a vn auter en fee, ore le alienee et lauter Joyntenant ſont Tenants en Common, pur ceo que ils ſont eins en tiels Tenements per ſeuerall titles, car lalienee vient eins en la moitie per la feoffement dun des Joyntenants, et lauter Joyntenant ad lauter moitie, per force de l primer Feoffement fait a luy, et a ſon compaignion, &c. Et iſſint ils ſont eins per ſeuerall titles, ceſtaſcauoir, per ſeueral Feoffements, &c.

TEnants in Common are they which haue Lands or Tenements in Fee-ſimple, Fee taile, or for terme of life, &c. and they haue ſuch Lands or Tenements by ſeuerall Titles, and not by a joynt title, and none of them know of this his ſeuerall, but they ought by the Law to occupie theſe Lands or Tenements in common, and *pro indiuiſo*, to take the profits in Common. And becauſe they come to ſuch Lands or Tenements by ſeuerall titles, and not by one ioynt title, and their occupation and poſſeſſion ſhall be by Law betweene them in Common, they are called Tenants in Common. As if a man enfeoffe two Ioynetenants in Fee, and the one of them alien that which to him belongeth, to another in Fee, now the Alienee and the other Ioyntenant are Tenants in Common, becauſe they are in in ſuch teneméts by ſeuerall titles, for the Alienee commeth to the moitie by the Feoffement of one of the Ioyntenaunts, and the other Ioyntenaunt hath the other moitie by force of the firſt feoffement made to him and to his Companion, &c. And ſo they are in by ſeuerall Titles, that is to ſay, by ſeuerall Feoffements, &c.

Plet.li.3.ca.4. ¶ Littleton hauing ſpoken of Parceners which are onely by diſcent, and of Ioyntenants which are onely by purchaſe, and by ioynt title, ſpeaketh now of Tenants in Common, which may be by three meanes, viz. by Purchaſe, by Diſcent, or by Preſcription, as hereafter in this Chapter ſhall appeare.

¶ On

¶ *Ou pur terme de vie, &c.* Here (&c.) implyeth pur terme dauter vie, or for tearme of yeares, or for any other fixed Inheritance in the Land.

And here it appeareth, that the essentiall difference betweene Ioyntenants and Tenants in Common, is that Ioyntenants haue the Lands by one ioynt Title, and in one Right, and Tenants in common by seuerall Titles, or by one Title and by seuerall Rights, which is the reason that Ioyntenants haue one ioynt Freehold, and Tenant in Common haue seuerall Freeholds, only this propertie is common to them both, viz. that their occupation is indeuided, and neyther of them knoweth his part in seuerall. *Vide Sect.* 256.

The Example that Littleton putteth in this Section is perspicuous, and needeth no explication.

Sect. 293.

¶ Et est ascauoir, que quant il est dit en aucun Lieur, q̄ home est seisie ē fee sauns pluis dire, il serra entendue en fee simple, car il ne serra entendue per tiel paroll (en fee) que home est seisie en fee tayle, sinon que soit mis a ceo tiel addition, fee tayle, &c.

AND it is to bee vnderstood, that when it is said in any Booke, that a man is seised in fee, without more saying, it shall bee intended in fee simple, for it shall not bee intended by this word (in fee) that a man is seised in fee tayle vnlesse there be added to it this addition fee tayle, &c.

¶ This is euident and secundum excellentiam, it shall bee taken for the highest and best fee, and that is fee simple. *Vide dicant. Sect.* 99.

¶ *Addition in fee tayle, &c.* Here is implyed a maxime in Law, viz. that Additio probat minoritatem, as it is vulgarly said, the younger sonne giueth the difference.

Sect. 294.

¶ Item si 3. ioyntenāts sont, & vn de eux alien ceo que a luy affiert a vn auter home en fee, en cest cas lalienee est tenant en common ouesque les auters deux ioyntenants, mes vncore les auters 2. ioyntenants sont seisies d̄s deux parts ioyntment que remayne, & de ceux deux parts le suruiuor enter eux deux tient lieu, &c.

ALso if three Ioyntenants bee, and one of them alien that which to him belongeth to another man in fee. In this case the alienee is Tenant in common with the other two Ioyntenants, but yet the other two Ioyntenants are seised of the two parts which remain ioyntly, and of these two parts the Suruiuor betweene them two holdeth place, &c.

¶ This needeth no explication, only the (&c.) in the end of this Section implyeth that the same Law is where there be more Ioyntenants then three.

Section 295.

¶ Item si soient deux Joyntenants en fee, & lun dona ceo que a luy affiert a vn auter en le tayle, & lauter done ceo que a luy affiert a vn auter en le tayle, les donees sont tenants en common, &c.

ALso if there bee two Ioyntenants in fee, and the one giueth that to him belongeth to another in tayle, and the other giueth that to him belongs to another in tayle, the Donees are Tenants in common, &c.

Vide Sect. 300. ¶ This (&c.) in the end of this Section implyeth, that so it is when a Lease for life, or pur auter vie is made, for in that case also the Lessees are Tenants in common.

Sect. 296.

¶ *Si terres sõt dones a* 2. *homes, &c.* Of this sufficient hath been spoken in the Chapter (a) of Joyntenants.

(a) *Sect.* 283.

¶ *Mes si terres sont dones a* 2. *Abbes, &c.* In this case of the two Abbots in respect of their seuerall capacities, albeit the words be ioynt, yet the Law (b) doth adiudge them to be seuerally seised.

(b) 7.H.7.9.b.16.H.7.15.b. 3.H.7.11. 10.E.4.16.b. 5.H.7.25. 18.E.27. 49.E.3.25.b. *Vide Sect.* 209.

The (&c.) in the end of this Section implyeth, that so it is of any (c) body Politique or Corporate bee they regular, as dead persons in law (whereof our Authour here speaketh) or Seculer: as if

(c) 4.H.7.45. 18.E.3.27.b.

¶ MEs si terres sont dones a 2. homes, & a les heires de lour deux corps engendres, les donees ount ioint estate pur terme de lour vies, & si chescun de eux ad issue & deux, lour issues tiendront en common, &c. Mes si terres sont dones, a deux Abbes, sicome al Abbe de Westminster, & al Abbe de S. Albon, a auer & tener a eux & a lour successors, ẽ cest cas ils out maintenant al commencement estate en common, & nemy ioynt estate. Et la cause est, pur ceo q̃ chescun Abbe, ou auter Soueraigne, de meason de Religion, deuant que il fuit fait Abbe, ou Soueraigne, &c. il fuit forsq; come mort person en ley, et quant il est fait Abbe, il est come vn home person able en ley tantsolemẽt a purchaser et auer terres ou tenements, ou auters

BVt if lãds be giuẽ to two men, and to the heires of their two bodies begotten, the Donees haue a ioint Estate for tearme of their liues, and if each of them hath issue and die, their issues shall hold in Common, &c. But if lands be giuen to two Abbots, as to the Abbot of *Westminster*, and to the Abbot of Saint *Albons*, to haue and to hold to them and to their Successors. In this case they haue presently at the beginning an estate in Common, and not a ioynt estate. And the reason is for that euery Abbot or other Soueraigne of a house of religion, before that hee was made Abbot or Soueraigne, &c. was but as a dead person in law, and when he is made Abbot, he is as a mã personable in Law only to purchase and haue lands or tenements or other things to the vse of his House, and

auters choſes al vſe de ſa meaſon, et nemy a ſon proper vſe, come auter ſeculer home poit, et pur ceo al commencement de lour purchaſe ils ſont tenants en common, et ſi lun de eux deuie, Labbe que ſurueſquiſt nauera my tout per le Suruiuour, mes le ſucceſſor de Labbe que mozuſt tiendza le moitie en common oue Labbe q̄ ſurueſquiſt, &c.

not to his owne proper vſe, as another ſecular man may, and therefore at the beginning of their purchaſe they are tenants in common, and if one of them die, the Abbot which ſuruiueth ſhall not haue the wholeby ſuruiuor, but the Succeſſor of the Abbot which is dead, ſhall hold the moitie in common with the Abbot that ſuruiueth, &c.

lands be giuen to two Biſhops, to haue and to hold to them two and their Succeſſours: Albeit the Biſhoppes were neuer any dead perſons in Law, but alwayes of capacitie to take, yet ſeeing they take this Purchaſe in their politique Capacitie, as Biſhops, they are pzeſently Tenants in Common, becauſe they are ſeiſed in ſeuerall rights, foz the one Biſhop is ſeiſed in the right of his Biſhopzicke of the one moitie, and the other is ſeiſed in the right of his Biſhopzicke of the other moitie, and ſo by ſeuerall Titles and in ſeuerall Capacities, whereas Joyntenants ought to haue it in one and the ſame right and Capacitie, and by one and the ſame ioynt Title. The like Law is if Lands be giuen to two Parſons and their Succeſſozs oz to any other ſuch like Eccleſiaſticall bodies Politique oz Incozpozate as hath beene ſaid.

If a Cozodie be granted to two men and their heires, in this caſe becauſe the Cozodie is incertaine and cannot be ſeuered, it ſhall amount to a ſeuerall grant to each of them one Cozodie, foz the perſons be ſeuerall, and the Cozodie is perſonall.

Sect. 297.

Item ſi terres ſoient dones a vn Abbe, & a vn Secular home, A auer & teñ a eux, ſ. al Abbe, & a ſes ſucceſſozs, & al Secular home a luy & a ſes heires, donques ils ount eſtate en cõmon, Cauſa qua ſupra.

Alſo if lands bee giuen to an Abbot and a Secular man, to haue and to hold to them, *viz.* to the Abbot and his Succeſſors, and to the Secular man, to him and to his heires, They haue an eſtate in common, *Cauſa qua ſupra.*

And ſo it is if lands be giuen to the Parſon of Dale, and to a Lay man, to haue and to hold to them, that is to ſay, to the Parſon and his Succeſſozs, and to the Lay man and his heires, they are pzeſently Tenants in Common foz the cauſes aboueſaid. So of a Biſhop, &c. Et ſic de ſimilibus. *F. N. B. 49. I. 16. E. 3. Voindre in action 27. 16. Ass. p. 1. 2. R. 3. 16. 7. H. 7. 9. 13. H. 9. 14.*

If Lands bee giuen to the King and to a Subiect. To haue and to hold to them and to their heires, yet they are Tenants in Common, and not Joyntenants, foz the King is not ſeiſed in his naturall Capacitie, but in his Royall and Politique Capacitie, in iure Coronæ, which cannot ſtand in Joynture with the ſeiſin of the ſubiect in his naturall Capacitie. So likewiſe if there bee two Joyntenants, and the Crowne diſcend to one of them the Joynture is ſeuered, and they are become Tenants in common. But if Lands bee giuen to A. de B. Biſhop of N. and to a Secular man to haue and to hold to them two, and to their heires. In this caſe they are Joyntenants, foz each of them take the lands in their naturall Capacitie. *Pl. Com. in Seig. Barkleys caſe. fol.*

If lands be giuen to Iohn Biſhop of Norwich and his Succeſſozs, and to Iohn Overall Doctoz of Diuinitie and his heires being one and the ſame perſon, he is Tenant in Common (d) with himſelfe. But our Authozs rules doe not hold in Chattels, Reals oz Perſonals, foz if a Leaſe foz yeares be made, oz a Ward granted to an Abbot and a Secular man, oz to a Biſhop and Secular man, oz if goods be granted to them, they are Joyntenants, becauſe they take not in their Politique Capacitie. (d) *13. H. 8. 14. 16. H. 7. 15. 9. H. 6. 25. 45. E. 3. 25.*

Sect. 298.

¶ And the reaſon is, becauſe they haue ſeuerall Freeholds and an occupation Pro indiuiſo.

Here is to be obſerued that the Habendum doth ſeuer the premiſſes that Prima facie ſeemed to be ioynt, for an expreſſe eſtate controles an implyed eſtate, as hath beene ſaid.

¶ Item ſi terres ſoient dones a deux a auer, et tener, s. lun moity a lun et a ſes heires, et lauter moity a lauter et a ſes heires, ils ſont tenants en common.

Alſo if lands be giuen to two to haue and to hold, s. the one moitie to the one and to his heires, and the other moitie to the other, and to his heires, they are tenants in common.

Section 299.

¶ And the like Law is, if the feoffment bee made of a third part or a fourth part, &c. And if there be an Aduowſon appendant, they are alſo Tenants in common of the Aduowſon. And albeit it is ſaid that ſuch a feoffment of a moity or third part, &c. is not good without writing, for that (as they ſay) a man cannot create an vncertain eſtate in land by Parol, yet is the Law cleere that ſuch a feoffment is good by Parol without writting, and ſuch an vncertaine eſtate ſhall paſſe by Liuery, and ſo it appeareth in our bookes.

11. *Aſſ. Pl.* 16.

45. *E.* 3. 22. 44. *Aſſ.* 11.

21. *E.* 4. 22. *b.*

¶ Item ſi home ſeiſie de certain terres enfeoffa vn auter de le moitie de meſme la terre ſans aſcun parlance de aſſignment ou limitation de meſme le moitie e̅ ſeueralty al temps del feoffment, don̄s le feoffee & le feoffor tiendront lour parts de la terre en common.

Alſo if a man ſeiſed of certaine lands infeoffe another of the moitie of the ſame land without any ſpeech of aſſignement or limitation of the ſame moitie in ſeueraltie at the time of the feoffment, then the Feoffee and the Feoffor ſhall hold their parts of the land in common.

21. *E.* 4. 22. *b.*

If a Verdict finde that a man hath Duas partes manerij, &c. in tres partes diuiſas,) this ſhall not be intended to be in Common, but if the verdict be in tres partes diuidendas, then it ſeemeth that they are Tenants in common by the intendment of the Verdict.

5. *E.* 3. 23. 67.
Temps E 1. *Feoffments* 115.
34. *E.* 1. *quar. imped.* 179.
10. *Eliz. Dier.* 28.
22. *E.* 3. 6. *Feoffments* 116.
6. *E.* 3. 56. 39. *E.* 3. 38.
9. *E.* 3. 16. 17. *E.* 3. 3.
18. *E.* 3. 43. 43. *E.* 3. 26.
23. *Aſſ.* 8. 33. *H.* 6. 5. *a.*

But if a man be ſeiſed of a Mannor whereunto an Aduowſon is appendant, and maketh a feoffment of three acres parcell of the Mannor together with the Aduowſon to two. To haue and to hold the one moitie together with the moity of the Aduowſon to the one and his heires, and the other moity together with the other moitie of the Aduowſon to the other and his heires this cannot be good without Deed, for the Feoffor cannot annex the Aduowſon to theſe three acres, and diſanex it from the reſt of the Mannor without Deed.

Section 300.

¶ E̅ eſt aſcauoir, que en meſm̄ le maner come eſt auantdit de tenants en common, de terres ou ten̄ts en fee ſimple, ou en fee taile, en meſme le maner poit eſtre de

And it is to bee vnderſtood that in the ſame maner as is aforeſaid of tenants in common of lands or tenements in fee ſimple, or in fee taile, in the ſame

de tenants a terme de vie. Sicom deux ioyntenants sont en fee, & lun lessa a vn home ceo que a luy affiert pur terme de vie, et lauter ioyntenant lessa ceo que a luy affiert a vn auter pur terme de vie, &c. les deux lessees sont tenants en common pur lour vies, &c.

manner may it be of tenants for terme of life. As if two ioyntenants bee in fee, and the one letteth to one man that which to him belongeth for terme of life, and the other ioyntenant letteth that which to him belongeth to another for terme of life, &c. the said two lessees are tenants in cõmon for their liues, &c.

Vid. Sect. 295. where this is sufficiently explaned before.

Sect. 301.

¶ Item si hom lessa terres a deux homes pur terme de lour vies, & lun granta tout son estate de ceo que a luy affiert a vn auter, donqs lauter tenant a terme de vie, et celuy a q̃ le graunt est fait sont tenants en common, durant le temps que ambideux les lessees sont ẽ vie.

ALso if a man let lands to two men for terme of their liues, & the one grants all his estate of that which belongeth to him to another, then the other tenant for terme of life, and hee to whom the grant is made are tenants in common during the time that both the lessees be aliue.

¶ Et memorandũ, que en touts auters tiels cases, coment que ne sont icy expressement moues ou specifies, si sont en semblable reason, sont en semblable ley.

¶ And *memorandum*, that in all other such like cases although it bee not here expresly moued or specified if they bee in like reason, they are in the like law.

¶ And so it is if lands be letten to two for terme of their liues, Et eorum alterius diuti viuenti, and one of them granteth his part to a stranger wherebp the ioynture is seuered, and dyeth, here shall be no suruiuour, but the Lessor shall enter into the moity, and the suruiuour shall haue no aduantage of these words Et eorum alterius diutius viuenti for two causes. First, for that the ioynture is seuered. Secondly, for that these words are no more then the Common Law would haue implyed without them, and Expressio eorum quæ tacitè insunt nihil operatur. Hereby it appeareth that in case of Leases for life it is more beneficiall for the Lessor to haue the ioynture seuered then to haue it continue. 30. Ass. 18.

¶ *Si soient en semblable reason sont en semblable ley.* Here Littleton citeth one of the maximes Vid Sect. 1.

of the Common Law, That whersoeuer there is the like reason, there is the like Law Vbi eadem ratio, ibi idem jus, or Vbi eadem ratio, ibi idem jus esse debet, for Ratio est anima legis. And therefore Ratio potest allegari deficiente lege. But it must be Ratio vera & legalis & non apparens. And here it appeareth that Argumentum à simili is good in Law, Sed similitudo legalis est casuum diuersorum inter se collatorum similis ratio, quod in vno similium valet, valebit in altero, dissimilium dissimilis est ratio.

Sect. 302.

¶ *Si deux Ioyntenants en fee,&c.*

This needeth no explanation.

¶ *Et sur ceo case vn question poet surder,&c.*

*Vi.*33.*H.*6.4.*i.*

Here Littleton maketh a question, and sheweth the reasons on both sides, and concludes with a Quære. When Littleton maketh a question, and sheweth the reason on both sides, the latter is euer his owne, (a) and the better. But Time hath made this question without question, for now all agree, That the ioynture is seuered for the time, according to the latter opinion here set down in Littleton, whose reasons are vnanswerable: for many times the change of the freehold makes an alteration or change of the reuersion. As if Tenant in Taile, or the husband seised in the right of his wife, or tenant for life make a lease for life of the Lesse, in euerie of these cases the Lessour doth gaine a new reuersion by wrong, as shall be sayd more at large in the Chapter of Discontinuance, and if the elder brother grant the reuersion (expectant vpon a Freehold) for life, it shall cause possessio fratris, as hath beene sayd.

a) *V.Se.*340.375.439.440. 462.463.464.482.483.648. 720.729. *vi.Sect.*170.

*Vi.Sect.*8. 7.*H.*5.

¶ *Per mesme le reason le reuersion que est dependant sur mesme le franktenement est seuer de le ioynture,&c.*

7.*H.*7.9.

If two Ioyntenaunts in fee be, and they both ioyne in a Lease to an Abbot and a secular man for terme of their lines, here the reuersion that is dependant vpon seuerall freeholds is seuered. And so it is if they ioine in a Lease to two secular men, to haue and to hold the one moitie to the

¶ Item si deux ioyntẽts ẽ fee sont, et lun lessa ceo que a luy affiert a vn auẽ pur ẽme de sa vie, le Tenant a terme de vie durant sa vie, et lauẽ Joyntenaunt que ne lessa passe, sont Tenants ẽ common. Et sur ceo case vn question puit surder sicome en tiel case, mittomus que l lessor ad issue et ouie, viuant lauter Joyntenant son companion, et viuant l tenant a terme de vie, le question poet estre tiel: Si le reuersion de la moitie que le lessor auoit discẽdra al issue le lessor, ou que lauẽ joyntenant auera cel reuersion per le suruiuor. Ascuns ont dit en cest case, que lauẽ joyntenant auera cel reuersion per le suruiuor, et lour reason est tiel, s̃, que quant les joyntenants fueront joyntment seisies en fee simple, &c. coment que lun de eux fist estate de ceo que a luy affiert pur terme de sa vie, et cõm̃t que il ad seuer le franktenement de ceo que a luy affiert

ALso if there bee two Ioyntenaunts in Fee, and the one letteth that to him belongeth to another for terme of his life, the Tenant for term of life during his life, and the other Iointenãt which did not let, are tenants in Common. And vpon this case a question may arise, as in such case admit that the lessor hath issue and die, liuing the other Ioyntenant his companion, and liuing the Tenant for life, the question may be this, Whether the reuersion of the moity which the lessor hath shall discend to the issue of the Lessor, or that the other joyntenant shall haue this reuersion by the suruiuor. Some haue said in this case, that the other jointenãt shal haue this reuersion by the suruiuor: and their reason is this, s. That when the Iointenãts were iointly seised in fee simple, &c. although that the one of thẽ make an estate of that to him belongeth for term of his life, and although that hee hath seuered the

affiert per l' leafe, vncore il nad feuer l' fee ſimple, mes le fee ſimple demuert a eux ioyntment cõe il fuyt adeuant. Et iſſint ſemble a eux, que lauter Joyntenant que ſurueſquiſt, auera le reuerſion per l' Suruiuour, &c. Et auters ont dit le contrarie, & ceo eſt lour reaſon, ſ, que quaunt lun des Joyntenaunts leſſa ceo que a luy affiert a vn auter pur terme de ſa vie, per tiel Leaſe le Franktenemẽt eſt feuer ô le joynture. Et per meſme le reaſon le Reuerſion que eſt dependant ſur meſme le Franktenement, eſt feuer de le Joynture. Auxy ſi le Leſſour vſt reſerue a luy vn annuall Rent ſur le Leas, le Leſſor ſolement aueroit le Rent, &c. le q̃l eſt vn proofe q̃ le reuerſiõ eſt ſolement en luy, et que lauter nad riens en cel reuerſion, &c. Auxy ſi le Tenant a term de vie fuit impleade, &c. & fiſt default apres default, donques le Leſſor ſerroit de ceo ſolment receiue a defender ſon droit, & freehold of this which to him belongs by the leaſe, yet hee hath not ſeuer'd the fee ſimple, but the fee ſimple remains to them ioyntly as it was before. And ſo it ſeemeth to them, that the other Ioyntenaunt which ſuruiueth ſhal haue the reuerſion by the ſuruiuor, &c. And others haue ſaid the contrarie, & this is their reaſon, s. that when one of the Ioyntenants leaſeth that to him belongeth, to another for terme of his life, by ſuch Leaſe the freehold is ſeuered frõ the joynture. And by the ſame reaſon the reuerſion which is depẽding vpon the ſame freehold is ſeuer'd frõ the joynture. Alſo if the leſſor had reſerued to him an annuall Rent vpon the leaſe, the leſſor onely ſhould haue had the Rent, &c. the which is a proofe, that the reuerſion is onely in him, and that the other hath nothing in the reuerſion, &c. Alſo if the Tenaunt for terme of life were impleaded, & maketh default after default, the leſſor ſhall be only receiu'd for this, to defẽd one for life, & the other molty to the other for life, for both theſe caſes are warranted by the authoritie of Littleton.

If two Joyntenants be of a Leaſe for twentie one yeres, and the one letteth his part for certaine yeares, part of the terme, the Joynture is ſeuered, and ſuruiuor holdeth not place, for a terme for a ſmall number of yeares is as high an intereſt, as for manie more yeares, and ſo was it reſolued Hil. 18. El. Regin. in Communi Banco, * which I my ſelfe heard.

* *Hil.* 18. *Eliz.*

If two Coparceners be in fee, and the one make a Leaſe for life, this is no ſeuerance of the Coparcenarie, for notwithſtanding the Lord ſhall make one auowrie vpon them both.

But if two Joyntenaunts be, and one maketh a Leaſe, this is a ſeuerance of the joynture, as Littleton here taketh it, and ſeuerall auowries ſhal be made vpon them.

¶ *Auxy ſi le Leſſor vſt reſerue vn annual rent, le Leſſor ſolement auera le rent, &c.* But if two Joyntenants make a Leaſe for life, reſeruing a rent to one of them, the rent ſhall enure to them both, becauſe the reuerſion remains in ioynture, vnleſſe the reſeruation be by Deed indented, and then he onely to whom it is reſerued ſhall haue it. But if they make a Leaſe by Deed indented, reſeruing or ſauing the reuerſion to one of them, that is voyd, becauſe they had the reuerſion before, but the rent is newly created.

5. *E.* 4 4. *a.* 27. *H.* 8. 16. *a.* 7. *E.* 4. 25. 14. *Ed.* 3. *Br.* 282.

And ſo it is if ſuch a Leſſee for life ſhould ſurrender to one of them, it ſhall enure to them both, for that they haue a ioynt reuerſion. But if the Leſſee grant his eſtate to one of them, no part of it ſhal enure to his Companion, becauſe for the moitie belonging to his Companion, it is in eſſe

5. *E.* 4. 4.

in

in him to whom the grant is made, the reuerſion to the other in fee.

38.H.6.24.b. 3.R.3. tit. Extinguiſhment 3. If two Ioyntenants make a Leaſe for life, the remainder to his Companion in fee, this is a good remainder of his moitie to his Companion.

¶ *Donques le feoffor ſerra de ceo ſolement receiue, &c.*

¶ *Receiue*, Receit, Receptio, is in many caſes where a perſon partie to a writ, or an ſtranger thereunto, to whom a reuerſion or remainder appertaineth, ſhall in default of another perſon be receiued to defend his or her Freehold or Inheritance, the Law ſaith, Admittatur, &c. And this admiſſion or receipt is giuen by ſundrie ſtatutes, (f) (and this is that which the Ciuilians call, Admiſſio tertiæ perſonæ pro intereſſe.) Et in caſibus prædictis duæ concurrunt Actiones: Vna inter petentem & tenentem, & alia inter tenentem ius ſuum oſtendentem & petentem.

(f) W.2.cap.3. 20.E.1. Statute de Defenſione Iuris. 33.R.2.cap.16.

¶ *Pur ceo que vn Franktenement ne poet per nature de Ioynture, eſte annexe a vn reuerſion.* And this is the principall reaſon, and of this ſufficient hath beene ſayd in the chapter of Ioyntenants, Sect. 291.

¶ *&c.* This &c. in the end of this Section, implieth any other heire lineall or collaterall.

ſon Compaignion en ceſt caſe en nul maner ſerroit receiue, le quel proue le reuerſion del moitie deſtre tantſolement en le Leſſor: Et ſic per conſequens, ſi le Leſſour morust viuant le Leſſee pur terme de vie, l'reuerſion diſcendra al heire de Leſſour, & nemy deuiendra a lauter Ioyntenaunt per le ſuruiuor, Ideo quære. Mes en ceſt caſe ſi celuy Ioyntenant que ad l'franktenement ad iſſue et deuie, viuant le leſſor & leſſee, donques il ſemble, que meſme liſſue aña ceſt moitie en demeſne, et en fee per diſcent, pur ceo que vn Franketenement ne poet per nature de Ioynture eſtre annexe a vn reuerſion, &c. et il eſt certaine, que celuy que leſſa fuit ſeiſie de le moitie en ſon demeſne come de fee, et nul auera aſcun iointure en ſon Franktenement, Ergo ceo diſcendra a ſon iſſue, &c. Sed quære.

his right, and his Companion in this caſe in no manner ſhall be receiued, the which proueth the reuerſion of the moitie to be onely in the Leſſor: & ſo by conſequent if the Leſſour dieth, liuing the Leſſee for terme of life, the reuerſion ſhall diſcend to the heire of the Leſſour, and ſhall not come to the other Ioyntenant by the ſuruiuor, *Ideo quære.* But in this caſe if that jointenant which hath the Freehold hath iſſue, & dies liuing the Leſſor and the Leſſee, then it ſeemeth that the ſame Iſſue ſhall haue this moitie in Demeſne, & in fee by diſcent, for that a Freehold cannot by nature of Ioynture bee annexed to a Reuerſion, &c. And it is certaine, That he which leaſed was ſeiſed of the moitie in his Demeſne as of Fee, and none ſhall haue any Ioynture in his Freehold, therefore this ſhall diſcend to his Iſſue, &c. *Sed quære.*

Section

Sect. 303.

¶ Mes ſi iſſint ſoit q̄ la ley en ceſt cas eſt tiel, que ſi le leſſor deuie viuant le leſſee, & viuant lauter ioyntenant, que ad le franktenement de lauter moitie, que le reuerſion diſcendra al iſſue del leſſor, donque eſt le ioynture, & title que aſcun de eux poit auer per le ſuruiuor, & le droit de le ioynture anient, & tout ouſterment defeat a touts iours. En meſme le maner eſt, ſi celuy ioyntenant que ad le franktenement deuie, viuant le leſſor & le leſſee ſi la ley ſoit tiel que ſon franktenemēt & fee q̄ il ad en le moity, diſcendra a ſon iſſue, donques le ioynture ſerra defeat a touts iours.

BVt if it be ſo that the Law in this caſe bee ſuch, that if the Leſſor dye liuing the Leſſee, and liuing the other ioyntenant which hath the freehold of the other moitie, that the Reuerſion ſhall diſcend to the Iſſue of the Leſſor, then is the Ioynture and title which any of them may haue by the Suruiuour, and the right of the Ioynture taken away, and altogether defeated for euer. In the ſame manner it is if that ioyntenant which hath the freehold dye liuing the Leſſor and the Leſſee, if the Law bee ſo as his freehold and fee which he hath in the moity ſhall diſcend to his Iſſue, then the Ioynture ſhall be defeated for euer.

¶ *Donque eſt le ioynture & title, &c. & le droit de le ioynture anient, &c.*

And the reaſon of this is, for if the ioynture be ſeuered at the time of the death of him that firſt deceaſed the benefit of Suruiuour is vtterly deſtroyed for euer, as hath bœne ſaid (*) afore in the Chapter of Ioyntenants. But in the caſe aforeſaid, if tenant for life dyeth in the life of both the ioyntenants they are ioyntenants againe as they were before. (*) *Vid. Sect* 291.

If two Ioyntenants bee in fee, and the one letteth his part to another for the life of the Leſſor & the Leſſor dieth, ſome ſay that his part ſhal ſuruiue to his companion, for by his death the Leaſe was determined. And others hold the contrary, and their reaſon is, firſt, for that at the time of his death the Joynture was ſeuered, for ſo long as he liued the Leaſe continued. And ſecondly, that notwithſtanding the act of any one of the Ioyntenants there muſt be equall benefit of Suruiuour as to the Freehold. But here if the other Ioyntenant had firſt dyed, there had bœne no benefit of Suruiuor to the Leſſor without queſtion.

Sect. 304.

¶ Item ſi 3. ioyntenants ſont, & lun releſſa p ſon fait a vn d ſes cōpanions tout le droit que il auoit en le terre, donques ad celuy a que le releas eſt fait le tierc̄ part de les ter-

ANd if three Ioyntenants be, and the one releaſe by his deed to one of his companions all the right which hee hath in the land, then hath hee to whom the releaſe is made the third part of

¶ VPon this caſe theſe two things are to be obſerued. Firſt, that in this caſe this Releaſe doth enure by way of mitter leſtate, and not (*) by way of Extinguiſhment, for then the Releaſe ſhould enure to his Companion alſo, and he is in the Per by him that maketh the Releaſe. (a) But if hee had releaſed to the other two, then had it wrought no degree but

(*) 9. *Eliz. Dier* 263. 19. *H.*6.17.
(a) 40. *E.*3.41. 13. *E.*3. *tit. Garr.* 35. *E.* 3 *releaſe* 43. 22. *H.*6.4 a 14. *E.*3. *Briefe* 28, 19. *H.*6.17 33. *H.*6.5. 28. *H.*6.2. 37. *H.* 8. *Alienation* 31. 8. *H.*4.8. 10. *E.*4.3.

but in ſuppoſition of Law, for many purpoſes they to whom the Releaſe is made (as hath beene ſaid) ſhall bee ſuppoſed in from the firſt feoffor as they ſhall deraigne the firſt warrantie for the whole. (b) The ſecond thing to bee obſerued is that hee to whom the Releaſe is made hath a fee ſimple without theſe wordes (heires) as hath beene touched in the firſt Chapter of the firſt Booke, for that hee to whom the Releaſe is, is ſeiſed per my, & per tout, of the fee and Inheritance as hath bin

(b) 9.Eliz.Dier 263. 19.H.6.17.

res per force de le dit releas, & il & ſon companion, teignent les autres deux parts en ioynture. Et quant al tierce part, que il ad per force de releas, il tient cel tierce part oue luy mesme & ſon companion en common.

the Lands by force of the ſaid releaſe, and he and his companion ſhall hold the other two parts in Ioynture. And as to the third part which he hath by force of the releaſe he holdeth that third part with himſelfe and his companion in common.

ſaid in the Chapter of Joyntenants. And note the like Law is betweene Coparceners: and further if there be two Coparceners, and the one hath Iſſue twentie daughters and dyeth, the other may releaſe to any one of the daughters her whole part, albeit ſhe to whom the Releaſe is, hath not an equall part, but for the priuitie and the indeuided eſtate the Releaſe is good.

But if two Joyntenants be of twentie Acres, and the one maketh a feoffment of his part in eighteene Acres, the other cannot releaſe his entire part, but only in two Acres, for that the Joynture is ſeuered for the reſidue.

Sect. 305.

CEt eſt aſcauoir, q̄ aſcun foits vn releas prendra effect, & vera pur mitter leſtate de celuy que fiſt le releas, a celuy a que le releas en fait, ſicome en le cas auantdit, & auxy ſicome ioynt eſtate ſoit fait a le baron & ſa feme, & a la tierce perſon & la tierce perſon releſſa tout ſon droit que il ad a le baron, adonque ad le baron la moitie que le tierce auoit, & la feme de ceo nad riens. Et ſi en tiel caſe le tierce releſſa a la feme nient noſmant le baron en le releas, donques ad la feme le moitie que le tierce auoit &c. & le barō nad riens de ceo forſq̄ en

AND is to bee obſerued, that ſometimes a deed of releaſe ſhal take effect, and enure to put the eſtate of him which makes the releaſe to him to whom the Releaſe is made, as in the caſe aforeſaid, and alſo, as if a ioynt eſtate bee made to the husband and wife, and to a third perſon, and the third perſon releaſe all his right which hee hath to the husband, then hath the Husband the moitie which the third had, and the wife hath nothing of this. And if in ſuch caſe the third Releaſe to the Wife not naming the Husband in the Releaſe, then hath the wife the moitie which the

(a) 10.Eliz.Bendloes 9.Eliz.Dier 263.

See more of this in the Chapter of Releaſes.

10.E.4.3.b. 21.H.6.8.b.

(c) And it is to bee vnderſtood that a Releaſe may enure foure manner of waies, firſt by way of mitter leſtate as here it appeareth. Secondly, by way of mitter la droit. Thirdly, by way of Extinguiſhment. Fourthly, by way of creation or inlargement of an Eſtate, as hereafter in this chapter ſhall appeare. And it is to bee obſerued that vpon a releaſe that creates or inlargeth an eſtate, or enures by way of mitter leſtate, a Rent may bee reſerued, but not vpō a releaſe that enureth by way of mitter le droit, or which enures by way of Extinguiſhment.

The (&c.) in the end of this Section implyeth a diuerſitie

en droit la feme, pur ceo que en tiel case le release vera de faire estate a celuy a que le release est fait, de tout ceo que affiert a celuy que fait le release, &c.

third had, &c. And the husband hath nothing of this but in right of his wife, because that in this case the release shall enure to make an estate to whom the release is made of all that which belongeth to him which maketh the release, &c.

betweene a release which enures by way of mitter lestate (whereof Littleton here speaketh) & a Release that enures by way of Extinguishment; for of a Release enuring by way of Extinguishment made to the husband the wife shall take benefit, or to the wife, the husband shall take beneat, as hereafter shall more at large be said.

Section 306.

CEt en aſcun cas vn releas vera de mitter tout le droit q̄ il q̄ fait le releas ad, a celuy a q̄ le release est fait. Sicome home seisie de certain tenemēts est disseisie per deux disseisors, si le disseisee p̄ son fait releſſa tout son droit, &c. a vn des disseisors, donque celuy a que le releas est fait auera & tiendra touts les tenements a luy solement, et oustera son companion de chescun occupation de ceo. Et le cause est, pur ceo q̄ les deux disseisors fuerōt eins encounter la ley, et quāt vn de eux happe le releas de celuy que ad droit dentre, &c. ceſt droit en tiel cas vestera en celuy a que le releas est fait, et est en tiel plyte, sicome il que auoit droit auoit enter, et luy enfeoffa,

AND in some case a release shall enure to put all the right which he who maketh the release hath, to him to whom the release is made. As if a man seised of certaine tenements is disseised by two disseisors if the disseisee by his deed release all his right, &c. to one of the disseisors, then hee to whom the release is made shall haue and hold all the tenements to him alone, and shall oust his companion of euery occupation of this. And the reason is, for that the two disseisors were in against the law, and when one of them happeth the release of him which hath right of entrie, &c. this right in such case shall vest in him to whom the release is made, and he is in like plite, as hee which

HEre Littleton pursueth the second part of his diuision, viz. where a release shall enure by way of Mitter le droit.

¶ *Disseisie per deux disseisors, &c.* The like law is, where there bee two ioynt Abators or Intrudors which come in meerely by wrong. But if two men doe vsurpe by a wrongfull presentation to a Church, and their Clarke is admitted, instituted and inducted, and the rightfull Patron releaseth to one of them, this shall enure to them both, for that the vsurpers come not in meerely by wrong, but their Clarke is in by admission and institution which are iudiciall acts. (f) And therefore an vsurpation shall worke a Remitter to one that hath a former right.

(f) *Fitz. N. B.* 35. *in* 11. *R.* 2. *quare Imp.* 144.

¶ *Donques celuy a que le releasé est fait auera & teignera touts les tenements, &c.* Here by operation of Law presently vpon the deliuery of the release the whole freehold and inheritance is vested in him to whom the release is made, and all the state, that the other Disseisor had wholly deuested; for right and wrong cannot consist together, but the wrongfull estate giueth place to the rightfull. And the reason hereof is for that as hath beene said the disseisor to whom the release was

was made was ſeiſed Per my & per tout, whereunto when the right commeth it excludeth the wrong (e) for right which is lawfull, and wrong that is contrary to Lawe cannot ſtand together.

(e) *Brit. fol.* 116.26. *Aſſ. pl.* 39. 39.*E.*3.29. 21.*H.*6.41 22.*H* 6.22. 7.*E.*4.25. 9. *E.*4.6. 11.*H.*7.12. 20.*H.* 7.5. 21.*H.*7.18. 12.*E.*4, *tit. Diſcontin.* 1. 9.*H.*6.37. 21.*H.*6.52.

¶ *En tiel plite ſi come il que auoit droit, auoit enter & luy enfeoffe &c.* This (&c.) doth imply that this is true ſecundum quid, but not ſimpliciter, for as to the holding out of the ioynt Diſſeiſor it amounts to as much as if hee had entred and enfeoffed him to whom the releaſe is made, but it doth not amount to an entrie and feoffment Simpliciter to all purpoſes, as ſhall be ſaid hereafter in his proper place in the chapter of releaſes.

ꝛc. Et la cauſe eſt, pur ceo que il q̃ auoit adeuant eſtate per tort, ſ. p diſſeiſin, ꝛc. ad ore per le releas vn eſtate droiturel.

hath the right had entred & enfeoffed him, &c. And the reaſon is, for that he which before had an eſtate by wrong, s. by diſſeiſin, &c. hath now by the releaſe a rightful eſtate

Sect. 307.

¶ HEre Littleton ſpeaketh of the third kinde of releaſes. And the reaſon of this diuerſitie (implyed in the (&c.) in the end of this Section) betweene the Diſſeiſors and their feoffees comming in by title and purchaſe are intended in Law to haue a warrantie (which is much eſteemed in Law) and therefore leſt the warranty ſhould be auoyded, the Releaſe ſhall enure to both the Feoffees in fauour of Purchaſors, and ſo the right and benefit of euery one ſaued. (f) And in ancient time if the Diſſeiſor had made a Feoffment in fee, or a gift in taile, or a leaſe for life, and the Feoffee, Donee, or Leſſee had continued in ſeiſin quietly a peare and a day, the entrie of the Diſſeiſee had not beene lawfull vpon him, and the reaſon was for the benefit and ſafegard of the warrantie (which was intended by Law) ſhould haue beene deſtroyed by the entrie. But hereof alſo more ſhall be ſaid in his proper place in the chapter of Releaſes.

(f) 20.*H.*3.*Aſſ.*432. 1.*Aſſ.*13. 9.*Aſſ.*15. 21.*Aſſ.*28. 27.*Aſſ.*68.32. 29.*Aſſ.*54. 43.*Aſſ.*17. 40.*E.*3.24. 50.*E.*3.21. 3.*R.*2. *entrie cong:* 38. 13.*E.*3.*tit. Aſſ.*9.12.*Aſſ.*20

¶ Et ẽ aſcun cas vn releas vera per voy dextinguiſhment, et en tiel caſe tiel releas aydera la iointenãt a que le releas ne fuit fait, auxybien come luy a q̃ le releaſe fuit fait. Sicome vn home ſoit diſſeiſie, et le diſſeiſor fait feoffment a deux homes en fee, ſi le diſſeiſee releſſa per ſon fait a vn de les feoffees, donq̃s cel releaſe vſeẽ a ambideux les feoffees, pur ceo q̃ les feoffees ont eſtate per la ley, ſ. per feoffment, et nemy per tort fait a nulluy, ꝛc.

AND in ſome caſe a releaſe ſhall inure by way of extinguiſhment, and in ſuch caſe ſuch releaſe ſhall aide the ioyntenant to whom the releaſe was not made aſwell as him to whom the releaſe was made. As if a man be diſſeiſed and the diſſeiſor makes a feoffment to two men in fee, if the diſſeiſee releaſe by his deed to one of the feoffees, this releaſe ſhall enure to both the feoffees, for that the feoffees haue an eſtate by the law, s. by feoffment, and not by wrong done to any, &c.

Sect. 308.

¶ Eſmeine le manor eſt, ſi le diſſeiſor fait vn leaſe a vn hõe pur termẽ de ſa vie, le remainder

IN the ſame manner it is if the diſſeiſor maketh a leaſe to a man for terme of his life the re-

der ouſter a vn auter en fee, ſi le diſſeiſee releſſa a le tenant a terme de vie tout ſon droit, &c. cel releaſe vera auxybien a celuy en le remainder, come a le tenant a terme de vie. Et la cauſe eſt, pur ceo que le tenant a terme de vie vient a ſon eſtate per courſe de ley, & pur ceo cel releaſe vera, et prent effect per voy dextinguiſhment de droit de celuy que releſſa, &c. Et per cel releaſe le tenant a terme de vie nad pluis ample ne greinder eſtate, que il auoit deuant le releaſe fait a luy, et le droit celuy que releſſa eſt tout ouſterment extinct. Et entant que ceſt releaſe ne poit enlarge leſtate de le tenant a terme de vie, il eſt reaſon que cel releaſe vera a celuy en le remainder, &c.

¶ Pluis ſerra dit de Releaſes en le Chapiter de Releaſes.

mainder ouer to another in fee if the diſſeiſee releaſe to the tenant for terme of life all his right, &c. this releaſe ſhall inure aſwell to him in the remainder, as to the tenant for terme of life. And the reaſon is for that the tenant for life commeth to his eſtate by courſe of law, and therefore this releaſe ſhall enure and take effect by way of extinguiſhment of the right of him which releaſeth, &c. And by this releaſe the tenant for life hath no ampler nor greater eſtate then hee had before the releaſe made him, and the right of him which releaſeth is altogether extinct. And in aſmuch as this releaſe cannot enlarge the eſtate of the tenant for life, it is reaſon that this releaſe ſhall enure to him in the remainder, &c.

More ſhall be ſaid of Releaſes in the chapter of Releaſes.

¶ *Eſt releaſe vrera auxibien a celuy en le remainder, come a le tenãt a term de vie, &c.* Of this and the reſt of this Section, for auoyding of repetition, more ſhall be ſaid in his proper place in the chapter of Releaſes.

¶ *Tout ſon droit, &c.* Here by this (&c.) is implyed, title, demand and other words which may tranſferre the right, &c. Alſo here is implyed of in or to the land.

Sect. 309.

¶ Item ſi ſoyent deux Parceners, et lun alien ceo que a luy affiert a vn auter, donqs lauter perſon et lalienee ſont Tenants en Common.

ALſo if two Parceners be, and the one alieneth that to her belongeth, to another, then the other Parcener and the Alienee are Tenants in Common.

This is evident, and needeth no explication.

Section 310.

¶ Item nota que Tenaunts en Common poyent eſtre per title de Preſcription, ſicome lun et ſes auncеſtors, ou ceux que eſtate il

ALſo note that Tenaunts in Common may bee by title of Preſcription, as if the one and his Anceſtors, or they whoſe e-

ad ẽ vn moity ont tenus en Common meſme le moitie, oue lauter tenant que ad lauter moitie et oue ſes auncеſtors ou oue ceux que eſtate il ad Pro indiuiſo, de temps dont memorie ne curt, &c. Et diuers auters manners poient faire et cauſer homes deſtre Tenaunts en Common, que ne ſont icy expreſſes, &c.

ſtate he hath in one moitie haue holdē in cōmon the ſame moitie with the other tenāt which hath the other moitie, & with his Anceſtors, or with thoſe whoſe ſtate he hath vndiuided, time out of mind of man. And diuers other manners may make and cauſe men to be Tenants in Common, which are not here expreſt, &c.

11.E.3.*Trans.*212. 13.E.3. *Breife* 674. 8.H.6.16.b. *Lib.Intrat*.23.

OF this, beſides Littleton, there is good authoritie in Law, as there is for al his other caſes throughout his 3 bookes, but Joyntenants cannot be by preſcription, becauſe there is ſurviuor betweene them, but not betweene Tenants in Common.

The two (&c.) in this Section are euident.

Section 311.

IN this Section we learne two things: Firſt, That in reall Actions, and in Actions alſo that are mixt with the perſonaltie, Tenants in Common ſhal ſeuer in Action, becauſe they haue ſeueral freholds, & claim in by ſeueral titles, and therefore as they ſhall be ſeuerally by others impleaded, ſo ſhall they ſeuerally implead others in all real and mixt Actions, vnleſſe it be in caſe of neceſſitie for a thing entire, as hereafter in this Chapter ſhall appeare. And Littleton here putteth the caſe of the Aſſiſe which is mixt with the perſonaltie, and therefore he needed not to put any caſe of any Precipe quod reddat, for if it be ſo in caſe of Aſſiſe A fortiori, in writs of higher nature, which is neceſſarily implied in the (&c.) Now of ſuits that ſound in the realtie, and of perſonal actions Littleton ſpeaketh hereafter in this Chapter. The ſecond thing here to be learned, is the diuerſitie betweene Tenants in Common, and Joyntenants, which both of it ſelfe, and vpon that which hath been ſayd, is apparant.

4.E.4.18.b.

IItem en aſcun cas Tenants en common doyent auer de lour poſſeſſion ſeueralx Actions, et en aſcū cas ils ioyndront en vn Action. Car ſi ſont deux Tenants en common, et ils ſont diſſeiſies, ils doyent auer deux Aſſiſes, et nemy vn Aſſiſe, car chaſcun de eux couient auer vn Aſſiſe de ſon moitie, &c. Et la cauſe eſt, pur ceo que tenants en common fuerent ſeiſies &c. per ſeueralx titles. Mes autrement eſt de Joyntenants, car ſi ſoyent vint Joyntenants, et ils ſont diſſeiſies, ils aueront ẽ touts lour noſmes forſque vn Aſſiſe, pur ceo que ils nont forſque vn ioynt title.

ALſo in ſome caſe tenants in Common ought to haue of their poſſeſſion ſeueral Actiōs and in ſome caſes they ſhall ioyne in one Action. For if two Tenants in Common be, and they be diſſeiſed, they muſt haue two Aſſiſes, and not one Aſſiſe, for each of them ought to haue one Aſſiſe of his moitie, &c. & the reaſon is, for that the Tenants in common were ſeiſed, &c. by ſeuerall Titles. But otherwiſe it is of Iointenants, for if twentie Ioyntenants be, and they bee diſſeiſed, they ſhall haue in al their names but one Aſſiſe, becauſe they haue not but one ioynt title.

Sect. 312.

¶ Item ſi ſoyent trois Joyntenants, & vn releaſe a vn de ſes companiõs tout le droit que il ad, &c. et puis les auters deux ſont diſſeiſies de lentiertie, &c. en ceſt caſe les deux auters aueront ſeuerals Aſſiſes, &c. en ceſt forme, ſ, ils auerent en lour ambideux noſmes, vn Aſſiſe de les deux parts, &c. pur ceo que les deux pts ils teignont ioyntment al temps de le diſſeiſin. Et quant a le tierce part, celuy a que le releaſe fuit fait, conient auer de ceo vn Aſſiſe en ſon noſme demeſne, pur ceo que il (quaunt a meſme le tierce part) eſt de ceo Tenant en Common, &c. pur ceo que il vient a cel tierce part per force del Releaſe, et nemy tantſolement per force del ioynture.

ALſo if three Ioyntenants bee, and one releaſe to one of his fellowes all the right which hee hath, &c. and after the other two be diſſeiſed of the whole, &c. In this caſe the two others ſhall haue ſeuerall Aſſiſes, &c. in this manner, s. They ſhall haue in both their names an Aſſiſe of the two parts, &c. becauſe the two parts they held ioyntly at the time of the diſſeiſin. And as to the third part, he to whom the releaſe was made ought to haue of that an Aſſiſe in his owne name, for that hee (as to the ſame third part) is thereof Tenant in Common, &c. becauſe hee commeth to this third part by force of the Releaſe, and not onely by force of the Ioynture.

¶ This is put for an example (which euer doth illuſtrate the Rule) and is euident of it ſelfe: and the (&c.) in this Section needeth no further explication.

Sect. 313.

¶ Item quant a ſuer des Actions que touchant l'realtie, y ſont diuerſities perẽter parceners que ſont eins per diuers diſcents, & Tenaunts en common. Car ſi home ſeiſie de certaine terre en fee ad iſſue deux files et moruſt, et les files entront, &c. et cheſcun de eux ad iſſue vn fits, et deuieront ſanns partition fait enter eux, per que lun moity diſcendiſt a le fits dun Parcener, & lauter moitie diſcẽdiſt al fits dauter parcener, et ils entront

ALſo to the ſuing of Actions which touch the realty, there be diuerſities betweene parceners which are in by diuers diſcents, and Tenants in Common: For if a man ſeiſed of certain land in fee, hath iſſue two Daughters and dieth, and the Daughters enter, &c. and each of them hath iſſue a Sonne, and die without partition made between them, by which the one moitie diſcends to the Sonne of the one Parcener, and the other moitie diſcend to the

entrount et occupiont en common et ſont diſſeiſies, en ceſt caſe ils aueront en lour deux noſmes vn Aſſiſe et nemy deux Aſſiſes. Et la cauſe eſt, que coment que ils veignont eins per diuers diſcents, &c. vncore ils ſont Parceners et briefe de Partitione facienda, giſt enter eux. Et ils ne ſont parceners eyant regard ou reſpect tantſolement a le ſeiſin et poſſeſſion de lour meres, mes ils ſont Parceners pluis eiant reſpect a leſtate que diſcendiſt de lour ayel a lour meres, car ils ne poyent eſtre Parceners ſi lour meres ne fueront Parceners a-deuant, &c. Et iſſint a tiel reſpect et conſideration, ſ, quaunt a le primer diſcent que fuit a lour meres ils ont vn title en parcenarie, le quel fait eux parceners. Et auxy ils ne ſont forſque come vn heire a lour common Auncеſtor, ſ, a lour ayel de que la terre diſcendiſt a lour meres. Et pur ceux cauſes deuant partition enter eux, &c. il aueront vn Aſſiſe coment que ils veignont eins p ſeueralx diſcents.

Sonne of the other Parcener, and they enter and occupie in common and be diſſeiſed, in this caſe they ſhall haue in their two names one Aſſiſe, and not two Aſſiſes. And the cauſe is, for that albeit they come in by diuers diſcents, &c. yet they are Parceners, and a Writ of Partition lieth between them. And they are not Parceners, hauing regard or reſpect onely to the Seiſin and poſſeſſion of their mothers, but they are parceners rather, hauing reſpect to the eſtate which diſcend from their Graundfather to their mothers, for they cannot be Parceners if their mothers were not Parceners before, &c. And ſo in this reſpect and conſideration, s. as to the firſt diſcent which was to their mothers, they haue a Title in Parcenarie, the which makes them Parceners. And alſo they are but as one heire to their common Anceſtor, s. to their Grandfather, from whom the land diſcended to their mothers. And for theſe cauſes, before partition betweene them, &c. they ſhall haue an Aſſiſe, although they come in by ſeueral diſcents.

vi. Sect. 241. ¶ THis, vpon that which hath bœne ſayd in * the Chapter of Parceners, is euident: where you may read excellent points of learning, and diuerſities concerning this matter, all which are here either expreſſed or implied, as the ſtudious and diligent Reader will obſerue.

Sect. 314.

¶ *En ceſt caſe quant a le Rent & liuer de Pepper, ils aueront deux Aſſiſes & quaunt a leſperuer ou le Chiual forſque vn Aſſiſe.*

But for the better vnderſtanding hereof it is to bee knowne, That if two Et-

¶ Item ſi ſont deux tenants en Common de certaine Terre en fee, et ils doneront cel terre a vn home en le taile, ou leſſerōt a vn home pur terme de

ALſo if there bee two Tenants in Common, of certain Lands in Fee, and they giue this Land to a man in Taile, or let it to one for terme of life, ren-

de vie, rendant a eux annuelment vn certaine rent, & vn liuer de Pepper, & vn esperuer, ou vn chiuall, & ils sont seisies de cest seruice, & puis tout le rent est aderere, & ils distreigneront pur ceo, & le tenant a eux fait rescous. En cest cas quant a le rent & liuer de Pepper ils aueront deux Assises, & quant a lesperuer, ou le chiual forsq; vn Assise. Et la cause pur que ils aueront deux Assises, quant a le rent & liuer de Pepper, est ceo, entant que ils fueront tenants en common en seuerall titles, & quant ils fieront vn done en le tayle ou leas pur terme de vie, sauant a eux le reuersion, & rendant a eux certaine rent, &c. tiel reseruation est incident a lour reuersion, & pur ceo que lour reuersion est en common, & per seuerall titles, sicome lour possession fuit deuant, le rent, & auters choses que poient estre seueres, et fueront a eux reserues sur l' done, ou sur le leas, queux sont incidents per la ley a lour reuersion, tiels choses issint reserues fueront de la nature del reuersion. Et entant que l' reuersion est a eux

dring to them yearely a certaine rent, and a pound of Pepper, and a Hawke or a Horse, and they bee seised of this seruice, and afterwards the whole Rent is behind, and they distraine for this, and the tenant maketh Rescous. In this case as to the rent and pound of Pepper they shall haue two Assises, and as to the Hawke or the Horse but one Assise. And the reason why then they shall haue two Assises as to the rent and pound of Pepper is this, insomuch as they were Tenants in Common in seuerall titles, and when they made a gift in tayle or lease for life, sauing to them the Reuersion, and rendring to them a certaine rent, &c. such reseruation is incident to their reuersion, and for that their reuersion is in common and by seuerall titles as their possession was before the rent and other things which may be seuered, and were reserued vnto them vpon the gift or vpon the lease which are incidents by the Law to their reuersion, such things so reserued were of the nature of the reuersion. And in as much as the reuersion is to them in common by seuerall titles, it beho-

nants in Common bee, and they grant a rent of 20. shillings per annum, out of their land, the Grantee shall haue two rents of 20. shillings for that euery mans grant shall bee taken most strongly against himselfe, and therefore they be seuerall grants in Law.

Pl. Com. Hill & Granges case. 171. Vide Sect. 219.

But if they two make a gift in tayle, a lease for life, &c. reseruing twenty shillings rent to them and their heires they shall haue but one 20. shillings, for they shall haue no more then themselues reserued: and the Donee or Lesse shall pay but 20. shillings according to their owne expresse reseruation: And albeit the reseruation of rents seuerable bee in ioynt words, yet in respect of the seuerall Reuersions the Law makes thereof a seuerance. Now for the rent, as namely 20. shillings or a pound of Pepper may bee seuered, the one Tenant in Common may haue an Assise for the moytie of 20. shillings, and the moytie of a pound of Pepper, de medietate vnius libr' piperis, but he cannot haue an Assise of ten shillings, or de dimidio libræ piperis. But for the Hawke or Horse, albeit they be Tenants in Common, they shall ioyne in an Assise for otherwise they should bee without remedie, for one of them cannot make his plaint in Assise of the moytie of a hawke, or of a horse, for the Law will neuer suffer any man to demand any thing against the order of nature

Vide 16. Ass. Pl. 1. 16. E. 3. Ioyndre en action. 27.

ture or reaſon, as before, it appeareth by Littleton Section. 129

Regula. Vide Sect. 129. Lex enim ſpectat naturæ ordinem. Alſo the Law will neuer enforce a man to demand that which hee cannot recouer, and a man cannot recouer (l) the moytie of a Hawke, Horſe or of any other entire thing.

(l) *Lib.*5.*fol.*21. *Regula.*

Regula. Lex neminem cogit ad vana, ſeu inutilia. But in that caſe they ſhall ioyne in Aſſiſe, and the reaſon is, Ne Curia Domini Regis deficeret in iuſtitia exhibenda, or lex non debet deficere cõquerentibus in iuſtitia exhibenda. And if they ſhould not ioyne, they ſhould haue damnum & iniuriam, and yet ſhould haue no remedie (*) by Law, which ſhould be inconuenient. But the Law will, that in euery caſe where a man is wronged and endammaged, that hee ſhall haue remedie. Aliquid conceditur ne iniuria remaneret impunita quod aliàs non concederetur.

(*) 3.*E.*3.19.

38.*E.*3.35. *Regula.*

en common per ſeuerall titles, il couient que le rent, et le liuer de Pepper, queux poient eſtre ſeuers, ſoyent a eux en common, et per ſeuerall titles, et de ceo ils aueront deux Aſſiſes, et chescun de eux en ſon Aſſiſe ferra ſon pleint de le moitie de le rent, et de le moitie del liuer de Pepper, mes de leſperuer, ou de chiual que ne poyent eſtre ſeuers, ils aueront forſque vn Aſſiſe, car home ne poit faire vn pleint en Aſſiſe de le moitie dun eſperuer, ne de le moitie dun chiual, &c. En meſme le maner eſt dauter rents & dauter ſeruices que Tenants en Common ount en groſſe per diuers titles, &c.

ueth that the rent and the pound of Pepper which may bee ſeuered, bee to them in common and by ſeuerall titles. And of this they ſhall haue two Aſſiſes, and each of them in his Aſſiſe ſhal make his plaint of the moytie of the rent, and of the moytie of the pound of Pepper. But of the Hawke or of the Horſe which cannot be ſeuered, they ſhall haue but one Aſſiſe, for a man cannot make a plaint in an Aſſiſe of the moytie of a Hawke, nor of the moytie of a Horſe, &c. In the ſame manner it is of other Rents and of other Seruices which Tenants in Common haue in groſſe by diuers titles, &c.

(m) 5.*H.*7.8. 13.*E.*2. *quare imp.* 170. 33.*H.*6.21. 6.*E.*4.10.15.*E.*3. *dart. preſentment* 10.

(m) And Tenants in Common ſhall ioyne in a quare impedit, becauſe the preſentation to the Aduowſon is entire.

(n) *H.*4.6.7. 45.*E.*3.10. 30.*H.*6. *Aſſiſe* 39 38.*E.*3.36.

(n) Alſo Tenants in Common of a Seigniory ſhall ioyne in a Writ of Right of ward, and Rauiſhment of ward for the bodie, becauſe it is entire.

If two Tenants in Common be of the wardſhip of the bodie, and one doth rauiſh the ward, and the one Tenant in Common releaſes to the Rauiſher, this ſhall goe in benefit of the other Tenant in Common, and he ſhall recouer the whole, and this Releaſe ſhall not bee any barre to him. And ſo it is if two Tenants in Common be of an Aduowſon, and they bring a Quare impedit, and the one doth releaſe, yet the other ſhall ſue forth, and recouer the whole preſentment.

Two Tenants in Common ſhall ioyne in a detinue of Charters, and if the one be Nonſuit, the other ſhall recouer.

18.*E.*3.56. It is ſaid that Tenants in Cõmon ſhall ioyne in a Warrantia Chartæ, but ſeuer in Voucher.

¶ *Moitie de chiual, &c.* Here is implyed or any other entire rent or ſeruice.

¶ *Per diuers titles, &c.* That is by ſeuerall titles, and not by one ioynt title as hath beene ſaid.

Section 315.

29.*E.*3.51. 43.*E.*3.24. 46.*E.*3.27. 5.*H.*4.3. 14.*H.*4.31. 3.*H.*6.57. 12.*H.*6.22. 22.*H.*6.14. 18.*E.*4.30. 2.*R.*3.16. 20.*H.*7.27. 21.*H.*7.22. 37.*H.*6.35. 21.*E.*4.22.

¶ *A Veront tiels actions perſonells iointment en touts lour noſmes, &c.* By this

¶ Item, quant al actiõs perſonals tenants en common aueront tiels actiõs per-

ALſo as to Actions perſonals Tenants in common may haue ſuch actions per-

psonals ioyntment en touts lour nosmes, sicome de tresspas, ou de offence que touche lour tenements en common, sicome de bruser lour measons, de enfreinder de lour closes, de pasture, degaster, & de fouler des herbes, de couper lour bois, de pischer en lour pischarie, & huiusmodi. **Et en cest cas tenãts en common aueront vn action ioyntment & recoueront ioyntment lour damages, pur ceo que laction est en le personaltie, & nemy ẽ le realty,** &c.

sonals ioyntly in all their names as of tresspasse, or of offences which concerne their Tenements in Common, as for breaking their Houses, breaking their Closes, feeding, wasting, and defowling their grasse, cutting their Woods, for fishing in their Pischarie, and such like. In this case Tenants in Common shall haue one Action ioyntly, and shal recouer iointly their damages, because the Action is in the personaltie, and not in the realtie, &c. it appeareth that Tenants in Common shall haue personal Actions ioyntly. And it is to bee obserued, that where dammages are to bee recouered for a wrong done to Tenants in Common, or Parceners in a personall Action, and one of them die, the Suruiuor of them shall haue the Action, for albeit the property or estate bee seuerall betweene them, yet (as it appeareth here by Littleton) the personall action is ioynt.

¶ Et huiusmodi. *Vide Sect.319.320.321.* Hereby is implyed a diuersity betweene a chattle in possession, and a personall Chose in Action belonging vnto them. As if two Tenants in Common be of land, and one doth a trespasse therein, of this action they are Iointenants, and the Suruiuor shal hold place. So it is if two Tenants in Common be of a Mannor, and they make a Baylife ther of, and one of them dieth, the Suruiuor shall haue the Action of Account, for the Action giuen vnto them for the arrerages vpon the Account was ioynt. So it is if two Tenants in Common sow their land & one doth eat the same with his cattle, though they haue the Corne in Common, yet the Action giuen to them for trespasse in the same is ioynt, and shall suruiue. For the trespasse and dammage done to them was ioynt, all which here is implyed by Littleton, who sayth, that they shall haue an Action ioyntly, and the same Law is of Coparceners.

22.H.6.12. 38.E.3.7.13.E.3.accompt 126. 45.E.3.13.14. 37.H.6.32.38.

But if two Tenants in Common be of goods, as of an horse, or of any other goods personall, there if one dye, his Executors shall be Tenant in Common with the Suruiuor.

38.E.35.17.E.3.11.3.H.5. *Quare Imp.*71.14.H.4.12. 9.H.6.30.22.H.4.14.37.H. 6.9.b.10.*Eliz.Dyer* 279. F.N.B.35.9.E.3.36.37. *Pl.Com.Seignior. Barkleys case.*

¶ *Et nemy en le realtie, &c.* **If two Tenants in Common bee** of an Auowson, and a stranger vsurpe, so as the right is turned to an action, and they bring a writ of Quare impedit which concernes the realtie, the sixe moneths passe, and the one dyeth, the writ shall not abate, but the Suruiuor shall recouer, otherwise there should be no remedie to redresse this wrong. And so it is of Coparceners, and this is one exception out of our Authors rule.

(*) But if three Coparceners recouer land & dammages in an Assise of Mordancester, albeit the iudgement be ioynt, that they shall recouer the land and dammages, yet the dammages being accessory, though they be personall, doe in iudgement of Law depend vpon the Freehold, being the principall which is seuerall. And though the words of the iudgement be ioynt, yet shall it be taken for distributiue. And therefore if two of them dye, the entire dammages doe not suruiue, but the third shall haue execution according to her portion, and this is another exception out of our Authors rule. But if all three had sued Execution by force of an Elegit, and two of them had dyed, the third should haue had the whole by Suruiuor, till the whole dammages be paid

(*) 14.E.3.*Execution* 75. 45.E.3.3.b.

If the Aunt and Niece ioyne in an Action of Waste, for waste done in the life of the other sister, the Aunt shall recouer the dammages only, because the same belongs not by Law to the Niece. And some hold the dammages in that case to be the principall.

45.E.3.3.b. 48.E.3.14. 11.H.4.16.b. 35.H.6.23.b. 11.E.2.*Waste.*115.

Section 316.

¶ Item si deux tenants en common font vn lease de lour

ALso if two Tenants in Common make a lease of their Te-

lour tenemẽts a vn auter p̃ term̃ des ans, rendant a eux certaine rent annualment durant l' term̃ si le rent soit aderere, &c. les tenants en cõmon auerõt vn action de Debt enuers le lessee, et nemy diuers actions, pur ceo que laction est en la personalty.

nements to another for terme of yeares, rendring to them a certaiue Rent yearely during the terme if the rent bee behinde, &c. the tenants in common shall haue an action of debt against the lessee, & not diuers actions, for that the action is in the personalty.

This vpon that which hath beene said is euident.

Sect. 317.

¶ MEs en auowry pur le dit rent ils couient seuer, Car ceo est en le realtie, come le assise est supra.

BVt in an auowry for the said rent they ought to seuer for this is in the realty, as the assise is aboue.

Vid. 9. E. 3. 36. 37. *Pl. Com. Seignior Berkly's Case.*

This being an addition to Littleton albeit it be consonant to Law yet I omit it.

Sect. 318.

¶ ITem, tenants en common poyent bien faire partition enter eux sils voilent, coment q̃ ils ne serront compelles de faire partition per la ley, mes sils font enter eux partition per lour agreement et consent, tiel partition est assets bone, come est adiudge en le liuer dassises.

ALso tenants in common may well make partition between them if they will, but they shall not bee compelled to make partition by the law, but if they make partition betweene themselues by their agreement and consent, such partition is good enough, as is adiudged in the booke of Assises.

* *Vid. Sect.* 239. 290. 247. 264

Of this sufficient hath beene said * in the chapter of Parceners and Ioyntenants.

(o) 19. *Ass.* p. 1. 30. *Ass.* p. 8. 47. E. 3. 22.

¶ *In le liuer Dasisises.* This booke is of great Authority in Law, and is so called because it principally conteyneth the proceeding vpon writs of Assise of Nouel disseisin which in those dayes was Festinum & frequens remedium.

Sect. 319.

¶ ITem, sicome y sont tenants en common de terres et tenements, &c. come est auantdit: En mesme le maner y sont de chattels reals et personals: Sicome lease soit fait de certaine terres a deux homes pur terme de 20. ans, et quant ils sont de ceo

ALso as there bee tenants in common of lands and tenements, &c. as aforesaid. In the same manner there be of chattells reals and personals. As if a lease bee made of certaine lands to two men for terme of 20. yeares, and when they be of this possessed, the

ceo poſſeſſes lun de les leſſees grant ceo q̄ a luy affiert durant le terme a vn auter, donq̄ meſme celuy a que l grant eſt fait, et lauter tiendront et occupieront en common.

one of the leſſees grant that which to him belongeth to another during the terme, then hee to whom the grant is made, and the other ſhall hold and occupie in common.

¶ *Grant ceo que a luy affiert.* The ſame law it is if the one Leſſee in this caſe make a Leaſe of part of the terme, the ſecond Leſſee and the other are Tenants in common as hath beene ſaid in the chapter of Joyntenants. The (&c.) in this Section implyeth other hereditaments whereof men may bee Tenants in common, whereof ſufficient hath beene ſaid before. *Vid. Sect.* 315.

Section 320.

¶ Item, ſi deux ont ioyntm̄t le gard̄ de corps & de t̄re dun enfant deins age, et lun de eux granta a vn auter ceo q̄ a luy affiert de m̄ le garde, donque le grantee et lauter que ne granta pas, aueront et tiendront ceo en common, &c.

ALſo if two haue ioyntly the wardſhip of the body & lād of an infant within age, & the one of them grant to another that which to himſelfe belongeth of the ſame ward, then the grantee, and the other which did not grant ſhall haue & hold this in common, &c.

¶ Hereby it appeareth, that there may bee Tenants in common as well of chattells reall entire, as wardſhip of the body, &c. as of chattels Perſonal, as a Hawke or a Horſe. If two Tenants in common be of a Seigniory, and a ward fall, they are Tenants in common of the wardſhip aſwell of the body as land. And ſo it is, if the land it ſelfe eſchsat to them, they ſhall be Tenants in common thereof, and ſo it is of Parceners. *16.E.3.tit.8.*

¶ *En common, &c.* Here (&c.) implyeth any other entire chattell. *Vid. dauer. Sect.* 315.

Section 321.

¶ En meſme le maner eſt de chateux perſonals: Sicome deux ont ioyntment per done ou per achate vn chiual ou boefe, &c. et lun grant ceo que a luy affiert de meſme le chiual ou boefe a vn auter: Donq̄s le grātee, & lauter que ne granta pas, aueront et poſſideront tiels chateux perſonals en cōmon. Et en tiels caſes, ou diuers perſons ont chateux reals ou perſonels en common et p̄ diuers titles, ſi lun de eux moruſt, les auters q̄ ſuruesquont, nauera ceo p̄ le ſuruiuor

IN the ſame manner it is of chattells perſonals. As if two haue ioyntly by gift or by buying a horſe or an oxe, &c. and the one grant that to him belongs of the ſame horſe or oxe to another, the grantee and the other which did not grant, ſhall haue and poſſeſſe ſuch chattells perſonalls in common. And in ſuch caſes where diuers perſons haue chattells real or perſonall in Common, and by diuers titles, if the one of them dieth the others which ſuruine ſhall not haue this as Suruiuor, but the exe-

uiuor, mes les executors celuy que mourust tiendrõt et occupier ceo ouesq; eux que suruesquont, sicome lour testator fist ou deuoit en sa vie,&c. pur ceo q̃ lour titles & droits en ceo fueront seuerals,&c.

cutors of him which dieth shall hold and occupie this with them which suruiue,as their testator did or ought to haue done in his life time,&c. becauſe that their titles and rights in this were seuerall,&c.

Vid.dauant Sect.315.

This is euident enough, and hereof sufficient hath beene said * before.

Section 322.

¶ *Pur terme de ans, &c.* For one yeare,halfe a yeare,&c.

¶ *Lun occupy tout & mist lauter hors de possession.* These are words materially added, for albeit one Tenant in Common take the whole profits, the other haue no remedie by Law against him, for the taking of the whole profits is no ejectment. But if he driue out of the land any of the cattell of the other Tenaunt in Common,or not suffer him to enter or occupie the land, this is an ejectment or expulsion, whereupon he may haue an Ejectione firmæ, for the one moitie, and recouer damages for the entrie, but not for the meane profits.

¶ Ejectione firmæ *de la moitie, &c.* Here by this and the other (&c.) in these two Sections, are to be vnderstood diuers diuersities betweene Actions which concerne right and interest, (as of Ejectione firmæ,Ejectment de gard, quare ejecit infra terminum of a Chattell real vpon an expulsion or ejectment) and Actions concerning the bare taking of the profits rising of the Land, or doing of Trespasse vpon the Land, as here by the examples doe appeare, for the right is seuerall, and the taking of the profits in Common. The second diuersitie is betweene

¶ Tẽ en le case anãtd, sicõe deux ont estat en common pur terme dans, &c. lun occupier tout, et mist lauter hors de possession et occupation, &c. donques celuy que est mise hors de occupation auera enuers lauter briefe de Ejectione firmæ,de la moitie,&c.

Also in the case aforesayd, as if two haue an estate in Common for terme of yeares, &c.the one occupy all,and put the other out of possession and occupation, hee which is put out of occupation, shall haue haue against the other a writ of *Ejectione firmæ* of the moitie, &c.

Sect. 323.

¶ En mesme manner est, lou deux teignont le gard des terres ou tenements durant le nonage dũ enfant, si lun ousta lauter de son possession, il que est ouste auera briefe de Ejectment de gard de le moitie,&c.pur ceo que ceux choses sont chateux realx, & poyent estre apportions et seuers,&c. Mes nul Action de Trespas, cestascauoir, Quare clausum suum fregit, & herbam suam, &c. con-

IN the same manner it is, where two hold the wardship of Lands or Tenements during the nonage of an Enfant,if the one ouſt the other of his possession, he which is ousted shal haue a Writ of *Ejectment de gard* of the moitie, &c. becauſe that these things are Chattels reals, and may bee apportioned and seuered,&c. but no Action of Trespasse(*videlicet*) *Quare clausum suum fregit, & herbam suam &c. conculcauit, & con-*

21.*E.*4.11. 22.43.*E.*3.24. 45.*E.*3.13. 22.*H.*6.50.58. 8.*H.*6.17. 19.*H.*6.57. 32.*H.*6.16.2.*E.*4.23. 14.*E.*4.8. 18.*E.*4.30. 37.*H.*6.33. 21.*E.*3.29. 12.*Ass.*28. 47.*E.*3.22.*b.* 10.*H.*7.16.*F.N.B.*117.*a.* 17.*E.*2.*Accounts* 122.

conculcauit & consumpsit, &c. & huiusmodi actiones, &c. lun ne poet auer enuers lauter pur ceo q̄ chescun de eux poet enter et occupier en cōmon, &c. per my et p tout les Terres & tenements queux ils teignōt en common. Mes si deux sont possessés de chattels personalx en commō per diuers titles, sicome dun Chival ou Boef, ou Vache, &c. si lun prent ceo tout a luy hors ō possession dauter, lauter nad nul auē remedie, mes de prender ceo de luy que ad fait luy t̄ tort, pur occupier en common, &c. quant il poet veier son temps, &c. En mesm̄ le manner est de chattels realx, que ne poyent estre severs, sicome en le case auantdit, que deux sōt possesse dun gard ō corps dun enfant deins age, si lun prent lenfant hors de possession dauter, lauter nad ascun remedie per ascun action per la ley, mes de prend̄ lenfant hors de le possession dauē quant il veit son temps.

sumpsit, &c. & huiusmodi actiones, &c. the one cannot haue against the other, for that each of them may enter & occupie in cōmon, &c. *per my & per tout*, the Lands and Tenements which they hold in Common. But if two be possessed of Chattells personalls in Common by diuers titles, as of a Horse, an Oxe, or a Cowe, &c. if the one take the whole to himselfe out of the possession of the other, the other hath no other remedie but to take this from him who hath done to him the wrong to occupie in common, &c. when he can see his time, &c. In the same manner it is of Chattels realls, which cannot be seuered, as in the case aforesayd, where two bee possessed of the wardship of the bodie of an Enfant within age, if the one taketh the Enfant out of the possessiō of the other, the other hath no remedie by an action by the Law, but to take the enfant out of the possession of the other when he sees his time.

Chattells realls that are apportionable or severable, as Leases for yeares, wardship of lands, interest of tenemēts by Elegit, Statute merchant, Staple, &c. of lands and tenements and Chattells reals entire, as wardship of the bodie, a Villeine for yeares, &c. for if one Tenant in common take away the ward or the Villeine, &c. the other hath no remedie by Action, but he may take them againe. Another diuersitie is betweene Chattells reals and Chattels personalls, for if one Tenant in Common take all the Chattells personals, the other hath no remedie by Action, but hee may take them againe, and herein the like law is concerning Chattells reals entire, and Chattels personall for this purpose. But of Chattels entire, as of a ship, horse, or any other entire Chattell, reall or personall, no survivor shall bee betweene them that hold them in Common: And Tenants in Common shall not joyne in an Ejectione firmæ, nor in a Writ of Ejectment de gard, or a Quare ejecit infra terminum, &c. for that these Actions concerne the right lands which are severall. 10.H.4.Trespas 198. 11.H.4.3. 21.E.4.11.12.

If two Tenants in Common be of a Mannor, to the which waife and stray doth belong, a stray doth happen, they are Tenaunts in Common of the same; & if the one doth take the stray, the other hath no remedie by action, but to take him againe. But if by prescription the one is to haue the first beast happening as a stray, and the other the second, there an action lieth if the one take that which pertaines to the other. 13.E.3.Briefe 674.

If two Tenants in Common be of a Doue house, and the one destroy the old Doues whereby the flight is wholly lost, the other Tenant in common shall haue an Action of Trespasse, Quare vi & armis columbare le pl̄ fregit & ducentas columbas pretij 40. s. interfecit per quod volatum columbaris sui totaliter amisit: For the whole flight is destroyed, and therefore hee cannot haue 47.E.3.22.b.

barre plead Tenancie in Common. And ſo it is if two Tenaunts in Common bee of a Parke, and one deſtroyeth all the Deere, an Action of Treſpaſſe lieth.

4.E.2.*Treſp.*11 233. (c) 1.*H.*5.1. 2.*H.*5.3.

(c) If two Tenants in Common be of land, and of Mere ſtones, pro metis & burdis, and the one take them vp and carrie them away, the other ſhal haue an Action of Treſpaſſe Quare vi & armis againſt him, in like manner as he ſhall haue for deſtruction of Doues.

(d) 13 *E.*3.*Treſpas* 212. 19.*R.*2.*Br.*917. 11.*E.*3. *Treſpas* 212.*Vi.*18.*H.*6.5. (e) 13.*H.*7.26.

(d) If two Tenants in Common be of a Folding, and the one of them diſturbe the other to erect Hurdles, he ſhall haue an Action of Treſpaſſe quare vi & armis, for this diſturbance.

(e) If two ſeuerall owners of houſes haue a riuer in common betweene them, if one of them corrupt the riuer, the other ſhall haue an Action vpon his caſe.

(f) *F.N.B.*127.*Reg.*163.

(f) If two Tenants in Common, or Iointenants be of an houſe or mill, and it fal in decay, and the one is willing to repaire the ſame, & the other will not, he that is willing ſhal haue a Writ de reparatione facienda, and the Writ ſaith, Ad reparationem & ſuſtentationem eiuſdem domus tenentur, whereby it appeareth, that owners are in that caſe bound pro bono publico to maintaine houſes and mills which are for habitation and vſe of men.

17.*E.*2.*tit.Account* 22. 8.*E.*2.*Account* 115. 30.*E.*1.*Account* 127. 45. *E.*3.10. 47.*E.*3.22.*b.* 38. *E.*3.9. 22.*E.*3.60. 3.*E.*3. 27. 39.*E.* 27.82. *F.Nat.*. *B.*118.*i.* 10.*H.*7.16. 2.*E.*4.25.

If one Ioyntenant or Tenant in Comuon of Land maketh his Companion his Baylife of his part, he ſhall haue an Action of Account againſt him, as hath beene ſayd. But although one Tenant in Common or Ioyntenant without being made Baylife take the whole profits, no Action of Account lieth againſt him, for in an Action of Account he muſt charge him either as a Guardian, Baylife, or Receiuer, as hath been ſayd before, which he cannot do in this caſe, vnleſſe his companion conſtitute him his Bailife. And therefore all thoſe Bookes which affirme that an Action of Account lieth by one Tenant in Common, or Ioyntenant, againſt another, muſt be intended when the one maketh the other his Bailife, for otherwiſe, neuer his Baylife to render an Account, is a good plea.

*W.*2.*ca.*23.

If there be two Tenants in Common of a Wood, Turbarie, Piſcharie, or the like, and one of them doth waſt againſt the will of his companion, his companion ſhall haue an Action of Waſt, and he that did the waſt before iudgement, hath election either to take his part in certainetie by the Sheriffe and the oath of men, &c. or that he grant, That from thenceforth he ſhal not doe waſt but according to his portion, &c. and if he make choice of a certaine place, then the place waſted ſhall be aſſigned to him. (g) But this extends not to Coparceners, becauſe they were compellable to make partition by the Common Law: and this, as it is ſayd, doth extend as well to Tenants in Common and Ioyntenants for life, as to an eſtate of Inheritance. But if one Tenant in common, or Ioyntenant of a Doue houſe, deſtroy the whole flight of Doues, no Action of waſt doth lie in that caſe vpon the ſaid Statute,* as ſome doe hold.

(g) 27.*H.*8.13.21.*E.*3.29. 29.*E.*3.39.3.*E.*2.*Waſt.*35. *F.N.B.*59.*d. F.N.B.*49.*i.*

* 47.*E.*3.22. 50.*E.*3.3.

If lands be giuen to two, and to the heires of one of them, and the tenant for life doth waſt, he that hath the Inheritance ſhall haue no action of waſt by the ſtatute of Glouceſter, but vpon the ſtatute of *W.*2. he ſhall haue an Action of waſt. And it is to be knowne, that one Tenant in common may infeoffe his companion, but not releaſe, becauſe the freehold is ſeuerall. Iointenants may releaſe, but not infeoffe, becauſe the freehold is ioynt, but coparceners may both enfeoffe and releaſe, becauſe their ſeiſin to ſome intents is ioynt, and to ſome ſeuerall.

10.*E.*4.3.*b.* 22.*H.*6.42. 21.*E.*3.47. 17.*E.*3.47. 18.*E.*4.27.28. 3.*E.*4.

Sect. 324.

¶ Item quant vn home voile mer vn feoffem̃t fait a luy ou vn done en le taile, ou vn leaſe pur t̃me de vie dalcun tres ou tenem̃ts, la il dirra p force de quel feoffem̃t, done ou leas il fuit ſeiſie, &c. mes lou vn voile pleaд vn leas ou grāt fait a luy d̃ chattel real ou perſonal, la il dirra per force de quel il fuit poſſeſſe, &c.

¶ Pluis ſerra dit de tenants en common en le chapter de Releaſes, et tenant per Elegit.

ALſo when a man will ſhew a Feoffement made to him, or a gift in taile, or a leaſe for life of any lands or Tenements, there hee ſhall ſay, By force of which Feoffement, gift, or leaſe, he was ſeiſed, &c. but where one wil plead a leaſe or grant made to him of a Chattell reall or perſonall, then he ſhal ſay, By force of which he was poſſeſſed, &c.

More ſhall be ſaid of Tenants in Common, in the Chapters of Releaſes and Tenant by *Elegit*.

¶ *Il fuit ſeiſie, &c.* Seiſie **is a word of art, and in pleading is onely** applied to an Freehold at leaſt; as Poſſeſſe for diſtinction ſake is to a Chattell reall or perſonal.

As if B. plead a feoffement in fee, he concludeth, Virtute cuius prædict' B. fuit ſeiſitus, &c. But if he plead a leaſe for yeares, he pleadeth, Virtute cuius prædictus B. intrauit, & fuit inde poſſeſſionatus, and ſo it is of Chattells perſonalls.

And this holdeth not onely in caſe of Lands or Tenements which lie in liuerie, but alſo of Rents, Aduowſons, Commons, &c. and other things that lie in grant, whereof a man hath an eſtate for life or inheritance.

Alſo when a man pleads a leaſe for life, or any higher eſtate which paſſeth by Liuerie, hee is not to plead any entrie, for he is in actuall ſeiſin by the liuerie it ſelfe. Otherwiſe it is of a Leaſe for yeares, becauſe there he is not actually poſſeſſed vntill an entrie.

Chap. 5. Of Eſtates vpon Condition. *Sect.* 325.

Glanuill. lib. 10 cap. 8. Bracton lib. 2. cap. 5 f. 7. & c. lib. 4. fol. 213. Britton cap. 36. & fol. 89. 99. 114. 130. 205. 206. 207. 249. Fleta lib. 3. ca. 9. & lib 5 c. 5. Mirror cap. 2. §. 15. & 17.

¶ Eſtates, q̃ homes ount en terr̃s ou tenements ſur condition ſont de deux maners, ſcilicet ou ils ont eſtate ſur condition en fait, ou ſur condition en ley, &c. Sur condition en fait eſt, ſicome vn home per fait endent enfeoffa vn auter en fee ſimple, reſeruant a luy & a ſes heires annualment certaine rent payable a vn feaſt, ou a diuers feaſts per an, ſur condition que ſi le rent ſoit aderere, &c. que bien liſt al feoffor & a ſes heires en meſmes les terres ou tenements de entrer, &c. ou ſi terre ſoit alien a vn home en fee rendant a luy certaine rent, &c. & ſil happa q̃ le rent ſoit aderere per vn ſemaigne apres aſcun iour de payment de

¶ Eſtates, which men haue in lands or tenements vpon condition are of two ſorts, *viz.* either they haue eſtate vpon Condition in Deed, or vpon Condition in Law, &c. vpon Condition in Deed is, as if a man by Deed indented, enfeoffes another in fee ſimple, reſeruing to him and his heires yearely a certaine rent payable at one feaſt or diuers Feaſts *per annum*, on condition that if the rent bee behind, &c. that it ſhall bee lawful for the Feoffor and his heires into the ſame Lands or Tenements to enter, &c. And if it happen the rent to be behind by a weeke after any day of payment of it, or by a moneth after any day of payment of it, or by halfe a yeare, &c. that then it ſhall be lawful to the Feoffee

¶ *Vr condition.* Littleton hauing before ſpoken of Eſtates abſolute, now beginneth to intreate of Eſtates vpon condition. And a Condition annexed to the realtie whereof Littleton here ſpeaketh in the legall vnderſtanding eſt modus an Exqualitie annexed by him that hath Eſtate intereſt, or right to the ſame, whereby an Eſtate, &c. may either be defeated, or inlarged, or created vpon an incertaine euent. Conditio dicitur cum quid in caſum incertum qui poteſt tendere ad eſſe aut non eſſe confertur.

¶ *Sur condition en fait, quæ eſt facti*, that is, vpon a condition expreſſed by the partie in legall termes of Law.

¶ *Ou ſur condition en ley, &c.* quæ eſt iuris, that is, tacitè created by Law without any words vſed by the partie. Againe Littleton ſubdeuideth Conditions in deed (though not in expreſſe words) into conditions precedent (of which it is ſaid, Conditio adimpleri debet priuſquam ſequatur effectus) and conditions ſubſequent. Againe, of conditions in deed ſome be affirmatiue, and ſome in the negatiue; and ſome in the affirmatiue, which imply a negatiue: ſome make the Eſtate, whereunto they are annexed, voidable by entrie or clayme, and ſome make the eſtate

Eſtate void ipſo facto, without entrie or clayme.

Alſo of conditions in deed, ſome bee annexed to the rent reſerued out of the Land, and ſome to collaterall acts, &c. ſome bee ſingle, ſome in the conjunctiue, ſome in the diſiunctiue, as ſhall euidently appeare in this Chapter, where the examples of theſe diuiſions ſhall bee explayned in their proper place.

Mirror cap.2.§.15.& 17.

¶ *En ley, &c.* Of conditions in Law more ſhall be ſaid hereafter in this chapter.

¶ *Sur condition en fait, eſt ſicome vn home per fait indent, &c.* Here Littleton putteth one example of fiue ſeuerall kinds of conditions. That is, Firſt, of a ſingle condition in Deed. Secondly, of a Condition ſubſequent to the Eſtate. Thirdly, a condition annexed to the rent, &c. Fourthly, a Condition that defeateth the Eſtate. Fiftly, A condition that defeateth not the Eſtate before an entrie. And laſtly, a condition in the affirmatiue, which implyeth a negatiue, (as behind or vnpaid implyeth a negatiue) *viz.* not paid. All which doe appeare by the expreſſe words of Littleton.

ceo, ou per vn mois apres aſcun iour de payment de ceo, ou per vn deny, &c. que adonques bien lirroit a le feoffor & a les heirs dentrer, &c. En ceux caſes ſi le rent ne ſoit pate a tiel temps ou deuant tiel temps limit & ſpecifie deins les condition compriſes en lendenture, dõques poit le feoffor ou ſes heirs entrer en tielx terres ou tenements, & eux en ſon primer eſtate auer & tener, & de ceo ouſte le feoffee tout net. Et eſt appelle eſtate ſur condition pur ceo que le ſtate le feoffee eſt defeaſible ſi le condition ne ſoit performe, &c.

for and his heires to enter, &c. In theſe caſes if the rent bee not paid at ſuch time or before ſuch time limited and ſpecified within the Condition cõpriſed in the Indenture, then may the Feoffor or his heires enter into ſuch Lands or Tenements, and them in his former eſtate to haue and hold, and the Feoffee quite to ouſte thereof. And it is called an eſtate vpon Condition, becauſe that the ſtate of the Feoffee is defeaſible, if the Condition bee not performed, &c.

¶ *Rend a luy certaine rent, &c.* Here, by this (&c.) is implyed for life, in tayle, or in fee.

¶ *Et en ceſt caſe ſi le rent ne ſoit pay a tiel temps, &c. donques poet le feoffor ou ſes heires enter, &c.* By this Section, and by the (&c.) there-in contayned, fiue things are to be vnderſtood.

(b) *40.Aſſ.11. 20.H.6.30. 31.6.H.7.7. 19.H.6.76. 20.H.6.32. 22.H.6.46. Pl.Com. Kidwelys caſe fol.70. & Hill & Granges caſe fol.73.*

Firſt, where our Author ſayth, Si le rent ſoit arere, that though the rent bee behind and not paid, (b) yet if the Feoffor doth not demand the ſame, &c. he ſhall neuer reenter, becauſe the land is the principall debtor, for the rent iſſueth out of the Land, and in an Aſſiſe for the rent the land ſhall be put in view, and if the land be euicted by a title paramount, the rent is auoyded and after ſuch euiction the perſon of the Feoffee ſhall not be charged therewith, for the perſon of the Feoffee was only charged with the rent in reſpect of the grant out of the Land.

Secondly, The demand muſt be made vpon the Land, becauſe the Land is the debtor, and that is the place of demand appointed by Law.

Lib.4.fol.72.73. Boroughes caſe.

If the King maketh a Leaſe for yeares reſeruing a Rent payable at his receipt at Weſtminſter, and after the King granteth the Reuerſion to another and his heires, the Grantee ſhall demand the Rent vpon the Land, and not at the Kings Receipt at Weſtminſter, for as the Law without expreſſe words doth appoint the Leſſee in the Kings Caſe to pay it at the Kings Receipt, ſo in caſe of a ſubiect, the Law appoints the demand to be on the Land.

49.Aſſ.5.15.Eliz.Dyer 329

If there be a houſe vpon the ſame he muſt demand the Rent at the houſe. And hee cannot demand it at the backe doore of the houſe but at the fore doore, becauſe the demand muſt euer bee made at the moſt notorious place. And it is not materiall whether any perſon be there or no.

(c) *Dendlees Treſpaſſe 4.& 5 Ph & Mar.*

Albeit the Feoffee be in the Hall or other part of the Houſe yet the Feoffor nee not (c) but come to the fore doore, for that is the place appointed by Law, albeit the doore be open.

(d) If

(d) If the feoffment were made of a wood only, the demand muſt be made at the gate of the wood, or at ſome high way leading through the wood or other moſt notorious place. And if one place be as notorious as another, the Feoffor hath election to demand it, at which hee will, and albeit the Feoffee be in ſome other part of the wood readie to pay the Rent, yet that ſhal not anaple him. Et ſic de ſimilibus. (d) 15. *Eliz. Dyer* 325

Thirdly, And if the Feoffor demand it on the ground at a place which is not moſt notorious, as at the backe doore of a houſe &c. and in pleading the Feoffor alleadge a demand of the Rent generally at the houſe, the Feoffee may trauerſe the demand, and vpon the euidence it ſhall bee found for him, for that it was a void demand.

Fourthly, If the Rent bee reſerued to bee paid at any place from the Land, yet it is in Law a Rent, and the Feoffor muſt demand it at the place appointed by the parties obſeruing that which hath beene ſaid before concerning the moſt notorious place. *Lib.*4. *Boroughes Caſe fol.*73. *Pl.Com.*70.

Fiftly, And all this is to be vnderſtood when the Feoffee is abſent, for if the Feoffee commeth to the Feoffor at any place vpon any part of the ground at the day of payment, and offer his Rent, albeit they be not at the moſt notorious place, nor at the laſt inſtant the Feoffor is bound to receiue it, or elſe he ſhall not take any aduantage of any demand of the Rent for that day.

Sixtly, therfore the place of demand being now known, it is further to be known what time the Law hath appointed for the ſame. This partly appeareth by that which hath beene laſt ſaid. For albeit the laſt time of demand of the rent is ſuch a conuenient time before the ſunne ſetting of the laſt day of payment as the money may be numbred and receiued; notwithſtanding, if the tender be made to him that is to receiue it vpon any part of the land at any time of the laſt day of payment, and he refuſeth, the condition is ſaued for that time, for by the expreſſe reſeruation the money is to be paid on the day indefinitely, and conuenient time before the laſt inſtant, is the vttermoſt time appointed by Law to the intent that then both parties ſhould meet together, the one to demand and receiue, and the other to pay it, ſo as the one ſhould not preuent the other. But if the parties meet vpon any part of the land whatſoeuer one the ſame day, the tender ſhal ſaue the Condition for euer for that time. *Lib.*5. *fol.*114. *Wades Caſe.*

And if the reſeruation of the rent be (as here Littleton putteth the caſe) at certaine feaſts with condition that if it happen the rent to be behinde by the ſpace of a weeke after any day of payment, &c. In this caſe the Feoffor needeth not demand it on the feaſt day, but the vttermoſt time for the demand is a conuenient time (as hath beene ſaid) before the laſt day of the weeke, vnleſſe before that the Feoffee meet the Feoffor vpon the land and tender the rent as is aforeſaid. *Pl.Com. Hill et Granges caſe* 167.172. 20.*H.*6.30.31. 6.*H.*7.3.

If a rent be granted payable at a certaine day and if it be behinde and demanded that the Grantee ſhall diſtreine for it; In this caſe the Grantee need not demand it at the day, but if he demand it at any time after he ſhall diſtreyne for it, for the Grantee hath election in this caſe to demand it when he will to inable him to diſtreine. *Mich.*40.&41. *Eliz. inter Stanly & Read. Lib.*7.*fo.*28. *Maundes caſe.*

¶ *Et eux en ſon primer eſtate auer, &c.* **Regularly it is true that he** that entreth for a condition broken ſhall be ſeiſed in his firſt eſtate, or of that eſtate which he had at the time of the eſtate made vpon condition, but yet this fayleth in many caſes. 8.*H.*7.7.*b.*

First in Reſpect of Poſſibility. As if a man ſeiſed of lands in the right of his wife, maketh a Feoffment in fee by Deed indented, vpon condition that the Feoffee ſhould demiſe the land to the Feoffor for his life, &c. the husband dyeth the Condition is broken, in this caſe the heire of the husband ſhall enter for the Condition broken, but it is impoſſible for him to haue the eſtate that the Feoffor had at the time of the Condition made; For therein he had but an eſtate in the right of his wife, which by the couerture was diſſolued. And therefore when the heire hath entred for the Condition broken and defeated the Feoffment, his eſtate doth vaniſh and preſently the eſtate is veſted in the wife. 4.*H.*6.2. *Lib.*8 *fo.*43,44. *Whittinghams caſe.*

2. In reſpect of Neceſſity. If Ceſty que vſe after the Statute of R.3. and before the Statute of 27.H.8. had made a Feoffment in fee vpon condition, and after had entred for the condition broken. In this caſe he had but an vſe when the Feoffment was made, but now hee ſhall be ſeiſed of the whole eſtate of the land. So that as in the former caſe, the Anceſtor had ſomewhat at the making of the Condition, and the heire ſhall haue nothing when he hath entred for the Condition broken, ſo in this caſe the Feoffor had no eſtate or intereſt in the land at the time of the Condition made, but a bare vſe, yet after his entrie for the Condition broken he ſhall be ſeiſed of the whole eſtate in the land, and that alſo for neceſſitie, for by the Feoffment in fee of Cēv que vſe, the whole eſtate and right was deueſted out of the Feoffees. And therefore of neceſſitie the Feoffor muſt gaine the whole eſtate by his entrie for the Condition broken. 5.*H.*7.6.*b.*

Tenant in ſpeciall taile hath iſſue, and his wife dieth; Tenant in taile maketh a Feoffment in fee vpon Condition, the iſſue dieth, the Condition is broken, the Feoffor re-enters, ſhe ſhall

haue but an estate for life, as Tenant in taile apres possibility of issue extinct by the re-entry, and yet he had an estate taile at the time of the Feoffment, and that also for necessity.

3. In some cases the Feoffor by his re-entry shall be in his former estate, but not in respect of some collaterall qualities. As if Tenant by Homage auncestrell maketh a Feoffment in fee vpon Condition, and entreth vpon the Condition broken, it shall neuer be holden by Homage auncestrell againe. And so it is if a Coppihold escheate be, and the Lord make a Feoffment in fee vpon condition, and entreth for the Condition broken. And the reason in both these cases is, for that the custome or prescription for the time is interrupted.

15.Ass.12. Lord and Tenant by fealty and rent, the Lord is in seisin of his rent, the Lord granteth his Seignory to another and to his heires vpon condition, the Tenant attorneth and payeth his rent to the Grantee, the Condition is broken, the Lord distreyneth for his rent, and Rescous is made he shall be in his former estate, and yet the former seisin shall not enable him to haue an Assise without a new seisin.

8.H.7.7. If Tenant in taile make a Feoffment in fee vpon condition, and dyeth, the issue in taile within age doth enter for the Condition broken, he shall be first in as Tenant in fee simple as heire to his father, and consequently and instantly he shall be remitted. But if the heire be of full age, he shall not be remitted because he might haue had his Formdon against the Feoffee, and the entrie for the Condition is his owne act, but more shall be said hereof in his proper place in the chapter of Remitter.

2.H.6,4. If a man make a Feoffment in fee of Blacke acre and white acre vpon condition, &c and for breach thereof that he shall enter into Blacke acre, this is good.

43.Ass.47. 13.E.4.4. 2.H.5.7.b 39.Ass.15. 11.H.5.25. 16.Ass.47. If Tenant for life make a Feoffment in fee vpon condition and entreth for the Condition broken, he shall be Tenant for life againe, but subiect to a forfeiture, for the state is reduced, but the forfeiture is not purged.

Section 326.

¶ En meisme le manner est si terres sont dones en le taile, ou lesses a terme de vie ou des ans, sur condition &c.

IN the same manner it is if lands be giuen in taile, or let for terme of life or of yeares vpon condition, &c.

¶ *Sur condition, &c.* **This implyeth the seuerall kindes of conditions in Deed before specified.**

Sect. 327.

Vid.Sect.332. 19.E.tit.barre 280. 19.R.2.done rent 10. Pl.com.524. **¶ Et la terre tener tanque ils soyent satisfies ou paies de le rent aderere, &c.** By this it is implyed that if such a feoffment be made reseruing (b) (for example) 8.markes rent at the feast of Easter, with such a Condition as is aforesaid the Feoffor at the feast day demands the rent, the Feoffee payeth vnto him 6. markes parcell of the rent, the Feoffor entreth into the lands, and taketh the profits towards satisfaction. Afterwards the Feoffee doth tender the two markes residue of the rent to the Feoffor vpon the land who refuseth it. It

(b) 20.E.3.tit.Couenant 3. **¶ Mes lou feoffmẽt est fait de certaine terres reseruant certain rent, &c. sur tiel condition, que si le rent soit aderere, q̃ bien lirroit al feoffor, & ses heires dentrer, et la terre tener tanqz ils soient satisfies ou payes de le rent aderere, &c. En cest case si le rent soit aderer, & le feoffor ou ses heires enter, le feoffee**

BVt where a feoffment is made of certaine lands reseruing a certaine rent, &c. vpon such condition that if the rent bee behinde that it shall be lawfull for the feoffor and his heires to enter, and to hold the land vntill hee bee satisfied or payed the rent behinde, &c. In this case if the rent be behinde, and the feoffor or his

feoffee neſt pas excludede ceo tout net, meſ le feoffor auera & tiendra la terre et prendra ent les profits tanq; il ſoit ſatisfie de le rent aderere, & quant il eſt ſatiſſie, donq; poit le feoffee re-enter en meſme la terr̃, & ceo tener come il tenoit adcuãt: Car en tiel cas le feoffor auera la fre forſq; en maner cõe pur vn diſtres, tanq; il ſoit ſatiſſie de le rent, &c. cõment q̃ il prendre les profits en le meane temps a ſon vſe demeſne, &c.

heires enter, the feoffee is not altogether excluded from this, but the feoffor ſhall haue & hold the land, and thereof take the proffits, vntill hee bee ſatiſfied of the rent behinde, and when he is ſatiſfied, then may the feoffee re-enter into the ſame land, and hold it as hee held it before. For in this caſe the feoffor ſhall haue the land but in manner as for a diſtreſſe vntill he be ſatiſfied of the rent, &c. though hee take the profits in the meane time to his own vſe, &c.

hath beene adiudged that the Feoffee vpon the refuſall may enter into the land, for when the Feoffor is ſatiſfied either by perceptiõ of the profits or by payment or tender and refuſall, or partly by the one and partly by the other, the Feoffee may re-enter into the land. And this is within the words of Littleton, viz. (Vntill he be ſatiſfied.) And albeit the Feoffor had accepted part of his rent, yet hee may enter for the condition broken and reteine the land vntill he be ſatiſfied of the whole. All which is worthy of obſeruation.

¶ *Et en tiel caſe le feoffor auera la terre forſque en manner come vn diſtreſſe tanque il ſoit ſatiſſie de la rent. &c.* By this it appeareth that the Feoffor by his re-entry, gaineth no eſtate of freehold but an intereſt by the agreement of the parties to take the proffits in nature of a Diſtreſſe. And therefore if a man maketh a Leaſe for life with a reſeruation of a rent and ſuch a condition if he enter for the Condition broken and take the profits of the land Quousque, &c. he ſhall not haue an action of debt for the rent. Here for that the freehold of the Leſſee doth continue, and therefore the booke (c) that ſeemeth to the contrary is falſe printed, and the true caſe was of a Leaſe for yeares as it appeareth afterwards in the ſame page of the leaſe.

(c) 30.E.3 fo.7.

But herein alſo a diuerſity worthy the obſeruation is implyed, viz. If a man make a Leaſe for yeares reſeruing a rent with a condition that if the rent be behinde, that the Leſſor ſhall re-enter and take the proffits vntill thereof he be ſatisfied, there the proffits ſhall be accounted as parcell of the ſatisfaction, and during the time that he ſo taketh the proffits hee ſhall not haue an action of debt for the rent, for the ſatisfaction whereof he taketh the proffits. But if the condition be that he ſhall take the proffits vntill the Feoffor be ſatisfied or paid of the rent, (without ſaying thereof) or to the like effect, there the proffits ſhall be accounted no part of the ſatisfaction but to haſten the Leſſee to pay it, and as Littleton here ſaith, that vntill he be ſatiſfied he ſhall take the proffits in the meane time to his owne vſe.

30.E.3.7. *Vid ſemblable.* 27.H.8.4. 43.E.3.21. 31.Aſſ.Pl.26. *Vid le ſtatute de Merton ca 6. and obſerue the e words, Quod inde percipere poſſint duplicem valorem, &c.* Et ca.7 without this word (Inde.)

Sect. 328.

¶ Item, diuers parolx (enl autres) y ſont, queux p̃ vertue de eux meſmes font eſtates ſur condition: vn eſt le parol Sub conditione: Sicome A. enfeoffa B.

ALſo diuers words (amongſt others) there bee which by vertue of themſelues make eſtates vpon condition, one is the word (*Sub condic'*) as if *A.* infeoffe *B.* of cer-

¶ HEre in this and the next two Sections Littleton doth put foure examples of words that make conditions in Deed, and firſt Sub conditione. This is the moſt expreſſe and proper condition in deed, and therefore our Author beginneth with it.

Sub conditione. (c) *Mario Dier* 138. 27.H.8.15. 13.H.4 entr. *Cong* 57. 29 *Aſſ.*7. 33.*Aſſ.*11. 40.*Aſſ* 13. *Bracton vbi ſupra. Fleta lib.*4.*ca.*9. *Britton cap.*36. & *vbi ſupra.*

¶ *Tale reddit̃, &c.*

This

Vid.Sect.325.

This (&c.) implieth any other rent or ſum in groſſe, or any collaterall condition whatſoeuer, either to be performed by the Feoffee, (whereof our Author here putteth his caſe) or by the Feoffor, and extendeth to all kinds of Conditions in Deede, before ſpecified.

de certaine terre, habendum & tenendum eidem B. & hæredibus ſuis, ſub conditione, quod idem B. & hæredes ſui ſoluant ſeu ſolui faciant præfat' A. & hæredibus ſuis annuatim talem redditum, &c. En ceſt caſe ſans aſcun pluſ dire le Feoffee ad eſtate ſur condition.

taine land, To haue & to hold to the ſaid B. and his heires, vpon condition that the ſayd B. and his heires do pay or cauſe to be paid to the aforeſayd A. and his heires yearely ſuch a rent, &c. In this caſe without any more ſaying the feoffee hathan eſtate vpon Condition.

Sect.329.

Prouiſo. Vid.Sect.220. Dier 28.H.8.fol.13. 27.H.8.fol.14.15. 13.H 4. Entre Cong.57. Seignior Cromwells caſe. Lib.2.fo.71.72 at large. 35.H.8.tit.Condition. Br. Lib.8.89.Frewers caſe.

¶ *Prouiſo ſemper qd' B.ſoluat, &c.*

Our Author putteth his caſe where a Prouiſo commeth alone. And ſo it is if a man by Indenture letteth Lands for yeres, Prouided alwaies, and it is couenanted and agreed betweene the ſayd Parties, That the Leſſee ſhould not alien, and it was adiudged that this was a condition by force of the Prouiſo, and a couenant by force of the other words.

This word Prouiſo ſhall be alſo taken as a limitation or qualification, as hereafter in his proper place ſhall be ſayd. And ſometime it ſhal amount to a Couenant. All which do appeare by the authorities in the margent.*

For the (&c.) in this Section explanation is made in the Section next before.

(*) 27.H.8.15. &c. Ita quod. Fleta lib.4.cap.9. Bracton vbi ſupra. Britton vbi ſupra.

¶ A Vtry ſi les parols fuerõt tiels, Prouiſo ſemper, quod prædict' B. ſoluat, ſeu ſolui faciat præfato A. talem redditum, &c. ou fuerõt tiels, Ita quod prædict' B. ſoluat ſeu ſolui faciat præfaro A. talem redditum, &c. En ceux caſes ſauns pluis dire, le Feoffee nad eſtate forſque ſur condition, iſſint que ſil ne performaſt le condition, le feoffor et ſes heires poyent entrer, &c.

ALſo if the words were ſuch, Prouided alwayes that the aforeſayd B. do pay or cauſe to be payd to the aforeſayd A. ſuch a rent, &c. Or theſe, So that the ſayd B. do pay or cauſe to be payd to the ſayd A. ſuch a rent, &c. In theſe caſes without more ſaying the Feoffee hath but an eſtate vpon condition: So as if he doth not performe the condition, the Feoffor and his heires may enter, &c.

¶ *Ou fueront tiels,* Ita quod. This is the third condition in deed, whereof our Author maketh mention.

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6.E.2.Entrie Cong.65. 8.E. 2.Aſſ.320. adiudged. Quod ſi Contingat Paſch.37.Eliz.Rot.254. inter Seyer et Hurst in Com. Banco.

¶ *Quod ſi contingat &c.*

This is the fourth condition in Deed ſet downe by our Author.

¶ *Denter, &c.* hereby it is euident, That

¶ Item auſs parols ſont en vn fait queux cauſant les tenements eſtre Conditionals. Sicõe ſur tiel feoffment

ALſo there bee other words in a Deede which cauſe the Tenements to be conditionall: As if vpon ſuch feofment

ment vn Rent eſt reſerue al Feoffor, &c. et puis ſoit mitte en le Fait ceſt parol, Quod ſi contingat redditum prædict' aretro fore in parte vel in toto, quod tunc benè licebit **a le Feoffor et a ſes heyres dentrer, ac. ceo eſt vn fait ſur condition.**

a rent bee reſerued to the feoffor, &c. and afterward this word is put into the deed, That if it happen the aforeſayd rent to be behind in part or in all, that then it ſhall be lawfull for the Feoffor and his heires to enter, &c. This is a Deed vpon condition.

ſome words of themſelues do make a Condition, and ſome other, (whereof our Authour here and in the next Section * putteth an example) do not of themſelues make a Condition without a concluſion and clauſe of Re-entrie: And many times (Si) makes a Condition, and ſometimes a limitation, as hereafter ſhall be ſayd in this Chapter.

* *Vi. Sect.* 331.

In eſſe poteſt donationi modus, conditio, ſiue cauſa. * Scito quòd (vt) modus eſt (ſi) conditio (quia) cauſa.

3. *H* 6. 7. *Si. Flet li.* 4. *ca.* 9. *Bract. lib.* 4. *fo.* 213. *b.*

* 4. *Mar. Dyer* 138 *b.*

Conditio is explained before, Modus is at this day properly taken for a modification, limitation, or qualification, for the which alſo the Law hath appoynted apt words, and becauſe Littleton ſpeaketh of this alſo in the end of this Chapter, I will reſerue this matter to his proper place, where the Reader ſhall perceiue excellent matter of learning touching this point.

Bract. vbi ſupra.

Cauſa, The cauſe or conſideration of the Grant, and herein there is a diuerſitie betweene a gift of lands, and a gift of an annuitie or ſuch like For example, If a man grant an annuitie pro vna acra terræ, in this caſe this word Pro ſheweth the cauſe of the Grant, and therefore amounteth to a condition, for if the acre of land be euicted by an elder title, the annuitie ſhal ceaſe, for ceſſante cauſa ceſſat effectus.

Pro. 24 *E.* 3. 34.

And ſo if an annuitie be granted pro decimis, &c. if the Grantee be vniuſtly diſturbed of the tithes the Annuitie ceaſeth. And ſo it is if an Annuitie be granted pro concilio, and the Grantee refuſe to giue counceil, the Annuitie ceaſeth. So if an Annuitie be granted quod præſtaret concilium, this makes the Grant conditionall.

9. *E.* 4. 2*c.* 32. *E.* 3. *Annu.* 30. 14. *E.* 4. 4. 15. *E* 4. 2. *b.* 8. *H.* 6. 23. 5. *E.* 2. *tit. An.* 44. 41. *E.* 3. 19. 32. *E.* 1. *Monarie* 242. 21. *E.* 4 49. 22. *E.* 4. 28. 35. *H.* 6. 2. 10. *E.* 3. 44. 5. *E.* 2. 9. *E.* 4. 20. 15. *E.* 4. 3.

But if A. pro concilio impenſo, &c. make a feoffement or a leaſe for life, of an acre, or pro vna acra terræ, &c. albeit he denieth Counceil, or that the acre be euicted, yet A. ſhall not re-enter, for in this caſe there ought to be legall words of condition or qualification, for the cauſe or conſideration ſhall not auoyd the ſtate of the Feoffee; and the reaſon of this diuerſitie is, for that the ſtate of the land is executed, and the annuitie executorie.

And yet ſometime in caſe of lands or tenements (Cauſa) ſhall make a Condition. As if a woman giue lands to a man and his heires, cauſa matrimonij prælocuti, in this caſe if ſhee either marrie the man, or the man refuſe to marrie her, ſhe ſhall haue the land againe to her and to her heires. (c) But of the other ſide, if a man giue land to a woman and to her heires, cauſa matrimonij prælocuti, though he marrie her, or the woman refuſe, he ſhall not haue the lands againe, for it ſtands not with the modeſtie of women in this kind, to aſke aduice of learned Counceil, as the man may and ought: * And the rather for that in the caſe of the woman ſhee may auerre the cauſe, (for the reaſon aforeſaid) although it be not contained in the Deed) yea though the feoffement be made without Deed.

Flet. li. 5 *ca.* 34. 34. *Aſſ.* 1. 40. *Aſſ* 13.

(c) 5. *E.* 2 *Cui in vita* 34. *tit. Conditions Br.* 5. *H.* 4. 1.

* 12. *E.* 1. 1. *Feoffments & Faits* 114. *F. N. B.* 205. *L. Vid. Sect.* 365.

If a man maketh a feoffement in fee, ad faciendum, or faciendo, or ea intentione, or ad effectum, or ad propoſitum, that the Feoffee ſhall doe or not doe ſuch an act, none of theſe words make the ſtate in the land conditionall, for in iudgement of Law they are no words of condition, & ſo was it reſolued, Hil. 18. Eliz. in Com. Banco, in the caſe of a common perſon, but in the caſe of the King the ſayd or the like words doe create a Condition, and ſo it is in the caſe of a will of a common perſon, which caſe I my ſelfe heard and obſerued.

Ad faciend. ea intentione &c. Dyer 138. 7. *H.* 4. 22. 31. *H.* 8 *tit. Condition* 19. *Br. Pl. Com.* 142. 38. *H.* 6. 33. 36. 37. *Doct. & Stud. li.* 2. *ca.* 34. 27. *H.* 8 18. *a.* 32. *E.* 3. *Brene.* 291.

But for the auoyding of a Leaſe for yeares, ſuch preciſe words of condition are not ſo ſtrictly required as in caſe of Freehold and Inheritance. (f) For if a man by Deed make a Leaſe of a manor for yeares, in which there is a clauſe (And the ſayd Leſſee ſhall continually dwell vpon the capitall Meſſuage of the ſayd Manor, vpon paine of forfeiture of the ſaid term) theſe words amount to a Condition.

(f) 7. *E.* 6 *Dier* 79. 28. *H.* 8. *Dier* 27. *a. Sub pœna forisfacturæ.*

And ſo it is if ſuch a clauſe be in ſuch a Leaſe, Quod non licebit, to the Leſſee, Dare, vendere, vel concedere ſtatum, & ſub pœna forisfacturæ: this amounts to make the leaſe for yeres defeaſible, & ſo was it adiudged in the Court of Common Pleas (c) in Queene Elizabeths time, and the reaſon of the Court was, That a Leaſe for yeares was but a Contract, which may begin by word, and by word may be diſſolued.

Quod non licebit. 3. *E.* 6. *Dy.* 65. 66. 4. *Mar.* 138 (c) *Hill.* 40. *Eliz. Rot.* 1610. *inter Browne & Ayer. Vid. Pl. Com.* 142. *Br. & Burtons caſe.*

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¶ Mes il est diuersity perenter cest parol (si contingat,&c.) et les parols procheine auantdits. Car ceux parolx, Si contingat,&c.) ne valent riens a tiel condition, sinon que il ad ceux parolx subsequents, que bñ list al Feoffor et a ses heirs dentrer,&c. Mes en les cases auãtdits, il ne besoigne per la Ley, de mitter tiel clause, (scilicet) que le Feoffor et ses heyres poient entrer,&c. pur ceo que ils popent faire ceo per force des parols auantdits, pur ceo q̃ ils impreignont a eux mesmes en Ley vn condition, scilicet, que le Feoffor et ses heires popent entrer, &c. Uncore il est communemẽt vse en touts tiels cases auauntdits d̃ mitter les clauses en les faits, scilicet, si le rent soit aderere,&c. que bien lirroit a le Feoffor et a ses heires dentre,&c. Et ceo est bien fait, a cel intent, pur declarer et exprẽsser a les lays gents, que ne sont apprises en la Ley, de le manner et le condition de le feoffement,&c. Sicome home seisie de terre, lessa mesme la terre a vn auter per fait indent pur terme des ans rendant a luy certain rent, il est vse de mitter en le fait, que si le rent soit arere al iour de payment, ou per vn semaigne, ou per vn mois,&c. que adonque bien lirroit al Lessor a distreyñ,&c. uncor le lessor poit destreiñ d̃ cõmon droit p̃ le rent arere,&c. coment que tiels parols ne vnque fuerent mises en le Fait,&c.

BVt there is a diuersitie between this word *Si contingat,&c.* and the words next aforesaid, &c. for these words, *Si contingat*, *&c.* is naught worth to such a Condition, vnlesse it hath these words following, That it shall be lawfull for the Feoffor and his heires to enter,&c. but in the cases aforesayd, it is not necessarie by the law to put such clause, *scilicet*, that the Feoffor and his heires may enter, &c. becaus they may doe this by force of the words aforesaid, for that they containe in themselues a condition, *scilicet*, That the Feoffor and his heires may enter,&c. yet it is commonly vsed in all such cases aforesayd, to put the clauses in the Deeds, *scilicet*, if the Rent bee behind, &c. that it shall be lawfull to the Feoffor and his heires to enter, &c. And this is well done, for this intent, to declare and expresse to the Common people who are not learned in the Law, of the manner and condition of the Feoffement, &c. As if a man seised of Land, letteth the same Land to another by Deede indented for terme of yeares, rendering to him a certaine Rent, it is vsed to bee put into the Deed, That if the Rent bee behind at the day of payment, or by the space of a weeke or a moneth, &c. that then it shall bee lawfull to the Lessor to distreyne, &c. yet the Lessor may distreyne of common right for the Rent behind,&c. though such words were not put into the Deed,&c.

¶ Ils

¶ *Lez ne beſoigne per la ley de mitter tiel clauſe, &c.* Quæ dubitationis cauſa tollendæ inſeruntur, Communem legem non lædunt. Et expreſſio eorum quæ tacite inſunt, nihil operatur.

¶ *Per vn moys, &c.* Here albeit the clauſe of diſtreſſe bee added, that if the Rent be behind by the ſpace of a Weeke or a Moneth that the Leſſor may diſtreine, yet he may diſtreine within the Weeke or Moneth, becauſe a Diſtreſſe is incident of Common right to euery Rent Seruice. And the words bee in the affirmatiue, and therefore cannot reſtraine that which is incident of Common right.

The other (&c.) in this Section vpon that which hath beene ſaid are euident.

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¶ Item, ſi feoffment ſoit fait ſur tiel condition, que ſi le feoffor paya al feoffee a certaine iour, &c. 40. l. dargent, que adonque le feoffor poit reenter, &c. en ceo cas le feoffee eſt appell tenant en morgage, que eſt autant adire en Francois come mortgage, & en Latin, mortuum vadium. Et il ſemble que la cauſe, pur que il eſt appelle mortgage, eſt, pur ceo que il eſtoyt en awerouſt ſi le feoffor voyt payer, al iour limitte tiel ſumme ou non: & ſil ne paya pas, donque le terre que il mitter en gage ſur condition de payment de le money eſt ale de luy a touts iours, & iſſint mort a luy ſur condition, &c, & ſil paya le money, donqs eſt le gage mort quant a le Tenant, &c.

Item, if a feoffment be made vpon ſuch cõdition, that if the Feoffor pay to the Feoffee at a certain day, &c. 40. pounds of money, that then the Feoffor may reenter, &c. In this caſe the Feoffee is called Tenant in morgage, which is as much to ſay in French, as mortgage, and in Latine *mortuum vadium*. And it ſeemeth that the cauſe why it is called mortgage, is, for that is doubtful whether the Feoffor will pay at the day limited ſuch ſumme or not, and if he doth not pay, then the Land which is put in pledge vpon condition for the payment of the money is taken from him for euer, and ſo dead to him vpon condition, &c. And if hee doth pay the money, then the pledge is dead as to the Tenant, &c.

¶ *Mortgage* is deriued (c) of two French words, viz. Mort, that is, mortuum, and Gage that is vadium, or pignus. And it is called in Latine mortuum vadium, or morgagium. Now it is called here Mortgage, or mortuum vadium, both for the reaſon here expreſſed by Littleton, as alſo to diſtinguiſh it from that which is called viuum vadium. Viuum autem dicitur vadium, quia nunquam moritur ex aliqua parte quod ex ſuis prouentibus acquiratur. As if a man borrow a hundred pounds of another, and maketh an eſtate of Lands vnto him, vntill hee hath receiued the ſaid ſumme of the iſſues and the profits of the Land, ſo as in this caſe neyther money nor Land dyeth, or is loſt, whereof Littleton hath ſpoken (d) before in this Chapter) and therefore it is called, Viuum vadium.

(c) *Glanuil. lib.* 10. *cap.* 6. & *lib.* 13. *cap.* 26. 27.

(d) *Vide Sect.* 327.

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¶ Item ſicome hõe poit faire feoffment en fee en Moꝛtgage, iſſint home poit faire done en taile en Moꝛtgage, & vn leas pur terme de vie, ou pur terme des ans en Moꝛtgage, & touts tiels tenants ſont appels tenants en Moꝛtgage, ſolonque les eſtates, que ils ont en la terre, &c.

ALſo as a man may make a feoffment in fee in Morgage, ſo a man may make a gift in Tayle in Morgage, and a Leaſe for terme of life, or for tearme of yeares in Morgage. And all ſuch tenants are called tenants in morgage according to the Eſtates which they haue in the Land, &c.

This Section vpon that which hath beene ſaid needeth no further explication.

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27.H.8.19.b.

Lib.8.fol.91. Francis caſe.

¶ Q*ve le feoffor paiera a tiel iour, &c.* Albeit Conditions bee not fauoured, yet they are not alwayes taken litterally, but in this caſe the Law enableth the heire that was not named to perfoꝛme the Condition foꝛ foure cauſes.

Firſt, Becauſe there is a day limited, ſo as the heire commeth within the time limited by the Condition, foꝛ otherwiſe he could not doe it, as ſhall bee ſaid hereafter in this Chapter.

Secondly, Foꝛ that the Condition deſcends vnto the heire, and therefoꝛe the Law that giueth him an intereſt in the Condition, giueth him an abilitie to perfoꝛme it.

Thirdly, Foꝛ that the Feffee doth receiue no damnage oꝛ preiudice thereby (all theſe reaſons are expreſſly to be collected out of the woꝛds of Littleton.) And theſe things being obſerued.

Fourthly, The intent and true meaning of the Condition ſhall bee perfoꝛmed. And where it is here ſaid, that the heire may tẽder al iour aſſeſſe, &c. herein is implyed, that

¶ Item ſi feoffment ſoit fait en moꝛtgage ſur condition que le feoffoꝛ payera tiel ſumme a tiel iour, &c. come eſt enter eux per iour fait endent accoꝛde & limit, coment que le feoffoꝛ moꝛuſt deuãt le iour de payment, &c. vncoꝛe ſi le heire feoffoꝛ paya meſme le ſumme de money a meſme le iour a le feoffee, ou tender a luy les deniers, et le feoffee ceo refuſa de receiuer, donque poit lheire entrer en l'terre, et vncoꝛe le condition eſt, que ſi le feoffour payera tiel ſumme a tiel iour, &c. nient feaſant mention en le condition

ALſo if a feoffment bee made in morgage vpon condition, that the Feoffor ſhall pay ſuch a ſumme at ſuch a day, &c. as is betweene them by their Deed indented, agreed, and limited, although the Feoffor dyeth before the day of payment, &c. yet if the heire of the Feoffor pay the ſame ſumme of money at the ſame day to the Feoffee, or tender to him the money, and the Feoffee refuſe to receiue it. Then may the heire enter into the Land, and yet the condition is, that if the Feoffor ſhall pay ſuch a ſumme at ſuch a day, &c. not making men-

daſeum

dascun payment destē fait per son heire, mes pur ceo que le heire ad interesse de droit en l'condition, &c. et lentent fuit forsque que les deniers serront paies al iour assesse, &c. et le feoffee nad pluis dāmage, si il soit pay per heire, que sil fuit pay per le pier, &c. Et pur cest cause, si le heire paya les deniers, ou tendera les deniers a le iour assesse, &c. et lauter ceo refusa, il poit entrer, &c. Mes si vn estrāgē de sa teste demesne, que nad ascun interesse, &c. voile tender les auantdits deniers al feoffee a le iour assesse, le feoffee nest pas tenus de ceo receiuer.

tion in the Condition of any payment to bee made by his heire, but for that the heire hath interest of Right in the Condition, &c. and the intent was but that the money should bee payed at the day assessed, &c. and the Feoffee hath no more losse if it bee paid by the heire, thē it itwere paid by the Father, &c. therefore if the heire pay the money or tender the money at the day limited, &c. and the other refuse it, he may enter, &c. But if a stranger of his own head, who hath not any interest, &c. will tender the aforesaid money to the Feoffee at the day appointed, the Feoffee is not bound to receiue it.

the Executors or Administrators of the Mortgagor, or in default of them the Ordinarie may also tender as shall be said (f) hereafter in this Chapter. But what if the Condition had bœne, if the Mortgagor or his heires did pay, &c. and hee dyed before the day without heire, so as the Condition became impossible, here it is to be obserued, that where the Condition becommeth impossible to be performed by the act of God, as by death, &c. the state of the Feoffee shall not bee auoyded, as shall bee said hereafter in this Chapter. And therefore the Law here inableth the heire (of whom no mention was made in the Condition) to performe the Condition least the Inheritance should be lost, wherein diuers diuersities are worthy of obseruation.

(f) *Vide Sect.*337.

First, betweene a Condition annexed to a state in Lands or Tenements vpon a feoffment, gift in tayle, &c. and a Condition of an Obligation, Recognizance or such like. (g) For if a Condition annexed to Lands be possible at the making of the Condition, and become impossible by the act of God, yet the state of the Feoffee, &c. shall not bee auoyded. As if a man maketh a feoffment in Fee vpon Condition, that the Feoffor shall within one yeare goe to the Citie of Paris about the affaires of the Feoffee, and presently after the Feoffor dyeth, so as it is impossible by the act of God that the Condition should bee performed, yet the Estate of the Feoffee is become absolute, for though the Condition be subsequent to the state, yet there is a precedencie before the re-entrie, viz. the performance of the Condition. And if the Land should by construction of Law be taken from the Feoffee, this should worke a dammage to the Feoffee, for that the Condition is not performed which was made for his benefit. And it appeareth by Littleton, that it must not bee to the dammage of the Feoffee. And so it is if the Feoffor shall appeare in such a Court the next Tearme, and before the day the Feoffor dyeth, the Estate of the Feoffee is absolute. (h) But if a man be bound by Recognizance or Bond with Condition that he shall appeare the next Tearme in such a Court, and before the day the Conusor or Obligor dyeth, the Recognizance or Obligation is saued, and the reason of the diuersitie is because the state of the Land is executed and setled in the Feoffee, and cannot bee redeemed backe againe but by matter subsequent, viz. the performance of the Condition. But the Bond or Recognizance is a thing in action, and executorie, whereof no aduantage can be taken vntill there be a default in the Obligor, and therefore in all cases where a Condition of a Bond, Recognizance, &c. is possible at the time of the making of the Condition, and before the same can be performed, the Condition becomes impossible by the act of God, or of the Law, or of the Obligee, &c. there the Obligation, &c. is saued. But if the Condition of a Bond, &c. be impossible at the time of the making of the Condition, the Obligation, &c. is single. And so it is in case of a feoffment in fee with a Condition subsequent, that is impossible, the state of the Feoffee is absolute, but if the Condition precedent bee impossible, no

(g) *Pl. Com.* 456. *Wrothes case.* 14. *H.*7. 3. 15. *H.*7. 11. 14. *E.*4. 3. 38. *H.*6. 2. 3.

(h) 15. *H.*7. 18. 31. *H.*6. *barre* 60. 18. *E.*4. 17. 9. *Eliz.* 262. *Dyer lib.*5. 22. *Laughters case.* 38. *H.*6. 2.

*Fleta lib.*4. *cap.*9. & *Bracton & Britton vbi supra.*

14.H.8.28. 10.H.7.23. 4 H.7.4.8 E.4.1. 28.H.8.25. lib.5.fo.23. Laughters case & 75. 39.E.3 5. 17.H 6. Obligat.18. 5.Eliz. Dier 221

state or interest shall growe thereupon. And to illustrate these by examples you shall understand. If a man be bound in an Obligation, &c with condition that if the Obligor doe goe from the Church of St. Peter in Westmin. to the Church of St. Peter in Rome within three houres that then the Obligation shall be voide. The Condition is voyde and impossible and the Obligation standeth good.

And so it is if a feoffment be made upon condition that the Feoffee shall goe as is aforesaid, the state of the Feoffee is absolute and the condition impossible and voyde.

* Pl. com. Fullers case 272.

* If a man make a Lease for life upon condition that if the Lessee goe to Rome as is aforesaid that then he shall haue a fee, the condition precedent is impossible and voyde, and therefore no fee simple can grow to the Lessee.

35.H.6.tit.barre 262. 37.H.6.barre 60. 2.E.3.9. 9.Eliz. Dier 262. 28.H.8.30.

If a man make a feoffment in fee upon condition that the Feoffee shall re-infeoffe him before such a day, and before the day the Feoffor disseise the Feoffee and hold him out by force untill the day be past, the state of the Feoffee is absolute, for the Feoffor is the cause whereof the condition cannot be performed, and therefore shall neuer take aduantage for non performance thereof. (i) And so it is if A. be bound to B. that I.S. shall marry Ioan G. before such a day, and before the day B marry with Iane, he shall neuer take aduantage of the bond, for that he himselfe is the meane, that the condition could not be performed. And this is regularly true in all cases.

(i) 4.H.7.4. 30.H.8. Dier 42. 11.H.4 57. in protection. 10.H.7.18.

(k) Vid. Bracton, Britton Fleta ubi supra.

But it is commonly holden (k) that if the condition of a Bond, &c. be against law, that the bond it selfe is voyde.

Bracton lib.3.fo.100. 2.H.4.9. 8.E.4.12.b. 2.E.4.2.& 3. 4.H.7.4.b. 10.H.7 22. 14.H.8.28. 42.E.3.6.23.

But herein the Law distinguisheth betweene a condition against Law for the doing of any act that is Malum in se, and a condition against Law (that concerneth not any thing that is malum in se) but therefore is against Law, because it is either repugnant to the state or against some Maxime or rule in Law. And therefore the common opinion is to bee understood of conditions against Law for the doing of some act that is malum in se, and yet therein also the Law distinguisheth. As if a man be bound upon condition that he shall kill I.S. the bond is voide.

2.H.4.9.

Pl. Com. Brownings case 133

But if a man make a feoffment upon condition that the Feoffee shall kill I.S. the state is absolute, and the condition voyde.

If a man make a feoffment in fee upon condition that he shall not alien, this condition is repugnant and against Law, and the state of the Feoffee is absolute (whereof more shall be said in his proper place.) But if the Feoffee be bound in a bond, that the Feoffee or his heires shall not alien this is good, for he may notwithstanding alien if he will forfeit his bond that he himselfe hath made.

7.H 6.43.b. 21.H.6.33. 21.H 7.11. 21.H.7.30. 20.E.4.8. Pl. Com. in Brownings case 133.a. 27.H.8.

So it is if a man make a feoffment in fee upon condition that the Feoffee shall not take the profits of the land this condition is repugnant and against Law, and the state is absolute.

But a bond with a condition that the Feoffee shall not take the profits is good. If a man be bound, with a condition to enfeoffe his wife, the condition is voide and against Law, because it is against a maxime in Law, and yet the bond is good, but if he be bound to pay his wife money that is good. Et sic de similibus whereof there bee plentifull Authorities in our bookes.

Vid. Sect. 335.

¶ *Tender les deniers al iour assesse, &c.* **Note hereby is implied that** albeit a conuenient time before sunne set be the last time giuen to the Feoffor to tender, yet if he tender it to the person of the morgage at any time of the day of payment, and he refuseth it, the condition is saued for that time.

¶ *Il poet enter, &c.* **And so may his heire after his death.**

¶ *Mes si estranger de sa teste demesne que nad ascun interesse, &c. voile tender les auandits deniers al feoffee al iour assesse, le feoffee nest pas tenus de ceo receiuer.* Nota **by this period and the** (&c.) **it is implyed that if the** morgager die, his heire within age of 14. yeares (the land being holden in Socage) the next of kinne to whom the land cannot discend being his gardein in Socage may tender in the name of the heire, because he hath an interest as gardeine in Socage. Also if the heire be within age of 21. yeares, and the land is holden by Knights seruice, the Lord of whom the land is holden may make the tender for his interest which he shall haue when the condition is performed, for these in respect of their interest are not accounted estrangers.

Vid Sect. 401. Hill. 28. Eliz. in banco Regis Inter Watkins & Aswick Pro terris in Com. Devon. 45 E.3.tit. Release 28. 31.E 1.tit. Annuity 51. 33.H.6.18.

But if the heire be an Ideot, of what age soeuer, any man may make the tender for him in respect of his absolute disability, and the Law in this case is grounded upon charity, and so in like cases.

36.H.6.tit. barre.166. 33.E.1.tit. Annu.ty 51. 33.E.3.iudgement 254.

¶ *Le Feoffee nest pas tenus de ceo receiuer.* **And note that** Littleton saith, that he is not bound to receiue it at a strangers hand. But if any stranger in the name of

of the Mortgagor or his heire (without his consent or priuity) tender the money and the mortgage accepteth it, this is a good satisfaction, and the Mortgagee or his heire agreeing thereunto may re-enter into the land. Omnis ratihabitio retrorrahitur & mandato equiparatur. But the Mortgagor or his heire may disagree thereunto if he will.

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¶ ET memorandum que en tiel cas, lou tiel tender de le money est fait, &c. & le feoffee ô receiuer ceo refusa, per que le feoffor ou ses heires entront, &c. donque le feoffee nad ascun remedy dauer l' money per le cõmon ley, pur ceo que il serra tenu sa follie que il refusa le money quant vn loyal tendre de ceo fuit fait a luy.

AND be it remembred that in such case, where such tender of the money is made, &c. and the feoffee refuse to receiue it, by which the feoffor or his heires enter, &c. then the feoffee hath no remedy by the cõmon law to haue this money, becauſe it shall bee accounted his owne folly that hee refuſed the money, when a lawful tender of it was made vnto him.

¶ *Tender de le money est fait, &c.* Here is implyed at the due time and place according to the condition.

¶ *Entront, &c. viz.* into the lands or tenements.

¶ *Donque le feoffee nad ascun remedie dauer le money per le common ley, &c.* And the reason is becauſe the money is collaterall to the land, and the Feoffee hath no remedy therefore. 8.E.2.tit.Ass.389. 31.Ass.32.

If an Obligation of an hundred pound be made with condition for the payment of fifty pound at a day, and at the day the Obligor tender the money, and the Obligee refuseth the same; yet in action of debt vpon the Obligation, if the Defendant pleade the tender and refusall, he must also pleade that he is yet ready to pay the money and tender the same in Court. But if the Plaintife will not then receiue it but take issue vpon the tender, and the same be found against him, he hath lost the money for euer. 22.H.6.39. 21.E.4.25. 22.E.3.5. Lib.9 fo.79. H.Poyers case.

If a man be bound in 200. quarters of wheate for deliuery of a 100. quarters, if the Obligor tender at the day the 100. quarters, &c. he shall not pleade Vncore prist, becauſe albeit it be the parcell of the condition, yet they be Bona peritura, and it is a charge for the Obligor to keepe them. And the reason wherefore in the case of the Obligation the some mentioned in the condition is not lost by the tender and refusall, is not only for that it is a dutie and parcell of the obligation, and therefore is not lost by the tender and refusall, but also for that the Obligee hath remedy by Law for the same. And in this case, Liberata pecunia non liberat offerentem. 8.E.2.tit.Ass.389.

But if a man make a single bond, or knowledge a Statute or Recognizance & afterwards made a defeasance for the payment of a lesser summe at a day, if the Obligor or Conusor tender the lesser summe at the day, and the Obligee or Conusee refuseth it, he shall neuer haue any remedy by Law to recouer it, becauſe it is no parcell of the summe contained in the Obligation, Statute, or Recognizance, being contayned in the defeasance made at the time or after the Obligation, Statute, or Recognizance. And in this case in pleading of the tender and refusal the party shall not be driuen to pleade, that he is yet ready to pay the same or to tender it in Court: for neither hath the Obligee or Conusee any remedy by Law to recouer the summe contained in the Defeasance, (o) And so it is if a man make an Obligation of 100. pound with condition for the deliuery of Corne or timber, &c. or for the performance of an arbitrement, or the doing of any act, &c. This is collaterall to the Obligation, that is to say, is not parcell of it, and therefore a tender and refusall is a perpetuall barre. 7.H.4.18. 5.Mar Dier.150 21.E.4.25. 21.E.3.5. 33.H.6.2.b. 17.Ass pl.1. 20.E.4.1.b. 9.H.6.16. 36.H.6.16. 15.E.4.1. 16.H.7.13. 18.E.3.53. 7.E.4.4.b. 19.H.8.12. 27.H.8.1.a. 21.H.6 39.tit.Abatemẽt 11. 42.E.3.3. 19.H.6.12. (o) Henry Persons case vbi supra.

But if a man be bound to make a feoffment in fee to the Obligee, and he make a Lease and a release to him and his heires, albeit this be a collaterall condition, yet is it well performed, because this amounts in Law to a feoffment. 31.Ass.15. 11.H.4.33. 1.H.6.8. 1.E.4. 17.E.4.3. Pl.Com. Fogesses case, fo.6.

¶ *Money, moneta, Legalis moneta Angliæ.* Lawfull money of England either of Gold or Siluer, is of two sorts, viz. the English money coyned by the Kings authority Lib.5 fo.114.115. Wades case. Lib.9 fo.78.

authority, or forraine coyne by Proclamation made currant within the Realme. Coine, cuna dicitur a cudendo, of coyning of money. In French Coine signifieth a corner because in ancient time money was square with corners, as it is in some Countries at this day. Some say that Coine dicitur a κοινὸς id est, communis, quod sit omnibus rebus communis. Moneta dicitur à monendo, not only because he that hath it, is to be warned prouidently to vse it, but also because Nota illa de authore & valore admonet. Pecunia dicitur a Pecu, beasts, Omnes enim veterum diuitiæ in animalibus consistebant, and it appeareth that in Homers time, there was no money but exchange of catteil, &c.

Aristotle Lib.5.cap.8.

(*) 9.H.5.Stat.2.Cap.7. Nummus ἀπὸ τοῦ νόμου quia lege sit non natura. Vide *the Statute of 9.H.5 of the noble, halfe noble, and farthing of gold, which is the fourth part of a noble, and that is 20.pence.

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12.E.3.Condic.8. 13.Ed.3. ibid.10. 12.Ass.5.

¶ ET sil faile de paier les deniers, &c.

If a man make a feoffment of Lands, To haue and to hold to him and his heires, vpon condition, That if the Feoffee pay to the Feoffour at such a day twentie pounds, that then the Feoffee shall haue the lands to him and his heires; if the condition had not proceeded further, it had beene void, for that the Feoffee had a fee simple by the first words, and therefore the words subsequent are materially added, (And if he faile to pay the money, &c.)

Li.5.fo.96,97.Goodales case.

¶ *Le second Feoffee voile tender le summe des deniers, &c.*

Albeit the second Feoffee bee not named in the Condition, yet shall he tender the summe, because hee is prime in estate, and in iudgement of Law hath an estate and interest in the condition, (as Littleton heere saith) for the saluation of his Tenancie, Vi.Sect.334. And note he that hath interest in the conditiõ on the one side, or in the land on the other, may tender.

Li.5.fo.114,115.Wades case. And it is to bee ob-

¶ Item si feoffment soit fait sur tiel condition, Que si le Feoffee paya al feoffor a tiel iour inter eux limit xx.l. adonques le Feoffee auera la Terre a luy et a ses heires, et sil faile de payer les deniers a le iour assesse, que adonque bien list a le Feoffor ou a ses heyres dentrer, &c. et puis deuant le iour assesse, le Feoffee venda la terre a vn auter, et de ceo fait feoffment a luy, en ceste cãse si l'second Feoffee voile tender le summe de les deniers a le iour assesse a le Feoffor, et le Feoffor ceo refusa, &c. donque le second Feoffee ad estate en la terre clerement sans condition. Et la cause est, pur ceo que le second Feoffee auoit interest en le condition pur saluation d'son Tenancie. Et en ceste case il semble que si le prime Feoffee apres tiel render de la Terre, voile render le money a le

Also if a Feoffement be made on this condition, That if the Feoffee pay to the Feoffor at such a day between them limitted, twenty pounds, then the feoffee shal haue the Land to him and to his heires, and if he faile to pay the money at the day appointed, that then it shall bee lawfull for the Feoffor or his Heyres to enter, &c. and afterwards before the day appointed the Feoffee sel the Land to another, and of this maketh a Feoffement to him, in this case if the second Feoffee wil tender the sum of money at the day appointed, to the Feoffor, and the feoffor refuseth the same, &c. then the second Feoffee hath an estate in the land cleerely without condition. And the reason is, for that the second Feoffee hath an interest in the cõdition for the safegard of his tenancy: and in this case it seemes, that if the first feoffee after such sale of the land, wil tender the

le iour asseſſe, &c. a le feoffor, ceo serra assets bone pur saluation de estate de le second Feoffee, pur ceo que le priſ̄ Feoffee fuit priuie a le condition, & iſſint le tender de ascun de eux deux est assets boñ, &c.

money at the day appointed, &c. to the feoffor, this ſhall be good enough for the ſafegard of the eſtate of the ſecond feoffee, becauſe the firſt feoffee was priuie to the condition, and ſo the tender of either of them two is good enough, &c.

ſerued alſo, That the feoffee may tender any money that is currant within the Realme, albeit it bee foreine coine, ſo as it bee currant by Act of Parliament, or by the Kings proclamation, as hath bœne ſaid.

¶ *Tender le ſumme.* The Feoffee may tender the money in purſes or bagges, without ſhewing or telling the ſame, for he doth that which he ought, viz to bring the money in purſes or bagges. Which is the vſuall manner to carry money in, and then it is the part of the party that is to receiue it, to put it out and tell it.

¶ *A primer Feoffee.* Here it appeareth, that the firſt Feoffee may notwithſtanding his feoffment, pay the money to the Feoffor, becauſe he is partie and priuie to the Condition, and by his tender may ſaue the eſtate of his Feoffee, which in all good dealing he ought to doe.

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¶ Item ſi Feoffement ſoit fait ſur condition, Que ſi le Feoffor paya certaine ſumme dargent al Feoffee, adonqs bien lirroit a Feoffor et a ſes heirs dentrer: en ceſt caſe ſi le feoffor deuie deuant le payment fait, et iheire voile tender al feoffee les deniers, tiel tender ē voyd, pur ceo que le temps deins quel ceo doit eſtr̄ fait eſt paſſe, car quaunt le condition eſt, que ſi le feoffor paya les deniers al Feoffee, &c. ceo eſt tant adire, que ſi le feoffor durant ſa vie paya les deniers al feoffee, &c. et quant l'feoffor mozuſt, don-

Alſo if a feoffment bee made vpon condition, That if the Feoffor pay a certaine ſumme of money to the Feoffee, then it ſhal be lawfull to the feoffor and his heyres to enter: in this caſe if the feoffor die before the payment made, and the heire will tender to the feoffee the money, ſuch tender is void, becauſe the time within which this ought to bee done, is paſt. For when the condition is, That if the Feoffor pay the money to the Feoffee, &c. this is as much to ſay, as if the Feoffor during his life pay the money to the Feoffee, &c. & when the feof-

¶ This diuerſitie is plaine and euident, & agreeth with our (a) Bookes, and yet ſomwhat ſhal be obſerued hereupon: for here it appeareth, That ſæing no time is limitted, the Law doth appoint the time, & that is, during the life of the feoffor. Wherein diuers diuerſities are worthy the obſeruation:

(a) 14.*H.*7.31. 15.*H.*7.8.

First, Betwœne this caſe that Littleton here putteth of the condition of a Feoffment in fee, for the payment of money where no time is limitted, and the condition of a Bond for the payment of a ſumme of money where no time is limitted: for in ſuch a condition of a Bond the money is to be payd preſently, that is, in conuenient time. (b) And yet in caſe of a condition of a bond there is a diuerſitie betwœne a condition of an obligation, which concernes the doing of a tranſitorie act without limitation of any time, as payment of money, deliuery of Charters, or the like, for there the condition is to bœ performed preſently, that is, in conuenient time, & when by the condition of the Obligation the act that is to bee

by present[ly] or on demand
y^e Law intendeth, in
conuenient time

41.*E.*3.9. 33.*H.*6.45. & 48.*b.* 4.*E* 4.20. 9.*E.*4.22. 15 *E.*4.30. 21.*E.*4.38 *b.* 9.*H.*7.17.*b.* 10.*H.*7.15. 14.*H.*8.21.*a.* & 29.*b.*

(b) *Lib.*6.*fo.*30.31. *Babiet caſe.* 33.*H.*6.47.48.

done

done to the Obligee is of his owne nature locall, for there the Obligor (no time being limited) hath time during his life, to performe it, as to make a Feoffment, &c. if the Obligee doth not haſten the ſame by requeſt. In caſe where the condition of the Obligation is locall, there is alſo a diuerſitie, when the concurrence of the Obligor and the Obligee is requiſite, (as in the ſayd caſe of the Feoffment) and when the Obligor may performe it in the abſence of the Obligee, as to knowledge ſatisfaction in the Court of Kings Bench, * although the knowledge of ſatisfaction is locall, yet becauſe hee may doe it in the abſence of the Obligee, he muſt doe it in conuenient time, and hath not time during his life.

3.

(*) *Boothies caſe, vbi ſupra.*

4. Another diuerſitie is, where the condition concerneth a tranſitory or locall act, and is to be performed to the Feoffee or obligee, and where it is to be performed to a ſtranger: as if A. be bound to B. to pay ten pounds to C. A. tender to C. and hee refuſeth, the Bond is forfeited, as in this Section ſhall bee ſaid more at large.

5. Another diuerſitie is betweene a condition of an Obligation, and a condition vpon a Feoffment, where the Act that is locall is to be done to a ſtranger, and where to the Obligee or Feoffor himſelfe. As if one make a feoffment in fee, vpon condition that the Feoffee ſhall infeoffe a ſtranger, and no time limitted, the Feoffee ſhall not haue time during his life to make the feoffment, for then he ſhould take the profits in the meane time to his owne vſe, which the Eſtranger ought to haue, and therefore he ought to make the feoffment as ſoone as conueniently he may, and ſo it is of the condition of an Obligation. But if the condition be, That the Feoffee ſhall re-infeoffe the Feoffor, there the Feoffee hath time during his life, for the priuitie of the condition betweene them, vnleſſe he be haſtened by requeſt, as ſhall bee ſaid hereafter.

Boothies caſe, li.6.fo.31. Lib.2.fo.79.b Seignior Cromwels caſe. 44 E.3.9. 21.E.4.41. 2.E.4.3.4. 19.H.6.67.73.76. 4.E.4.4.b. 26.H.8.9.b.

6. Another diuerſitie is, when the Obligor or Feoffee is to enfeoffe a ſtranger, as hath bin ſaid, and when a ſtranger is to infeoffe the Feoffee or obligee: As if A. infeoffe B. of Blacke Acre, vpon condition that if C. infeoffe B. of White Acre, A. ſhall re-enter. C. hath time during his life, if B. doth not haſten it by requeſt, and ſo of an Obligation.

7. But in ſome caſes albeit the condition be collaterall, and is to be performed to the Obligee, and no time limited, yet in reſpect of the nature of the thing, the Obligor ſhall not haue time during his life to performe it. As if the condition of an Obligation be, to grant an annuitie or yearely rent to the Obligee during his life, payable yearely at the feaſt of Eaſter, this annuity or yearely rent muſt be granted before Eaſter, or elſe the Obligee ſhall not haue it at that feaſt during his life, & ſic de ſimilibus, and ſo was it reſolued by the Iudges (*) of the Common Pleas in the Argument of Andrews caſe, which I my ſelfe heard.

14.E.3.Dec.138 Li.2.fo.80. Seignior Cromwells caſe.

(*) *Vid.Dyer 14.El.311.*

8. Laſtly, When the Obligor, Feoffor, or Feoffee is to doe a ſole act or labour, as to goe to Rome,

ques le temps de le tender eſt paſſe. Mes autrement eſt lou vn iour de payment eſt limit, et le feoffor deuie deuaunt le iour, donque poet le Heire tender les deniers come eſt auauntdit, pur ceo que le temps de le tender ne fuyt paſſe per le mort del feoffor. Auxy il ſemble que en tiel caſe lou le feoffor deuy deuant le iour de payment, ſi les Executors de le feoffor tenderont les deniers al feoffee al iour de payment, cel tender eſt aſſets bon. Et ſi le feoffee ceo refuſe les heires de feoffor poient entrer, &c. Et le cauſe eſt, pur ceo que les Executors repreſentont l'perſon lour Teſtator, &c.

for dyeth, then the time of the tender is paſt. But otherwiſe it is where a day of payment is limited, and the Feoffor die before the day, then may the heire tender the money as is aforeſaid, for that the time of the tender was not paſt by the death of the Feoffor. Alſo it ſeemeth, That in ſuch caſe where the Feoffor dyeth before the day of payment, if the Executors of the Feoffor tender the money to the Feoffee at the day of payment, this tender is good enough, and if the Feoffee refuſe it, the heyres of the Feoffor may enter, &c. And the reaſon is, for that the Executors repreſent the perſon of their Teſtator, &c.

Rome, Jeruſalem, &c. In ſuch and the like caſes, the Obligor, Feoffor, or Feoffee hath time during his life and cannot bee haſtened by requeſt. And ſo it is if a ſtranger to the Obligation or Feoffment were to doe ſuch an act, he hath time to doe it at any time during his life.

¶ *Si les executors del feoffor tendront, &c.* **So as now it appeareth** that eyther the heire of the Feoffor, or his Executors may (when a day is limited) pay the money, and ſo alſo may the Adminiſtrator of the Feoffor doe, if the Feoffor dye inteſtate, (f) and this may the Ordinarie doe if there be neyther Executor nor Adminiſtrator, as hath beene ſaid.

Lib.5.fol.96.97. Good.les Caſe.

(f) *Vide Sect.*334.

¶ *Et le feoffee refuſe, les heires del feoffor poient enter, &c.* Nota **a tender** by the Executors or Adminiſtrators, and a refuſall doth giue the heire of the Feoffor a title of entrie. And hereby this (&c.) is a diuerſitie implyed, when a tender and refuſall ſhall giue a third perſon title of entrie.

If a man be bound to A. in an Obligation with Condition to infeoffe B. (who is a meere ſtranger) before a day, the Obligor doth offer to enfeoffe B. and he refuſeth, the Obligation is forfeit, for the Obligor hath taken vpon him to enfeoffe him, and his refuſall cannot ſatiſfie the Condition, becauſe no feoffment is made, but if the feoffment had beene by the Condition to be made to the Obligee, or to any other for his benefit or behoofe, a tender and refuſall ſhall ſaue the Bond, becauſe he himſelfe vpon the matter is the cauſe wherefore the Condition could not be performed, and therefore ſhall not giue himſelfe cauſe of action. But if A. be bound to B. with Condition that C. ſhall enfeoffe D. In this caſe if C. tender, and D. refuſe, the Obligation is ſaued, for the Obligor himſelfe vndertaketh to doe no act, but that a ſtranger ſhall infeoffe a ſtranger. And it is holden in Bookes, (h) that in this caſe it ſhall be intended, that the feoffment ſhould be made for the benefit of the Obligee. Some to reconcile the Bookes ſeeme to make a difference betweene an expreſſe refuſall of the ſtranger, and a readineſſe of the Obligor at the day and place to make performance, and the abſence of the ſtranger: but that can make no difference. I take it rather to bee the error of the Recorder; and the Records themſelues are neceſſary to be ſeene, for the Law herein is, as it hath beene before declared.

33.H.6.16.17. 36.H.6.8. 2.E.4.2.3. 15.E.4.5 6. 22.E.4.13.32.E 3.barre 264 7.E 3.29. 9.H.7.17. 10.H.7.14.b. 35.H.8. Dyer 56.lib.5.fol.23. Lambes caſe.

(h) *8.E.4.14.2.E.4. vbi ſupra.*

If I enfeoffe one in fee vpon condition to infeoffe I.S. and his heires, the Feoffee tenders the feoffment to I.S. and he refuſeth it, the Feoffor may reenter, for by the expreſſe intent of the Condition, the Feoffee ſhould not haue and retaine any benefit or eſtate in the land, but as it were an inſtrument to conuey ouer the land.

19.H.6.34.

But in that caſe if the Condition were to make a gift in tayle to I.S. and he refuſeth it, and a tender and refuſall is made, there the Feoffor ſhall not reenter, for that it was intended that the Feoffee ſhould haue an eſtate in the Land. And ſo it is if a feoffment bee made vpon Condition that the Feoffee ſhall grant a Rent Charge to a ſtranger, if the Feoffee tender the grant and he refuſeth, the Feoffor ſhall not reenter, becauſe the Feoffee was to retaine the land, which points are worthy of due obſeruation.

2.E.4.Entrie conge.25.

Here in the caſe of Littleton, When the Executors make the tender, and the Feoffee refuſeth, albeit the heire be a third perſon, yet is he no ſtranger, but hee and the Executors alſo are parties in Law.

¶ *Le perſon del teſtator, &c.* **This is to bee vnderſtood concerning** goods and chattels eyther in poſſeſſion or in action; and the Executor doth more actually repreſent the perſon of the Teſtator, then the heire doth the perſon of the Anceſtor. For if a man bindeth himſelfe, his Executors are bound though they bee not named, but ſo it is not of the heire: Furthermore, here the Adminiſtrators and the Ordinary alſo are imployed, as before hath beene ſaid.

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¶ **ET nota que en touts caſes de condition de payment d certaine ſumme en groſſe, touchant terres ou tenements, ſi loyall tender ſoit vn**

AND note that in all caſes of condition for payment of a certaine ſumme in groſſe touching lands or tenements, if lawfull tender be once re-

¶ **This is to bee vnderſtood**, that hee that ought to tender the money is of this diſcharged for euer to make any other tender, but if it were a dutie before, though the Feoffor enter by force of the Condition, yet the debt or dutie remayneth. As if A. borroweth a hundred

Vide Sect. ſequen.

hundred pound of B. and after mortgageth land to B upon Condition for payment thereof. If A. tender the money to B. and hee refuseth it, A. may enter into the Land, and the land is freed for euer of the Condition, but yet the debt remayneth, and may bee recouered by Action of Debt. But if A. without any lone, debt, or dutie preceding infeoffe B. of land vpon Condition for the payment of a hundred pounds to B. in nature of a gratuitie or gift. In that case if he tender the hundred pound to him according to the Condition and hee refuseth it, B. hath no remedie therefore, and so is our Author in this and his other cases of like nature to be vnderstood.

foits refuse, celuy q̄ duisoit tender le money est ō ceo assouth, & pleinm̄t discharge per touts temps apres.

fused, he which ought to tender the money is of this quite and fully discharged for euer afterwards.

Section 339.

CPAiera tiel some a tiel iour, &c. Here is implyed that this payment ought to bee reall and not in shew or appearance. For if it bee agreed betweene the Feoffor and the Executors of the Feffee, that the Feoffor shall pay to the Executors but part of the money, and that yet in appearance the whole summe shall bee paid, and that the residue shall bee repaid, and accordingly at the day and place, the whole summe is paid, and after the residue is repaid, this is no performance of the Condition, for the state shal not bee denested out of the heire which is a third person, without a true and effectuall payment, and not by a shadow or colour of payment, and the agreement precedent doth guide the payment subsequent.

18.E.4.fol.18. Lib.5.fol.96. Ovedales Case. 19.H.6.54. 20.E.3. Accions Pl.70.

And by this Section also it appeareth, that the Executors do more represent the person of the Testator, then the heire doth to the Auncestor, for though the Executor be not named, yet the

ITem si le feoffee en mortgage, deuant le iour de payment que serroit fait a luy face ses executors et deuie, et son heire enter en le terre come il deuoit, &c. il semble en cest cas que le feoffor doit payer le money al iour assesse as executors, et nemy al heire le feoffee, pur ceo que le money al commencemēt trenchast al feoffee en maner come vn dutie, et serra entendue que lestate fuit fait per cause de le prompter de le money per le feoffee, ou pur cause dauter dutie. Et pur ē le payñt ne serra fait al heire, come il semble. Mes les parols del condition poyent estre tiels, que le payment serra fait al heire, come si le condition fuit, que si le feoffor paya al feoffee, ou a ses heires, tiel summe a tiel iour, &c. la apres la

ALso if the Feoffee in morgage before the day of payment which should bee made to him, makes his Executors and die, and his heire entreth into the land as he ought, &c. It seemeth in this case that the Feoffour ought to pay the money, at the day appointed to the Executors, and not to the heire of the Feoffee, because the money at the beginning trenched to the Feoffee in manner as a dutie and shall be entended that the estate was made by reason of the lending of the money by the Feoffee, or for some other dutie, and therefore the payment shall not be made to the heire, as it seemeth, but the wordes of the Condition may be such, as the payment shall be made to the heire. As if the Condition were, that if the Feoffor pay to the Feoffee or to his heires such a summe at

la mort le feoffee, ill mourust deuant l'iour limit, l'payment doit estre fait al heir al iour assesse, &c.

such a day, &c. there after the death of the feoffee, if hee dieth before the day limitted the payment ought to be made to the heire at the day appointed, &c.

Law appoints him to receiue the money, but so doth not the Law appoint the heire to receiue the money vnlesse he bee named.

¶ *Doit estre fait al heire al iour assesse, &c.* And here it also appeareth that if the condition vpon the Morgage be to pay to the Morgagee or his heires the money, &c. and before the day of payment the Morgagee dieth, the Feoffor cannot pay the money to the Executors of the Morgagee; For Littleton saith that in this case the payment ought to be made to the heire. Et in hoc casu designatio vnius personæ est exclusio alterius, & expressum facit cessare tacitum. And the Law shall neuer seeke out a person, when the parties themselues haue appointed one. But if the condition be to pay the money to the Feoffee his heires or Executors, then the Feoffor hath election to pay it either (m) to the heire or Executors.

Vid. lib. 5. fo. 96. Goodales case Dier 2. Eliz. 181. 44. E. 3. 1. b.

(m) 12. E. 3. *Condition* 8. & 10.

If a man make a feoffment in fee vpon condition that the Feoffee shall pay to the Feoffor his heires or assignes 20. pound at such a day, and before the day the Feoffor make his Executors and dyeth, the Feoffee may pay the same either to the heire or to the Executors, for they are his assignes in Law to this intent. But if a man make a feoffment in fee vpon condition, that if the Feoffor pay to the Feoffee his heires or assignes 20. pound before such a feast, and before the feast the Feoffee maketh his Executors and dyeth, the Feoffor ought to pay the money to the heire, and not to the Executors, for the Executors in this case are no assignees in Law, and the reason of this diuersity is this, for that in the first case the Law must of necessity finde out Assignes, because there cannot be any Assignes in Deed, for the Feoffor hath but a bare condition and no estate in the Land which he can assigne ouer. But in the other case the Feoffee hath an estate in the land which he may assigne ouer, and where there may be Assignees in Deed, the Law shall neuer seeke out or appoint any Assignes in Law. And albeit the Feoffee made no assignment of the estate, yet the executors cannot be Assignees, because Assignes were only intended by the condition to be assignees of the estate, and so was it resolued * Mich. 23. & 24. Eliz by the two chiefe Iustices in the Court of wards betweene Randall and Browne which I obserued.

27. H. 8. 2. 3. & 4. Ph. & Mar. 140. a. (*) Mic. 23. & 24. Eliz. in Curia Wardorum. Inter Randal & Browne. Vid. 2. Eliz. Dier 181. Pl. Com. Chapmans case 184. 288. Vid. Goodales case. lib. 5. fo. 96. 97. 17. Ass. pl. 2. Goodales case vbi supra.

But if the condition be to pay the money to the Feoffee his heires or assignes, and the Feoffee make a feoffment ouer, it is in the election of the Feoffor to pay the money to the first Feoffee or to the second feoffee, and so if the first Feoffee dyeth the Feoffor may either pay the money to the heire of the first Feoffee or to the second Feoffee, for the Law will not enforce the Feoffor to take knowledge of the second feoffment, nor of the validity thereof, whither the same be effectuall or not but at his pleasure, and the First Feoffee and his heires are expressly named in the Condition.

Sect. 340.

¶ Item sur tiel case de feoffment en Morgage, questiõ ad este demaunde en quel lieu le feoffour est tenus de tender les deniers a l'feoffee al iour assesse, &c. Et aleuns ont dit, que sur la terre issint tenus en Morgage, pur ceo que l'cõdition est dependant sur le fre; Et ont dit, q

ALso vpon such case of feoffment in Morgage, a question hath beene demanded in what place the feoffor is bound to tender the money to the feoffee at the day appointed, &c. And some haue said, vpon the land so holden in Morgage, because the condition is depending vpon the land. And they

¶ *Item sur tiel case de feoffment en morgage question ad este demande, &c.* Here and in other places that I may say once for all, where Littleton maketh a doubt, and setteth downe seuerall opinions and the reasons, hee euer setteth downe * the better opinion and his owne last, and so he doth here. (n) For at this day this doubt is settled, hauing beene oftentimes resolued, that seeing the money

(*) *Vid Sect.* 170. 302. 375.
(n) 8. E. 4. 4. & 14. 11. H. 4. 62. 17. *Ass. p.* 3. 17. E. 3. 2. 21. H. 7. Kelway 74. 16. El. Dier 327. *Lib.* 4. f. 73. *in Beroughs case.* 21. E. 4. 6.

money is a ſumme in groſſe and collaterall to the title of the land, that the Feoffor muſt tender the money to the perſon of the Feoffee according to the latter opinion, and it is not ſufficient for him to tender it vpon the land: otherwiſe it is of a rent that iſſueth out of the land. But if the condition of a Bond, or feoffment be to deliuer twenty quarters of wheate or twenty load of Timber or ſuch like, the Obligor or Feoffor is not bound to carry the ſame about, and ſeeke the Feoffee, but the Obligor or Feoffor before the day muſt goe to the Feoffee, and know where he will appoint to receiue it, and there it muſt bee deliuered. And ſo note a diuerſitie betweene money, and things ponderous, or of great weight. If the condition of a Bond or feoffment be to make a feoffment, there it is ſufficient (b) for him to tender it vpon the land, becauſe the ſtate muſt paſſe by Liuerie.

8.E.4.2. 19.R.2. Dor.178.

(b) 2.E.43.

¶ *Deins le roialm Dengleterre.* For if he be out of the Realme of England, hee is not bound to ſeeke him or to goe out of the Realme vnto him. And for that the Feoffee is the cauſe that the Feoffor cannot tender the money, the Feoffor ſhall enter into the land, as if he had duly tendered it according to the condition.

¶ *Vn eſpeciall corporall ſeruice al feoffee.* This is a diuerſity betweene a Rent iſſuing out of land, and a Corporall ſeruice iſſuing out of land, for it

ſi le feoffor ſoit ſur le terre la preſt a paier la mony al feoffee a le iour aſſeſſe, & le feoffee adonqꝫ ne ſoit pas la, adonqꝫ le feoffor eſt aſſouth, & excuſe de paymẽt de l' mony, pur ceo que nul default eſt en luy. Mes il ſemble a aſcuns que la ley eſt contrary, & que default eſt en luy. Car il eſt tenus ỏ querer le feoffee ſil ſoit adonqꝫ en aſcun auter lieu deins le Roialme ỏ Engleterr'. Come ſi home ſoit oblige en vn obligation de 20.li. ſur condition endorce ſur meſm̃ lobligat', que ſil paya a celuy a que lobligation eſt fait a tiel iour 10. li. adonque lobligation de 20. li. perdra ſa force, & ſerra tenus pur nul, en ceſt cas il couient a celuy que fiſt obligation de querer celuy a que lobligation eſt fait, ſil ſoit deins Engleterre, & al iour aſſeſſe de tender a luy les dits 10.li. autrement il forfeitera la ſumme de 20.li compriſe deins l' obligation, &c. Et iſſint il ſemble en lauter cas, &c. Et coment q̃ aſcuns ont dit, que le condition eſt dependant ſur la terre, vncore ceo ne proue q̃ le

haue ſaid that if the feoffor be vpon the land there ready to pay the money to the feoffee at the day ſet, & the feoffee bee not then there, then the feoffor is quit and excuſed of the payment of the money, for that no default is in him. But it ſeemeth to ſome that the law is contrary, and that default is in him, for he is bound to ſeeke the feoffee if hee bee then in any other place within the Realm of England. As if a man be bound in an obligation of 20. pound vpon condition endorced vpon the ſame obligation, that if hee pay to him to whom the obligation is made at ſuch a day 10. pound, then the obligation of 20. pound ſhall loſe his force and bee holden for nothing. In this caſe it behoooueth him that made the obligation to ſeek him to whom the obligation is made if he be in England, and at the day ſet to tender vnto him the ſaid 10. poũd otherwiſe hee ſhall forfeit the ſumme of 20. pound compriſed within the obligation, &c. And ſo it ſeemeth in the other caſe, &c. And albeit that ſome haue

le feasans de le condition destre performe, couient estre fait sur la terr, &c. nient plus que si le condition fuit que le feoffor ferra a tiel iour, &c. vn especial corporall seruice al feoffee, nient nosmant le lieu ou tiel corporal seruice serra fait, & tiel cas le feoffor doit faire tiel corporal seruice al iour limitte al feoffee, en quecunq; lieu Dengleterre que le feoffee est, sil voile auer aduãtage, ô le condition, &c. Issint il semble en lauter cas. Et il semble a eux que il serroit pluis properment dit, que lestate de la terre est dependant, sur la condition, que adire, que le condition est dependant sur la terre, &c. Sed quære, &c.

said that the condition is depending vpon the land, yet this proues not that the making of the condition to be performed, ought to bee made vpon the land, &c. no more then if the condition were that the feoffor at such a day shal do some especiall corporal seruice to the feoffee not naming the place where such corporall seruice shall be done. In this case the feoffor ought to doe such corporall seruice at the day limitted to the feoffee in what place soeuer of England that the feoffee be, if hee will haue aduantage of the condition, &c. so it seemeth in the other case. And it seemes to them that it shall bee more properly said, that the estate of the land is depending vpon the condition, then to say that the condition is depending vpon the land, &c. *Sed quære, &c.*

sufficeth (as hath beene said) that the rent bee tendered vpon the land, out of which it issueth. But Homage or any other speciall Corporall seruice must be done to the person of the Lord; and the Tenant ought by the lawe of conuenience to seeke him to whom the seruice is to bee done in any place within England. 21.E.3.10. 20.H.6.31. 27.E.3.34. 21.Ass 13. 7.E.4.4. 21.E.4.17. 20.E. Auowrie 113. 45.E3.9. 46.E.3. Barre 216.

If a man be bound to pay twenty pound at any time during his life at a place certaine, the Obligor cannot tender the money at the place when hee will, for then the Obligee should be bound to perpetuall attendance, and therefore the Obligor in respect of the incertainty of the time must giue the obligee notice that on such a day at the place limitted, hee will pay the money, and then the obligee must attend there to receiue it: for if the obligor then and there tender the money, he shall saue the penaltie of the Bond for euer. *Mich.22. & 23.Eliz in Banke le Roy which I my selfe heard and obserued. 19.Eliz. Dyer 354. Lib.8.fol.92. in Frances case.*

The same law it is if a man make a feoffment in fee vpon condition, if the Feoffor at any time during his life pay to the Feoffee twenty pound at such a place certaine that then, &c. In this case the Feoffor must 13.Eliz.Dyer 354.

giue notice to the Feoffee when he will pay it, for without such notice as is aforesaid the tender will not be sufficient. But in both these cases if at any time the Obligor or Feoffor meete the Obligee or Feoffee at the place he may tender the money.

If A be bound to B. with condition, that C. shall enfeoffe D. on such a day. C must giue notice to D. thereof, and request him to be on the land at the day to receiue the feoffment and in that case he is bound to seeke D. and to giue him notice. 2.E.4.3.& 4.

¶ *De tender.* or Tendre is a word common both to the English and French, in Latyn Offerre, and in that sence, and with that Latyn word it is alwayes vsed in the Common Law. Vide Sect.514. the tender of the halfe Marke. And before Sect. 333.334.337.

Sect. 341.

¶ HEre the diuerſitie appeareth betweene a ſumme in groſſe, and a rent iſſuing out of the land, as hath been touched before.

¶ *Vncore il poet eſlier*, S. *de relinquiſher ſon entry ou de auer vn Aſſiſe.*

Here it appeareth, That if the condition be broken for non payment of the rent, yet if the Feoffor bringeth an Aſſiſe for the rent due at that time, he ſhal neuer enter for the condition broken, becauſe he affirmeth the rent to haue a continuance, and thereby waiueth the condition. And ſo it is if the rent had had a clauſe of Diſtreſſe annexed vnto it, if the Feoffor had diſtreyned for the rent, for non payment whereof the condition was broken, he ſhould neuer enter for the condition broken, but he may receiue that rent and acquite the ſame, and yet enter for the condition broken. But if he accept a rent due at a day after, hee ſhall not enter for the condition broken, becauſe he thereby affirmeth the leaſe to haue a continuance.

14.E.3.Entre conuable 45. *14.Aſſ.*11. 45. *Aſſ.*5. *6.H.7.3.17.E.3.73. Pl.Com.*133. *22.H.6.57.*

¶ MEs il feoffment ẽ fee ſoit fait reſeruant al feoffor vn annuall rent, et pur ðfault de payment vn re-entrie, &c. en ceſt caſe il ne beſoigne le tenant a tẽder le rent, quaunt il eſt arere, forſque ſur le tre pur ceo que ceo eſt Rent iſſuant hors de la Terre, que eſt Rent ſecke. Car ſi le Feoffor ſoit ſeiſie vn foits ð ceſt rent, et puis il vient ſur la terre, &c. et le rent luy ſoit denie, il poet auer Aſſiſe de Nouel Diſſeiſin, Car coment que il poet entr̃ p cauſe de le condition enfreint, &c. vncore il poet eſlier, ſ̃, de relinquiſher ſon entrie, ou de auer vn Aſſiſe, &c. Et iſſint eſt diuerſitie quant al tender de le Rent que eſt iſſuant hors de la Terre, et del tender dauter ſumm̃ en groſſe que ne paſſe iſſuant Hors daſcun Terre.

BVt if a feoffement in fee bee made, reſeruing to the feoffor a yerely rent, and for default of payment a re-entrie, &c. in this caſe the Tenaunt needeth not to tender the rent when it is behind, but vpon the land, becauſe this is a Rent iſſuing out of the Land, which is a Rent Secke. For if the Feoffor bee ſeiſed once of this Rent and after hee commeth vpon the Land, &c. and the rent is denied him, he may haue an Aſſiſe of *Nouel Diſſeiſin*: for albeit he may enter by reaſon of the Condition broken, &c. yet hee may chooſe either to relinquiſh his entrie, or to haue an Aſſiſe, &c. And ſo there is a diuerſitie as to the tender of a Rent which is iſſuing out of the land, and of the Tender of another Summe in Groſſe, which is not iſſuing out of any Land.

Section 342.

¶ ET pur ceo il ſerra bone et ſure choſe pur celuy que boet faire tiel feoffement en mortgage, de mitter vn eſpecial lieu lou les deniers ſr̃ot payes, et le pluis eſpeciall que eſt mis, le

AND therefore it wil be a good and ſure thing for him that wil make ſuch feoffement in morgage, to appoint an eſpecial place where the money ſhall be payd, and the more ſpeciall that it bee put, the

le melioꝛ eſt pur le feoffoꝛ. Sicome A. infeoffe B. a auer a luy et a ſes heires, ſur tiel condition, Que ſi A. paya a B. en le Feaſt de Saint Michael Larchangell pꝛocheine a uener en Eſglíſe cathedꝛall de Paules en Londꝛes deins quater heures pꝛocheine deuant le heure d̄ noone d̄ meſm̄ le feaſt a le Rood loft de le Rood de le Noꝛth dooꝛe deins meſme le Eſglíſe, ou al tombe d̄ S. Erkenwald, ou al huis de tiel Chappell, ou a tiel piller, deins meſme Leſglíſe que adonque bien liſt al auantdit A. et a ſes heyꝛes dentrer, ꝛc. en tiel caſe il ne beſoigne de querer le feoffee en auter lieu, ne deſtre en auter lieu, foꝛſque en le lieu compꝛiſe en lendenture, ne deſtre la pluis longe temps, q̄ le temps ſpecifie en meſm̄ lendenture, pur tender ou payer le money a le Feoffee, ꝛc.

better it is for the Feoffor. As if A. infeoffe B. to haue to him and to his heires, vpon ſuch condition, That if A. pay to B. on the Feaſt of Saint *Michael* the Arch-Angel next comming, in the Cathedrall Church of Saint *Pauls* in London, within foure houres next before the houre of Noone of the ſame feaſt, at the Rood loft of the Rood of the North doore, within the ſame Church, or at the Tombe of Saint *Erkenwald*, or at the doore of ſuch a Chappell, or at ſuch a pillar within the ſame Church, that then it ſhall be lawfull to the aforeſayd A. and his heires to enter, &c. In this caſe he needeth not to ſeek the Feoffee in an other place, nor to bee in any other place, but in the place compriſed in the Indenture, nor to bee there longer than the time ſpecified in the ſame Indenture, to tender or pay the mony to the feoffee, &c.

¶ HEre is good councell and aduice giuen, to ſet downe in Conueyances euerie thing in certaintie and particularitie, foꝛ Certaintie is the mother of Quietneſſe and Repoſe, and Incertaintie the cauſe of variance and contentions: and foꝛ obtaining of the one, and auoyding of the other, the beſt meane is in all aſſurances, to take councell of learned and well experienced men, and not to truſt onely without aduice to a Pꝛeſident. Foꝛ as the rule is concerning the ſtate of a mans bodie, Nullum medicamentum eſt idem omnibus, ſo in the ſtate and aſſurance of a mans Lands, Nullum exemplum eſt idem omnibus.

¶ *Al Tombe de Saint Erkenwald, &c.* This Erkenwald was a younger ſonne of Anna King of the Eaſt Saxons, and was firſt Abbot of Cherſey in Surrey, which he had founded, and after Biſhop of London, a holy and deuout man, and lieth buried in the South Ile, about the Quire in Saint Pauls Church, where the Tombe yet remaineth that Lit. ſpeaketh of in this place, hee flouriſhed about the yeare of our Lord, 680.

The reſidue of this Section, and the (&c.) are euident.

*Sect.*343.

¶ ITem en tiel caſe lou le lieu de payment eſt limitte, le Feoffee neſt oblige de receiuer le payment en nul auter lieu foꝛſque en meſme le lieu iſſint

ALſo in ſuch caſe where the place of payment is limitted, the Feoffee is not bound to receiue the payment in any other place but in the ſame place ſo limitted.

¶ HEerby it appeareth that the place is but a Circumſtance. And therefoꝛe if the Obligee receiueth it at any other place, it is ſufficient, though he be not bound to receiue it at any other place.

And

And so it is if the money be to be paid on such a Feast, yet if the money be tendred and received at any time before the day, it is sufficient.

limit. Mes vncore si il receiust le payment en auter lieu, ceo est assets bone, et auxy fort pur le feoffor, sicome le receit vst este en meisme le lieu issint limit, &c.

But yet if hee do receiue the payment in another place, this is good enough and as strong for the feoffor as if the receipt had been in the same place so limitted, &c.

Sect. 344.

THereupon are many diuersities worthie of obseruation.

3.H.7.4.b.9.H.7.16. 11.H.7.20.21 19.E.4.1.b. 47.E.3.24. 22.E.4.24. 37. H.6.26.Li.9.fo.78.Peytoes case.

First, there is a diuersitie, when the condition is for payment of money, and when for the deliuerie of a Horse, a Robe, a Ring, or the like: for where it is for payment of money, there if the Feoffee or Obligee accept an Horse, &c. in satisfaction, this is good; but if the condition were for the deliuerie of a horse, or robe, there albeit the obligee or feoffee accept money or any other thing for the Horse, &c. it is no performance of the condition. The like Law is, if the condition bee to acknowledge a Recognisance of twentie pounds, &c. if the Obligee or feoffee accept twenty pounds in satisfaction of the condition, it is not sufficient in Law, * but notwithstanding such acceptance, the condition is broken. And so it is of all other collaterall conditions, though the Obligee or feoffee himselfe accept it.

22.H.4.23.

* Peytoes case vbi supra.

THem en tiel case de feoffmẽt en morgage, si le feoffor paya al feoffee vn chiual, ou hanap dargent, ou vn annuel dor, ou auter tiel chose en plein satisfaction del money, & lauter ceo receiust, cẽ assets bon & auxy fort sicome il vst receiue la summe del money, coment que le chiual, ou lauter chose ne fuit de vintisme part del value de sum de le money, pur ceo que lauter auoit ceo accept en pleine satisfaction.

ALso in the case of Feoffement in Morgage, if the Feoffor payeth to the Feoffee a Horse or a Cup of Siluer, or a Ring of Gold, or any such other thing in full satisfaction of the money, and the other receiueth it, this is good enough, and as strong as if hee had receiued the summe of money, though the horse or the other thing were not of the twẽtith part of the value of the sum of mony, because that the other hath accepted it in ful satisfaction

4.H.7.4. Dy.35.H.8.56. 27.H.8.1.

Secondly, in case when the condition is for payment of money, there is a diuersitie when the money is to be payd to the partie, and when to an estranger: for when it is to bee payd to an estranger, there if the stranger accept a horse or any colaterall thing in satisfaction of the money, it is no performance of the Condition, because the Condition in that case is strictly to bee performed. But if the condition be, That a stranger shall pay to the Obligee or Feoffee a sum of money, there the Obligee or Feoffee may receiue a horse, &c. in satisfaction.

Lib.5.fo.17.Pinnels case.

Thirdly, Where the condition is for payment of twentie pounds, the Obligor or feoffor cannot at the time appointed pay a lesser summe in satisfaction of the whole, because it is apparant that a lesser summe of money cannot be a satisfaction of a greater. But if the Obligee or Feoffee doe at the day receiue part, and thereof make an acquittance vnder his Seale in full satisfaction of the whole, it is sufficient, by reason the Deed amounteth to an acquittance of the whole. If the Obligor or Lessor pay a lesser summe either before the day, or at another place than is limitted by the Condition, and the Obligee or Feoffee receiueth it, this is a good satisfaction.

26.H.6.tit.Barre 37.

30.E.3.23.

Fourthly, Not onely things in possession man be giuen in satisfaction, (whereof Littleton putteth his case, but also if the Obligee or Feoffee accept a Statute or a Bond in satisfaction of the money it is a good satisfaction.

11.R.2.tit.Barre 343.

If the Obligor or Feoffor be bound by condition to pay an hundred Markes at a certaine day,

day, and at the day the parties doe account together, and for that the Feoffee or Obligee did owe twentie pound to the Obligor or Feoffor, that summe is allowed, and the residue of the hundred Markes paid, this is a good satisfaction, and yet the twentie pound was a Those in action, and no payment was made thereof, but by way of retayner or discharge 37.H.6.26. 46.E.3.33. 34.H.6.17. 12.H.8.1.b.

¶ *En pleine satisfaction.* Nota, In satisfaction, and in full satisfaction is all one.

Sect. 345.

ITem si home enfeoffa vn auter sur condition, que il et ses heires rendront a vn estrange home a a ses heires vn annuel rent de 20. s. &c. et si il ou ses heires faylont de payment de ceo, que adonques bien lirroit al feoffor et a ses heires de entrer, ceo est bon condition, et vncore en cest cas, coment que tiel annuall payment est appelle en lendenture vn annuall rent, ceo nest pas properment rent. Car sil serroit rent, il couient estre Rent seruice, ou rent charge, ou rent secke, et il nest ascun de eux. Car si lestrange fuit seisie d ceo, et puis il fuit a luy denie, il nauera vnque Assise de ceo, pur ceo que il nest pas issuant hors dascun tenements, et issint lestrange nad ascun remedie si tiel annual rent soit aderere en cest cas, mes que le feoffor ou ses heires poient enter, &c. Et vncore si le feoffor ou ses

ALso if a man infeoffe an other vpon Condition, that hee and his heires shall render to a stranger and to his heires a yearely rent of 20. shillings, &c. and if hee or his heires fayle of payment thereof, that then it shall bee lawfull to the Feoffor and his heires to enter, this is a good Condition, and yet in this case, albeit such annuall payment be called in the Indentnre a yearely rent, this is not properly a rent. For if it should be a rent, it must bee Rent Seruice, Rent Charge, or a Rent Secke, and it is not any of these. For if the stranger were seised of this and after it were denied him, hee shall neuer haue an Assise of this, because that it is not issuing out of any Tenements, and so the stranger hath not any remedie if such yearely rent be behind in this case, but that the Feoffor or his heires may enter, &c. And yet if the Feoffor or his heires enter for default of pay-

¶ R *Endront a vn estrãge home vn annuel rent, &c.*

This reseruation is meerely void (a) for the reasons hereafter in this Section alleadged by Littleton, and also for that no Estate moueth from the strãger, and that he is not partie to the Dæd. (a) *Lib.*8.*fol.*70.71.

And albeit it bee a voyde reseruation, and can be no rent, and the words of the Condition be that if the feoffee or his heires faile of payment of it (that is, of the annual rent) that then, &c. yet it appeareth that the Condition is good, and annuall Rent shall bee taken for an annuall summe of money in grosse, and not in the proper signification thereof, viz. to bee a Rent issuing out of Land, which is to bee obserued, that words in a Condition shall bee taken out of their proper sence, Vt res magis valeat quam pereat, and so in like cases it is holden (b) in our Bookes. (b) 6.E.2.entr.cong.55. recipere. 8.Ass.34. mentere.

But if A. bee seised of certaine lands, and A. and B ioyne in a Feoffment in fee reseruing a rent to them both and their heires, and the Feoffee grant that it shall be lawfull for them and their heires to distreine for the

the rent, this is a good grant of a rent to them both, becauſe hee is partie to the Deed, and the clauſe of diſtreſſe is a grant of the rent to A. and B. as it appeareth before in the Chapter of rents. But if B. had beene a ſtranger to the Deed, then B. had taken nothing. And vpon this diuerſitie are all the Bookes (c) with prima facie ſeeme to vary, reconciled.

(c) 18.E.2.Aſſ.381. 36.H.8.2.13.E.2.feoffments & faits 108. 31.Aſſ.p.31.

¶ *Car ſil ſerra rent, il couient eſtre rent ſeruice, rent charge ou rent ſecke, & il neſt nul de eux.* This is a good Logicall argument à diuiſione, & argumentum à diuiſione eſt fortiſſimum in lege. Littleton vſeth this argument elſe where, where ſee more of this matter.

heires entront pur default ď payment, adonque tiel rent eſt ale a touts iours. Et iſſint tiel rent neſt forſqz vn peine aſſeſſe a le tenant et ſes heires, que ſils ne voilent payer ceo ſolonque la forme ďl Indenture, ils perdront lour terre per lentrie del feoffor ou ſes heires pur default ď payment. Et en ceſt cas il ſemble que le feoffee et ſes heires doient querer le eſtranger et heires ſils ſont deins Engleterre, pur ceo que nul lieu eſt limit lou le payment ſerra fait, & pur ceo que tiel rent neſt pas iſſuant hors dalcun terre, &c.

ment: then ſuch rent is taken away for euer. And ſo ſuch a rent is but as a paine ſet vpon the tenant and his heires, that if they will not pay this according to the forme of the Indenture, they ſhall loſe their land by the entrie of the Feoffor or his heires for default of payment. And in this caſe it ſeemeth that the Feoffee and his heires ought to ſeeke the ſtranger and his heires if they bee within *England*, becauſe there is no place limited where the payment ſhall bee made, and for that ſuch rent is not iſſuing out of any land, &c.

(d) *Vide Sect.381.*

¶ *Pur default de payment.* Note here ſeeing it is but a ſumme in groſſe, there need no demand of the rent, for Littleton here ſayth, that the Feoffee ought to ſeeke the perſon of the ſtranger to pay him the ſumme of money, becauſe it is a ſumme in groſſe, and not iſſuing out of the Land.

Section 346.

¶ A *Le feoffor donor, &c. ou a lour heires.* Hereby it may ſeeme that if a man make a Feoffment, Gift, or Leaſe, that (omitting himſelfe) hee may reſerue a Rent to his heires. But Littleton is not ſo to bee vnderſtood, his meaning is, that eyther the Feoffor, &c. may reſerue the Rent to himſelfe only, or to himſelfe and his heires. And yet it is holden (e) in our bookes that a man may make a Feoffment in fee reſeruing a Rent of forty ſhillings to the Feoffor for tearme of his life, and

(e) 5.E.3.17.18.

¶ ET hic nota deux choſes, Vn eſt, que nul rent (qz proprement eſt dit rent) poit eſtre reſerue ſur alcun feoffment, done, ou leas, forſque tantſolement al feoffor, ou al donor, ou al leſſor, ou a lour heires, & en nul maner il poit eſtre reſerue a alcun eſtrang perſon

AND here note two things, one is, That no rent (which is properly ſaid a Rent) may be reſerued vpon any feoffment, gift, or leaſe, but only to the Feoffor, or to the Donor, or to the Leſſor, or to their heires, and in no manner it may bee reſerued to any ſtrange perſon. But if

perſon. Mes ſi deux iointenants font vn leas per fait en dent, reſeruant a vn de eux vn certaine annuall rent, ceo eſt aſſets bon a luy a que l'rent eſt reſerue, pur ceo q̄ il eſt p̄riuie a le leaſe & nemy eſtrange a le leas, &c.

two Ioyntenants make a Leaſe by Deed indented reſeruing to one of them a certaine yearely Rent, this is goodenough to him to whom the Rent is reſerued, for that hee is priuie to the Leaſe, & not a ſtranger to the Leaſe, &c.

after his deceaſe a pound of Comyne to his heires, that this is good.

If a man make a Feoffement in fee reſeruing a Rent to him or his heires it is good (f) to him for tearme of his life, and void to his heire. (f) *Lib.* 5. *fol.* 111. *Mallories caſe.*

¶ *Mes ſi* 2. *iointenants font vn leaſe per fait indent, &c.*

This caſe being by Deed indented, is euident, and it hath beene touched before, but 5. E. 4. 4. a 27. H. 8. 16. *Vide Sect.* 58.

if that two Ioyntenants without a Deed indented make a Leaſe for life reſeruing a Rent to one of them, it ſhall enure to them both in reſpect of the ioynt reuerſion. And ſo it is of a ſurrender to one of them, it ſhall enure to them both.

If two Ioyntenants, the one for life, and the other in fee, ioyne in a Leaſe for life, or a gift in tayle reſeruing a Rent, the Rent ſhall enure to them both, for if the particular eſtate determine, they ſhall be ioyntenants againe in poſſeſſion. But if tenant for life & he in the reuerſion ioyne in a Leaſe for life or a gift in tayle by Deed reſeruing a Rent, this ſhall enure to the Tenant for life only, during his life, and after to him in the reuerſion, for euery one grant that which he may lawfully grant, and if at the Common Law they had made a Feoffment in fee generally, the Feoffee ſhould haue holden of the Tenant for life during his life, and after of him in reuerſion, and ſo it was holden (g) in the Kings Bench. *Vide Sect.* 58. (g) *Mich.* 36. & 37. *Eliz.*

Section 347.

¶ LE ſecond choſe eſt que nul entre, ou reentre (que eſt tout vn) poit eſtre reſerue, ne done a aſcun perſon forſq̄ tantſolement al feoffor, ou al donor, ou al leſſor, ou a lour heires, & tiel reentre ne poit eſtre grant, a vn auter perſon. Car ſi home leſſa terre a vn auter pur terme de vie per Indenture, rendant al leſſor & a ſes heires certaine rent, & pur default de payment vn reentry, &c. ſi apres le leſſor per vn fait grant a le reuerſion de la terre a vn auter en fee et le tenant at terme de vie atturna, &c. ſi le rent a-

THe ſecond thing is, that no entrie nor reentrie (which is all one) may bee reſerued or giuen to any perſon but only to the Feoffor or to the Donor, or to the Leſſor, or to their heires. And ſuch reentrie cannot bee giuen to any other perſon. For if a man letteth land to another for tearme of life by Indenture rendring to the Leſſor and to his heires a certaine rent, and for default of payment, a reentrie, &c. If afterward the Leſſor by a Deed granteth the reuerſion of the Land to another in fee, and the Tenant for terme of life, attorne, &c. if the rent bee

¶ *Ve nul entrie &c.* Here Littleton reciteth one of the maximes of the Common law, & the reaſon hereof is, for auoyding of maintenance, ſuppreſſion of right, and ſtirring vp of ſuites: and therefore nothing in action, entrie, or reentrie can be granted ouer; for ſo vnder colour thereof, pretended titles might bee granted to great mē, whereby right might bee trodden downe, & the weake oppreſſed, which the Common Law forbiddeth, as men to grant before they be in poſſeſſion.

¶ *Pur default*

fault de payment vn re-entrie, &c. Hereupon is to bee collected diuers diuerſities, firſt betweene a condition that requireth a re-entrie, and a limitation that ipſo facto determineth the eſtate without any entrie. Of this firſt ſort no ſtranger as Littleton ſaith, ſhall take any aduantage, as hath beene ſaid. But of limitations it is otherwiſe. As if a man make a Leaſe Quouſque that I.S. come from Rome, the Leſſor grant the reuerſion ouer to a ſtranger. I.S. comes from Rome, the Grantee ſhall take aduantage of it and enter, becauſe the eſtate by the expreſſe limitation was determined.

pres ſoit aderere, le grantee de le reuerſion poit diſtreiner pur le rent, pur ceo que le rent eſt incident a le reuerſion, mes il ne poit entrer en la tre, ouſte le tenant, ſi come l'leſſor puiſſoit, ou ſes heyres, ſi le reuerſion vſt eſte continue en eux, &c. Et en ceſt caſe lentrie eſt tolle a touts temps. Car le grantee de le reuerſion ne poit entrer, Cauſa qua ſupra. **Et le leſſor, ne ſes heyres ne poyent enter. Car ſi le leſſor puiſſoit ent, donqs il couient que il ſeroit en ſon primer eſtate, &c. & ceo ne poit eſtre, pur ceo que il ad alien de luy le reuerſion.**

after behinde, the grantee of a reuerſion may diſtreine for the rent, becauſe that the rent is incident to the reuerſion, but hee may not enter into the land and ouſt the tenant, as the leſſor might haue done or his heires, if the reuerſion had beene continued in them, &c. And in this caſe the entrie is taken away for euer, For the grantee of the reuerſion cannot enter. *Cauſa qua ſupra.* And the leſſor nor his heires cānot enter, for if the leſſor might enter, then hee ought to be in his former eſtate, &c. And this may not bee, becauſe hee hath aliened from him the reuerſion.

Regiſter 246. Pl. Com. 27. 34.E.3. Formedon 68. F.N.B.201. Lib 10 fo.36. Marie Portingtons caſe.

So it is if a man make a Leaſe to a woman Quamdiu caſta vixerit, or if a man make a Leaſe for life to a widow, Si tam diu in pura viduitate viuerit. So it is if a man make a Leaſe for a 100. years if the Leſſee liue ſo long, the Leſſor grants ouer the reuerſion, the Leſſee dies, the Grantee may enter, Cauſa qua ſupra.

2. Another diuerſitie is betweene a condition annexed to a freehold, and a condition annexed to a Leaſe for yeares.

Brooke tit. Condition in Abb. 11.H.7. Lopping de Bramley 10.E.3.2. 10. Aſſ pl.24. Pl. Com.136. 11.H.7.17. 19.R.2. Dene 10.

For if a man make a gift in taile or a Leaſe for life vpon condition, that if the Donee or Leſſee goeth not to Rome before ſuch a day, the Leaſe ſhall ceaſe or be voide, the Grantee of the reuerſion ſhall neuer take aduantage of this condition, becauſe the eſtate cannot ceaſe before an entrie, but if the Leaſe had beene but for yeares, there the Grantee ſhould haue taken aduantage of the like condition, becauſe the Leaſe for yeares ipſo facto by the breach of the condition without any entrie was voyde, for a Leaſe for yeares may begin without ceremony, and ſo may end without ceremony: but an eſtate of freehold cannot begin nor end without ceremonie. And of a voide thing an ſtranger may take benefit, but not of a voydable eſtate by entrie.

Pl. Com.313.314. in Scolaſtickes caſe.

¶ *Al feoffor, ou al donor, &c. ou a lour heires, &c.* Here is to be obſerued a diuerſity betweene a reſeruation of a rent and a re-entry, for (as it hath beene ſaid) a rent cannot be reſerued to the heire of the Feoffor, but the heire may take aduantage of a condition, which the Feoffor could neuer doe. As if I infeoffe another of an acre of ground vpon condition that if mine heire pay to the Feoffee, &c. 20. ſhillings, that he and his heires ſhall re-enter, this condition is good, and if after my deceaſe my heire pay the 20. ſhillings, he ſhall re-enter for he is priuie in blood, and enioy the land as heire to me.

15.E.4.14.a.

21.H.7.18.a.

¶ *Forſque tantſolement al feoffor, &c. ou a lour heires.* Our Author ſpeaketh here of naturall perſons for an example, for if a Biſhop, Archdeacon, Parſon, Prebend, or any other body politique or Corporate, Eccleſiaſticall or Temporall make a Leaſe, &c. vpon condition, his ſucceſſor may enter for the Condition broken, for they are priuie in right.

And ſo if a man haue a Leaſe for yeares, and demiſe or grant the ſame vpon condition, &c. and die, his Executors or Adminiſtrators ſhall enter for the condition broken, for they are priuie in right, and repreſent the perſon of the dead.

(y) If Ceſty que vſe had made a leaſe for yeares, &c. vpon Condition, the Feoffees ſhould not enter for the Condition broken, for they are priuie in eſtate, but, not priuie in blood. (y) 27.H.8.1.

Another diuerſitie is in caſe of a Leaſe for yeares, where the condition is that the Leaſe ſhall ceaſe or be voide as is aforeſaid, and where the condition is, that the Leſſor ſhall re-enter, for there the Grantee as Littleton ſaith, ſhall neuer take benefit of the condition.

And it is to be obſerued that where the eſtate or Leaſe is Ipſo facto voide by the condition or limitation, no acceptance of the rent after can make it to haue a continuance; Otherwiſe it is of an eſtate or Leaſe voidable by entrie. Pl.Com. Browninge Caſe.136.

Another diuerſitie is betweene conditions in Deed whereof ſufficient hath beene ſaid before, and conditions in Law. As if a man make a Leaſe for life, there is a condition in Law annexed vnto it, that if the Leſſee doth make a greater eſtate, &c. that then the Leſſor may enter. Of this and the like conditions in Law which doe giue an entrie to the Leſſor, the Leſſor himſelfe and his heires ſhall not only take benefit of it, but alſo his Aſſignee and the Lord by Eſcheate euery one for the condition in Law broken in their owne time. Another diuerſitie there is betweene the iudgement of the Common Law whereof Littleton wrote, and the Law at this day by force of the ſtatute (*) of 32.H.8.cap.34. (a) For by the Common Law no Grantee or Aſſignee of the reuerſion could (as hath beene ſaid) take aduantage of a re-entrie by force of any Condition. For at the Common Law, if a man had made a Leaſe for life reſeruing a rent, &c. and if the rent be behinde a Re-entrie, and the Leſſor grant the reuerſion ouer, the Grantee ſhould take no benefit of the condition for the cauſe before rehearſed. But now by the ſaid Statute of 32.H.8. the Grantee may take aduantage thereof, and vpon demand of the rent and non-payment he may re-enter. By which act it is prouided, that aſwell euery perſon which ſhall haue any grant of the King of any reuerſion, &c. of any lands, &c. which pertained to Monaſteries, &c. as alſo all other perſons being Grantees or Aſſignees, &c. to or by any other perſon or perſons, and their Heires, Executors, Succeſſors and Aſſignees ſhall haue like aduantage againſt the Leſſees, &c by entrie for non-payment of the rent, or for doing of waſte or other forfeiture, &c. as the ſaid Leſſors or Grantors themſelues ought or might haue had. Vpon this Act diuers reſolutions and iudgements haue beene giuen which are neceſſary to be knowne. (*) 32.H.8. cap.34. in le preamble (a) 26.H.6.tit.entre cong.49

1. That the ſaid Statute is generall, viz. (b) that the Grantee of the reuerſion of euery common perſon aſwell as of the King ſhall take aduantage of conditions. (b) Pl.Com.Hill & Grangers caſe, 175.176. M.10.& 11.Eliz.180. Dier.Ibid.

2. That the Statute doth extend to Grants made by the Succeſſors of the King albeit the King be only named in the act.

3. That where the Statute ſpeaketh of Leſſees that the ſame doth not extend to gifts in taile. 14.Eli.Dier 309. Wynters caſe.

4. That where the Statute ſpeakes of Grantees and Aſſignes of the reuerſion, (d) that an Aſſignee of part of the ſtate of the reuerſion may take aduantage of the Condition. As if Leſſee for life be, &c. and the reuerſion is granted for life, &c. So if Leſſee for yeares, &c. be, and the reuerſion is granted for yeares, the Grantee for yeares ſhall take benefit of the Condition in reſpect of this word (Executors) in the Act. (d) Pl.Com.Kidwellyes caſe 69. Vid.Dier Mich.14.& 15. Eliz.309. Vid.7.E.3.54. Simile adiud.ad in Communi lance in the Lord Dyers time, P.17.Eliz. Mich.14.& 15 Eliz. Dier 309.adiudge Winters caſe.

5. That a Grantee of part of the reuerſion, ſhall not (e) take aduantage of the Condition, as if the Leaſe be of three acres reſeruing a rent vpon condition, and the reuerſion is granted of two acres, the rent ſhall be apportioned by the act of the parties, but the condition is deſtroyed, for that it is entire and againſt common right. (e) Lib.5.fo.54. Knights caſe. Wynters caſe, vbi ſupra.

6 That in the Kings caſe the condition in that caſe is not deſtroyed but remaines ſtill in the King. Knights caſe vbi ſupra.

7 By act in Law a condition may bee apportioned in the caſe of a common perſon, as if a Leaſe for yeares be made of two acres, one of the nature of Burrough English, the other at the Common Law, and the Leſſor hauing iſſue two ſonnes, dieth, each of them ſhall enter for the condition broken, and likewiſe a condition ſhall be apportioned by the act and wrong of the Leſſee, as hath beene ſayd in the Chapter of Rents. Lib.4.fo.120. Dumpers caſe.

8. If a Leaſe for life bee made, reſeruing a rent vpon condition, &c. the Leſſor leuies a fine of the reuerſion, he is Grantee or Aſſignee of the reuerſion, but without attornement he ſhall not take aduantage of the Condition, for the makers of the makers of the Statute intended to haue all neceſſarie incidents obſerued, otherwiſe it might be miſchieuous to the leſſee. Reſolued in Dukes caſe Paſc. 20.Eliz. in Communi Banco. Mallories caſe, lib.5. fo.112.b.

9. There is a diuerſitie betweene a Condition that is compulſarie, and a Power of Reuocation that is voluntarie; for a man that hath a power of reuocation, may by his owne act extinguiſh his power of Reuocation in part, as by leuying of a fine of part, and yet the power ſhall remaine for the reſidue, becauſe it is in nature of a limitation, and not of a Condition, and ſo it as reſolued (b) in the Earle of Shrewſburies caſe in the Court of Wards, Paſch.39.Eliz. and Mich.40.& 41.Eliz. (b) 14.Eliz.Dyer 39.

10. If the Leſſor bargaine and ſell the reuerſion by Deed indented and inrolled, the Bargainee is not in the Per by the Bargainor, and yet he is an Aſſignee within the Statute.

So if the Leſſor grant the reuerſion in fee to the vſe of A. and his heires, A. is a ſufficient Aſſignee within the Statute, becauſe he comes in by the act and limitation of the partie, albeit he is in the Poſt, and the words of the Statute be, To or By, and they bee Aſſignees to him, although they be not by him: but ſuch as come in meerely by act in Law, as the Lord of the Villeine, the Lord by Eſcheat, the Lord that entreth or claimeth for Mortmaine, or the like, ſhall not take benefit of this Statute.

Lib 5 fo.113. Mallaries caſe. Lib 8 fol.92, Leames caſe.

11 If the Leſſor in the caſe before bargaine and ſel the reuerſion by Deed indented and inrolled, or if the Leſſor make a feoffement in fee, and the Leſſee re-enter, the Graunte or Feoffee ſhall not take any aduantage of any Condition, without making notice to the Leſſee.

And ſo was it reſolued in Wynters caſe. Mich. 14. & 15 Eliz. in Common Banco and oftentimes ſince. V. Dyer 309.

12 Albeit the whole words of the Statute be, for non-payment of the Rent, or for doing of waſt or other forfeiture, yet the Grantees or Aſſignees ſhall not take benefit of euerie forfeiture, by force of a condition, but onely of ſuch conditions as either are incident to the reuerſion, as Rent, or for the benefit of the ſtate, as for not doing of waſt, for keeping the houſes in reparations, for making of Fences, ſcouring of Ditches, for preſeruing of woods, or ſuch like, and not for the payment of any ſumme in Groſſe, deliuerie of Corne, Wood, or the like, ſo as other forfeiture ſhall be taken for other forfeitures like to thoſe examples which were there put, (videlicet) of payment of Rent, and not doing of Waſt, which are for the benefit of the Reuerſion.

Section 348.

¶ *AL Seignior per voy de Eſcheat, &c.*

Note here it appeareth, That the Lord by Eſcheat ſhall diſtreyne for the Rent, and yet the Rent was reſerued to the Leſſor and his heires, but both Aſſignees in Deed and Aſſignees in Law ſhall haue the rent, becauſe the Rent being reſerued of Inheritance to him and his heires, is incident to the reuerſion, and goeth with the ſame. But if the Rent were reſerued to him and his Aſſignes, and the Leſſor aſſigned ouer the reuerſion, and dieth, the Aſſignes ſhall not haue the Rent after his deceaſe, becauſe the Rent determined by his death, for that it was not reſerued to him, his heires, and Aſſignes.

19.E.3. Reſerue 14.

¶ *Mes il ne poet enter en la terre per force del Condition, &c.*

Hereby it appeareth, That at the Common Law neither Aſſignes in deed, nor Aſſignes in Law could haue taken the benefit of either entrie or re-entrie, by force of a condition.

¶ *Pur ceo que il neſt paſſe heire al Leſſor, &c.*

(f) *21.H.7.18. 17.Aſſ 20. 19.E.3.Gard 113.114. 18.Aſſ.pl.18. Lib.7. fol 7. The Earle of Bedfords caſe.*

¶ Item ſi ſoyt Seignior et tenant, & l'tenant fait vn tiel leaſe pur terme de vie, rendant a Leſſor et a ſes hẽs tiel annual rẽt, & pur default de payment vn re-entrie, &c. ſi apres l'Leſſor mozuſt ſans heire durant la vie le Tenaunt a terme de vie, per que le reuerſion deuient al Seignior per voy deſcheate, et puis le rent de le Tenaunt a terme de vie ſoit adeꝛere, l'Seignior poet diſtreyner l'Tenant pur le Rent arere: Mes il ne poet enter en la terre per force del condition, &c. pur ceo que il neſt paſſe heire al Leſſor, &c.

ALſo if Lord and Tenant be, and the Tenant make a Leaſe for terme of life, rendring to the Leſſor and his Heyres ſuch an annuall Rent, and for default of payment, a re-entrie, &c. if after the Leſſor dieth without heire during the life of the Tenant for life, whereby the Reuerſion commeth to the Lord by way of Eſcheat, and after the rent of the tenant for life is behind, the Lord may diſtreyn the Tenant for the rent behind, but he may not enter into the Land by force of the condition &c. becauſe that he is not heire to the Leſſor, &c.

The Gardein in Chiualrie or in Socage ſhal in the right of the heire take benefit of a Condition by entrie or re-entrie, by the Common Law, and ſo it is here implied.

Section 349.

¶ Item ſi terre ſoit graunt a vn home pur terme de deux ans ſur tiel condition, que ſil payeroit al grantor deins les dits deux ans 40. Markes adonques il aueroit la terre a luy et a ſes heyres, &c. en ceſt caſe ſi le Grantee enter per force de le Grant ſans aſcun liuerie de ſeiſin fait a luy per le Grantor, et puis il paya al Grauntor les 40. Markes deins les deux ans, vncore il nad riens en la terre forſque pur terme de deux ans, pur ceo que nul liuerie de Seiſin a luy fuit fait al commencement. Car ſil aueroit Franktenement et fee en ceſt caſe, pur ceo que il ad performe le condition, donque il aueroit Franktenement per force del prime graunt, lou nul liuerie de Seiſin de ceo fuit fait, que ſeroit inconuenient, &c. Mes ſi le Grantor vſt fait liuerie de ſeiſin al Grantee per force de la Grant, donque aueroit le Grantee le Franktenement et l'fee ſur meſme le condition.

ALſo if land bee graunted to a man for terme of two yeares, vpon ſuch condition, That if hee ſhall pay to the Grauntor within the ſayd two yeares fortie Marks, then he ſhall haue the Land to him and to his Heyres, &c. In this caſe if the Grantee enter by force of the Grant, without any Liuerie of Seiſin made vnto him by the Grauntor, and after he payeth the Grauntor the fortie Markes within the two yeares, yet he hath nothing in the land but for terme of two yeares, becauſe no liuerie of Seiſin was made vnto him at the beginning: for if he ſhould haue a freehold and fee in this caſe, becauſe he hath performed the condition, then he ſhould haue a freehold by force of the firſt Grant, where no liuerie of Seiſin was made of this, which would be inconuenient, &c. but if the Grauntor had made Liuerie of Seiſin to the Grantee, by force of the Graunt then ſhould the Grauntee haue the Freehold and the Fee vpon the ſame condition.

¶ HEre fiue things are to be obſerued: Firſt, Littleton here putteth an example of a condition precedent. Secondly, That ſuch a Condition which createth an eſtate may be made by Paroll without Deed. Thirdly, That Liuerie of Seiſin in this caſe muſt be made before the Leſſee enter, (as Littleton here ſaith at the beginning) for after his entrie liuerie made to him that is in poſſeſſion is void, as hath beene ſayd. Fourthly, That if no Liuerie of Seiſin be made, that no Fee ſimple doth paſſe, although the money be paid. Fifthly, That it is inconuenient, that the Fee ſimple ſhould paſſe in this caſe without liuerie of ſeiſin. Sixtly, That Argumentum ab inconuenienti, is forcible in Law, as often hath been and ſhall be obſerued. See more of this kind of condition in the Section next following. *V. Sect.* 60.

¶ *Et a ſes heires, &c.* Here (&c.) implieth an eſtate in taile, or a Leaſe for life.

Sect.

Sect. 350.

¶ *Ore il ad fee ſimple conditionall, &c.*

¶ Item ſi terre ſoyt grant a vn home pur ẽme de 5. ans, ꝑ condition, que ſil pay al Grantor deins les deux primer ans 40. Markes, que adonque il aueroit fee, ou autrement forſque pur terme de les v. ans, et liuerie de Seiſin eſt fait a luy pur force de le graunt, ore il ad fee ſimple conditionall, &c. Et ſi en ceo caſe le Grauntee ne paia my al Grantor les 40. Markes deins les primers deux ans, donques immediate apres meſmes les deux ans paſſes, le fee et le franktenement eſt, et ſerra adiudge en le Grantor, pur ceo que le Grantor ne poet apres les dits deux ans maintenant enter ſur le Grauntee, pur ceo que le Grantee ad vncore tilt per trois ans dauer et occupier la terre per force de ẽ le grant. Et iſſint pur ceo que le condition ỏl part le Grantee eſt enfreint, et le Grauntor ne poet entrer la Ley mittera le fee et le franktenement en le Grauntor. Car ſi Grantee en cẽ caſe fait waſt, donques apres le enfreinder de le condition, &c. et apres les deux

Alſo if Land be granted to a man for term of fiue yeares, vpon condition, That if he pay to the Grauntor within the two firſt yeares fortie Markes, that then he ſhall haue fee, or otherwiſe but for terme of the fiue yeares, and liuerie of Seiſin is made to him by force of the Grant, now he hath a fee ſimple conditionall, &c. And if in this caſe the Grauntee doe not pay to the Grantor the fortie Markes within the firſt 2 yeares, then immediately after the ſayd two yeares paſt, the fee & the freehold is and ſhall bee adiudged in the Grauntor, becauſe that the Grauntor cannot after the ſayd two yeares preſently enter vpon the Grauntee, for that the Grauntee hath yet title by three yeares to haue and occupie the land, by force of the ſame Grant. And ſo becauſe that the condition of the part of the Grauntee is broken, and the Grauntor cannot enter, the Law will put the fee and the Freehold in the Grauntor: for if the Grauntee in this caſe makes Waſt, then after the breach of the condition, &c. and after the two

31.E.1.tit.Feoffments & Faits 119. 31. E.1. tit. Feoffments & Faits 119. A letteth a Mannor to B. for term of twenty yeres, and the Deed would, That after the terme of twentie yeares that B. and his heirs ſhould hold the ſayd Mannor for euer by twelue pounds rent, A. taketh a wife and dieth before the term be paſt, the wife of A. demands Dower. And there Wayland chiefe Juſtice ſaith, That the Fee and the franktenement doth repoſe in the perſon of the Leſſor vntill the terme be paſt, for before that, the condition is not performed, for if the Leſſor had aliened the land before the end of the terme, B. ſhould not recouer by a writ of Aſſiſe, and by the death of the Leſſor the chiefe Lord ſhould haue had the wardſhip

deux ans, le grantor auera son briefe de wast. Et ceo est bone proofe adonque que le reuersion est en luy, &c.

yeares, the Grauntor shall haue his Writ of Waste. And this is a good proofe then, that the reuersion is in him, &c.

of the heire of the Lessor, and by iudgement the wife recouered Dower, for the tenemor could not haue fee, all which be the words of that Booke.

11. E. 2. tit. voucher 265. I letteth Lands to B for eight yeares, and if the Lessor pay not a hundred Markes to the

11. E. 2. tit. voucher 265.

Lessee at the end of the tearme, that then he shall haue fee: by the non-payment of the money. The fee and franktenement accrueth to him, and before, the Lessee cannot bee impleaded in a Præcipe, neyther shall he vouche.

(x) 7. E. 3. 10. I. letteth certaine lands to N. for the tearme of ten yeares, rendring a hundred shillings by the yeare to him and his heires, and granted by deed, that if he held the lands ouer to him and his heires, that he should render by the yeare twenty pounds, the Lessor during the tearme brought an Action of debt for the rent. And there Herle Chiefe Iustice of the Common Pleas giueth the rule, that during the tearme the Lessee had but for yeares, and therefore the Action of Debt maintenable.

(x) 7. E 3 10. Pl. Com. Sayer case 272.

(y) 44. E. 3. tit. attaint. 22. and 43. Ass. p. 41. D. and A. infeoffe the two Plaintifes in the Assise, they let those lands to S. for tearme of nine yeares vpon Condition, that if the Plaintife in the Assise pay a hundred shillings to S. during the tearme that S. shall haue it but for nine yeares, and if they pay it not that S. shall haue fee. S. continueth his estate by one yeare, and after granteth his estate to one H which H. continueth his estate by two yeares, and granted the residue of the tearme to R. and within the tearme of nine yeares the Plaintifes in the Assise pay the hundred shillings to S. R. continueth his possession after the tearme, and infeoffeth D which infeoffeth the Lord Furniuall, against whom and others without any clayme or entrie made by the Plaintifes, after the nine yeares ended, hee brought his Assise, and after adiournment recouered.

(y) 44. E. 3. tit. attaint. 22. 43. Ass p. 41.

(z) 10. E. 3. 39. & 40 R. doth let certaine lands to I. for tearme of twelue yeares, and in surretie of his tearme he maketh a Charter of the fee vpon Condition, that if hee bee disturbed within the tearme, that he cannot hold the lands vntill the end of the tearme, that then he shall hold the lands to him and his heires for euer, and seisin was deliuered vpon the one Charter and the other. R. within the tearme plowed and sowed the land, and tooke the profits against the will of I. and I. vpon this disturbance had fee and recouered in Assise.

(z) 10. E. 3 39. 40. 10. Ass. 15 tit. Ass. 261. Pl Com. Brownings case 135.

6. R. 2 tit. Quid iuris clamat. 20 If a Lease be made for a tearme vpon Condition, if the Lessee pay a certaine summe within the tearme, that then he shall haue fee, if hee pay the money hee shall haue the fee, but if before the day of payment the Lessor leuieth a fine to another the Lessee ought to attorne by protestation, and if he pay the money, the Conusee shall haue it, and the Conusee shall haue the rent reserued vntill the day of payment, and if Land be letten for tearme of yeares vpon Condition, that if the Lessee be ousted within the tearme by the Lessor, that hee shall haue fee, if hee be ousted, he shall haue fee by the Condition, and notwithstanding hee shall not haue any Assise, but hee must hap possession after the ouster, and of this he shall haue an Assise.

6. R. 2. tit. quid iuris clamat 20.

And generally the Bookes (*) are cited that make a diuersitie betweene a Condition precedent, and a Condition subsequent.

(*) 15. H. 7. 1. a. 14 H. 8. 18. 20. 3. H. 6. 6. b.

And lastly, they cite Dier, (a) 10. Eliz. 281. and in Say and Fullers case, Pl. Com 272. the opinions of Dyer and Browne.

(a) *Dyer 10. Eliz 281. Pl. Com. 272.*

Notwithstanding all this there are those that defend the opinion of Littleton, both by reason and authoritie. By reason for that by the rule of Law a liuery of seisin must passe a present Freehold to some person, and cannot giue a Freehold in futuro, as it must doe in this case, if after liuery of seisin made the Freehold and Inheritance should not passe presently, but expect vntill the Condition be performed, and therefore if a Lease for yeares bee made to beginne at Michaelmas, the remaynder ouer to another in fee, if the Lessor make liuery of seisin before Michaelmas the liuery is void, because if it should worke at all it must take effect presently and cannot expect.

Vide Litt. in the Chapter of Tenants for yeares.

Secondly, they say that when the Lessor makes liuery to the Lessee, it cannot stand with any reason that against his owne liuery of seisin a Freehold should remayne in the Lessor, seeing there is a person able to take it. But if a man by Deed make a Lease for yeares the remaynder to the right heires of I. S. and the Lessor make liuery to the Lessee secundum formam chartæ this liuery is void, because during the life of I. S. his right heire cannot take (for nemo est hæres viuentis) and in that case the Freehold shall not remayne in the Lessor, and expect the death of I. S. during the tearme, for albeit I. S. die during the tearme, yet the remaynder is void because a liuery of seisin cannot expect.

And they ſay further that ſeeing all the Bookes aforeſaid proove that ſuch a Condition is good, and that the liuery made to the Leſſee is effectuall, by conſequence the Freehold and Inheritance muſt paſſe preſently, or not at all.

(b) Hill & Granges Pl.Com.171.

And it is not rare, ſay they, in our Bookes that words ſhall bee tranſpoſed and marſhalled ſo as the feoffment or grant may take effect. (b) As if a man in the moneth of February, make a Leaſe for yeares reſerving a yearely rent payable at the Feaſts of Saint Michael the Archangell, and the Annunciation of our Lady during the tearme, the Law (in this Caſe of reſeruation) ſhall make tranſpoſition of the Feaſts, viz. at the Feaſts of the Annunciation, and of Saint Michael, the Archangell, that the rent may be paid yearely during the tearme. And ſo it is (c) in caſe of a grant of an Annuitie. And further they take a diuerſitie in this caſe betweene a Leaſe for life, and a Leaſe for yeares. For in caſe of a Leaſe for life with ſuch a Condition to haue fee, they agree that the Fee ſimple paſſeth not before the performance of the Condition, for that the liuery may preſently worke vpon the Freehold: but otherwiſe it is in the caſe of a Leaſe for yeares. Alſo they take a diuerſitie betweene Inheritances that lye in grant and Inheritances that lie in Liuery. For they agree that if a man grant an Annowſon for yeares vpon condition, that if the Grantee pay twentie ſhillings, &c. within the tearme, that then he ſhall haue fee, the Grantee ſhall not haue fee vntill the Condition be performed, Et ſic de ſimilibus. But otherwiſe it is where liuery of ſeiſin is requiſite, and therefore if the King make ſuch a Leaſe for yeares, vpon ſuch a condition, the fee ſimple ſhall not paſſe preſently becauſe in that caſe no liuery is made.

(c) 10.E.3. Seignior Stafford's caſe, lib.8.fol.74. Pl.Com.Nicho's caſe 487.

They alſo make ſeuerall anſweres to the Authorities before cited. For as to the caſe in 31 E.1. they ſay that either the caſe is miſreported, or elſe the Law is againſt the iudgement. For the Caſe is but this, that a man make a Leaſe of a Mannor to B for twenty yeares, and that after the twenty yeares B. ſhall hold the Mannor to him and his heires by twelue pound rent and (as it muſt bee intended) maketh liuery of ſeiſin, in this caſe it is cleere (ſay they) that B hath a fee ſimple Maintenant, for there is no Condition precedent in the caſe.

As for the caſe in 12.E.2. the caſe (as it is put in the Booke) is that Iohn de Marre made a Charter to Iohn de Burford of Fee ſimple, and the ſame day it was couenanted betweene them that Iohn de Burford ſhould hold the ſame tenements for eight yeares, & if he did not pay a hundred Markes at the end of the tearme that the Land ſhould remayne to Iohn de Burford, and his heires. In which caſe, ſay they, there is direct repugnancie, for firſt the Charter of the Fee ſimple was abſolute, and after the ſame day it was couenanted betweene them, &c. this Couenant being made after the Charter, could neyther alter the abſolute Charter, nor vpon a Condition precedent giue him a Fee ſimple that had a Fee ſimple before. Seignior Stafford's caſe vbi ſup.

To all the other Bookes, viz. 7.E.3. 10.E.3. 10 Aſſ. 44.E.3. 43 Aſſ. and 6.R.2. they ſay that being rightly vnderſtood they are good Law, for in ſome of thoſe Bookes, as namely in 10.E.3. 10 Aſſ. &c. it appeareth that there was a Charter made in ſuretie of the tearme, which ſay they muſt be intended thus, viz. A man maketh a Leaſe for yeares, the Leſſee enters and the Leſſor makes a Charter to the Leſſee, and thereby doth grant vnto him, that if he pay vnto the Leſſor a hundred Markes during the tearme, that then he ſhall haue and hold the Lands to him and to his heires.

In this caſe, ſay they, there need no liuery of ſeiſin, but doth enure as an executorie grant by increaſing of the ſtate, and in that caſe, without queſtion, the Fee ſimple paſſeth not before the Condition performed. Pl.Com.in Nichol's caſe 487.

And therefore Littleton warily putteth his caſe of an eſtate made all at one time by one Conueyance, and a liuery made thereupon.

For Littleton himſelfe in the Section before ſayth, That in that caſe without a liuery nothing paſſeth of the Freehold and Inheritance.

And this diuerſitie (ſay they) is proued by Bookes, and thereupon they cite (d) 10 E.3.54. in a Writ of Dower, the Tenant vouched to Warrantie, the vouchee as to part pleaded that the husband was neuer ſeiſed of any eſtate whereof ſhe might bee endowed, as to the reſidue the tenant pleaded that he leſſed to the husband in gage vpon Condition, that if the Leſſor paid ten Markes at a certaine day, that he ſhould re-enter, and if hee fayled of payment, that the Land ſhould remayne to the husband and his heires, which muſt be intended to be done by one entire Act, and pleaded that he paid the money at the day which is allowed to bee a good plea, Ergo, the Fee ſimple paſſed by the Liuery, otherwiſe the plea had amounted that the husband was neuer ſeiſed, &c. And ſay they that it cannot be intended, that the Iudges ſhould bee of one opinion in Trinitie Tearme, and of another opinion in Michelmaſſe Tearme in the ſame yeare, and therefore (they hold) their ſeuerall opinions, are in reſpect of the ſaid diuerſitie of the caſes.

(d) 10.E.3.54.

(e) 32.E.3.tit.garr.30. (e) 32.E.3.tit.garr.30. A Tenant by the curteſie made a Leaſe for yeares, & in ſuretie of the tearme, &c. made a Charter in Fee ſimple, and made Liuery according to the Charter (note a ſpeciall mention made of Liuery in this caſe) and iſſue being taken in an Aſſiſe, whether the

Tenant

Tenant by the courte ſe demiſed in fee, vpon the ſpeciall matter found, it was adiudged that a Fee ſimple paſſed, and that the heire might enter for a forfeiture, which ſay they in caſe of a Liuery is an expreſſe iudgement in the point agreeing with the opinion of Littleton.

(f) 43.E.3.35. in an Action of waſte againſt one in Lands which hee held for tearme of yeares, Belknap pleaded thus for the Defendant, that the Defendant was ſeiſed in fee, and infeoffed the Plaintife, &c. and after the Plaintife demiſed the Land backe againe to the Defendant for yeares vpon condition, that if the Defendant paid certaine money, &c. that then the Defendant might retaine the land to him and to his heires, and if not, the Plaintife might enter, &c. and pleaded that the tearme endured, and that the day of payment was not come, and demanded iudgement, if the Plaintife may maintaine an Action of waſte, inaſmuch as the Defendant had now a Fee ſimple, and ſhewed forth the Indenture of Leaſe with the condition, (which agreeth with Littletons caſe) all being done at one time, and by one Deed, and a Liuery intended, and with Littletons opinion alſo. It is true, ſay they, that Cauendiſh accounſell with the Plaintife offered to demurre, but neuer proceeded. (g) Vide 20. Aſſ. pl.20. (f) 43.E.3.35.

(g) 20.*Aſſ.Pl.*20.

Other Authorities they cite, but theſe (as I take it) are the principall, and therefore for auoyding of tediouſneſſe, hauing I feare beene too long vpon this point, the others I omit. Only this they adde that Littleton had ſeene and conſidered of the ſaid Bookes, and haue ſet downe his opinion where liuery of ſeiſin is made vpon a Conueyance made at one time, as hath beene ſaid, that he hath Fee ſimple conditionall.

Benigne lector vtere tuo iudicio, nihil enim impedio. Conditio beneficialis quæ ſtatum conſtruit benigne ſecundum verborum intentionem eſt interpretanda, odioſa autem quæ ſtatum deſtruit ſtricte ſecundum verborum proprietatem eſt accipienda. *Lib.*8.*fo.*90. *Frances caſe.*

A Leaſe is made to a man and a woman for their liues vpon condition, that which of them two ſhall firſt marrie, that one ſhall haue fee, they entermarrie, neyther of them ſhall haue fee, for the incertaintie.

Note if the condition be to increaſe an eſtate, (that is to ſay,) to haue fee vpon payment of money to the Leſſor or his heires at a certaine day, before the day the Leſſor is attainted of treaſon or felony, and alſo before the day is executed, now is the condition become impoſſible by the act and offence of the Leſſor, and yet the Leſſee ſhall not haue fee becauſe a precedent condition to encreaſe an eſtate muſt be performed, and if it become impoſſible, no eſtate ſhall riſe.

¶ *Pur ceo que le grantor ne poet enter, &c.* Regularly when any man will take aduantage of a condition, if he may enter he muſt enter, and when he cannot enter he muſt make a clayme, and the reaſon is for that a free-hold and inheritance ſhall not ceaſe without entry or clayme, and alſo the feoffor or Grantor may waiue the condition at his pleaſure. *Pl.Com. Browning & Beſtons caſe,*133.*b.*

As if a man grant an Aduowſon to a man and to his heires vpon condition, that if the Grantor, &c. pay 20.pound on ſuch a day, &c. the ſtate of the Grantee ſhall ceaſe or bee vtterly void. The Grantor payeth the mony yet the ſtate is not reueſted in the Grantor before a claym, and that clayme muſt be made at the Church. (d) And ſo it is of a reuerſion or remainder of a Rent or Common or the like, there muſt be a clayme before the ſtate be reueſted in the Grantor by force of the condition, and that clayme muſt be made vpon the land. *Vid.Littleton cap. Villein.* (d) *Pl.Com.Brownings caſe,*133.*b.*

A fortiori in caſe of a Feoffment which paſſeth by Liuery of ſeiſin there muſt be a re-entry by force of the condition before the ſtate be voide. 42.*E.*3.1.

Queere if Y. Bergaine hath any right to hold the Eſtate. Whose Eſtate he is in Bargain ex: & who ſhall haue Y. Eſtate interea.

If a man bargaineth and ſelleth land by Deed indented and inrolled with a Prouiſo that if the Bargainer pay, &c. that then the ſtate ſhall ceaſe and be voide, he payeth the money, the ſtate is not reueſted in the Bargainer before a re-entry, and ſo it is if a bargaine and ſale be made of a Reuerſion Remainder Aduowſon, Rent, Common, &c. And ſo it is if lands be deuiſed to a man and his heires vpon condition, that if the Deuiſee pay not 20.pound at ſuch a day, that his eſtate ſhall ceaſe and be voyde; the money is not paid, the ſtate ſhall not bee veſted in the heire before an entrie. And ſo it is of the Reuerſion or Remainder, an Aduowſon, Rent, Common, or the like. *Lib.*2*ſo.*50. *Sir Hugh Chalmeleys caſe.*

But the ſaid rule hath diuers exceptions. Firſt, in this preſent caſe of Littleton, for that he can make no entrie, hee ſhall not be driuen to make any clayme to the reuerſion, for ſeeing by conſtruction of Law the freehold and inheritance paſſeth Maintenant out of the Leſſor; by the like conſtruction, the freehold and inheritance by the default of the Leſſee ſhalbe reueſted in the Leſſor without entrie or clayme. *Vid.lib.*1.*ſol.*174. *Digs caſe.* 20.*E.*4.18.19.

2. If I grant a Rent charge in fee out of my land vpon condition, there if the condition be broken, the rent ſhall be extinct in my land, becauſe I (that am in poſſeſſion of the land) neede make no clayme vpon the land, and therefore the Law ſhall adiudge the rent voyde without any clayme. *Pl Com.Brownings caſe,*133.*b.* 20.*E.*4.19.

3. If a man make a feoffment vnto me in fee vpon condition that I ſhall pay vnto him 20. pound at a day, &c. before the day I lette vnto him the land for yeares reſerving a rent, and after 20.*E.*4.19. 20.*H*7.4*b.*

after faile of payment the Feoffee ſhall retaine the land to him and to his heires, and the rent is determined and extinct for that the Feoffor could not enter, nor need not clayme vpon the land for that he himſelfe was in poſſeſſion, and the condition being collaterall is not ſuſpended by the Leaſe, otherwiſe it is of rent reſerued.

Lib.1.174. Digges caſe.

4. If a man by his Deed in conſideration of fatherly loue, &c. couenant to ſtand ſeiſed to the vſe of himſelfe for life, and after his deceaſe to the vſe of his eldeſt ſonne in taile, the remainder to his ſecond ſonne in taile, the remainder to his third ſonne in fee with a Proviſo of reuocation, &c. the father doth make a reuocation according to the Proviſo, the whole eſtate is maintenant reueſted in him without entrie or clayme for the cauſe aforeſaid

¶ *Le grantee ad vncore title pur 3. ans.* **By this it appeareth that** albeit the Leſſee had Pro tempore a fee ſimple, yet after that fee ſimple is deueſted out of him, and veſted in the Leſſor he ſhall hold the lands for three yeares by the expreſſe limitation of the parties.

Pl. Com. in Fulmerſtons caſe. 107.b.

If a man make a Leaſe for 40. yeares, the Leſſee afterwards taketh a Leaſe for 20. yeares vpon condition that if he doth ſuch an act, that then the Leaſe for 20. yeares ſhall be voide, and after the Leſſee breake the condition, by force whereof the ſecond Leaſe is voide, notwithſtanding the Leaſe for 40. yeares is ſurrendred, for the condition was annexed to the Leaſe for 20. yeares, but the ſurrender was abſolute. So it is if a man make a Leaſe for 40. yeares, and the Leſſor grant the reuerſion to the Leſſee vpon condition, and after the condition is broken, the tearme was abſolutely ſurrendered. And the diuerſitie is when the Leſſor grants the reuerſion to the Leſſee vpon condition, and when the Leſſee grants or ſurrenders his eſtate to the Leſſor, for a condition annexed to a ſurrender may reueſt the particular eſtate, becauſe the ſurrender is conditionall. But when the Leſſor grants the reuerſion to the Leſſee vpon condition, there the condition is annexed to the reuerſion and the ſurrender abſolute.

7.E.4.29. 14.E.4.6. 45.E.3.

A gardeine in Chiualry tooke a feoffment of the infant within age that was in his ward, and the infant brought an Aſſiſe, and the Gardein ſhall be adiudged a Diſſeiſor which proueth that the feoffment as againſt the infant was voide, and yet by acceptance thereof the intereſt of the Gardein was ſurrendred.

8.E.2. Aſſ.395.

A man maketh a Leaſe for terme of life by Deede, reſerning the firſt ſeuen yeares a Roſe, and if the Leſſee will hold, the land after the ſeuen yeares, to pay a rent in money, the Leſſee will not hold ouer, but ſurrender his tearme; In this caſe in iudgement of Law he had but a tearme for ſeuen yeares. And ſo it is if a man make a Leaſe for life, and if the Leſſee within one yeare pay not 20. ſhillings, that he ſhall haue but a tearme for two yeares if he pay not the money the eſtate for life is determined, and he ſhall haue the land but for two yeares.

50.E.3.27.

¶ *Ceo eſt bone proofe adonques que le reuerſion eſt in luy, &c.* **Here is** implyed that no man can haue an action of waſte, vnleſſe the reuerſion be in him, and by the Authority of our Author the reaſon of a caſe, and well applyed is a good proofe in Law.

Section 351.

¶ Mes en tiels caſes de feoffment ſur condition, lou le feoffor poit loyalment enter pur le condition enfreint, &c. la le feoffor nad le franktenemēt deuant ſon entrie, &c.

BVt in ſuch caſes of feoffment vpon condition, where the feoffor may lawfully enter for the condition broken, &c. there the feoffor hath not the freehold before his entrie, &c.

This vpon that which hath beene ſaid is euident and needeth no further explanation.

Sect. 352.

¶ *Que le feoffee donera, &c.* Here is no time limitted, therefore the Feoffee by the Law hath time du-

3.Marie 134. Dier 14.Eliz. Dier. 311.b. 2.H.4.5. 44.E.3.9. Lib.2.fo.79.80.81.in Seigniur Cromwells caſe.

¶ Item ſi feoffment ſoit fait ſur tiel condition, que l'feoffee donera le terre al feoffor,

ALſo if a feoffment be made vpon ſuch condition that the feoffee ſhall giue the land to

foꝛ, ⁊ a la feme del feoffoꝛ, a auer ⁊ tener a eux, ⁊ a les heyres de lour deux coꝛps engendres, ⁊ pur default de tiel iſſue, le remainder al droit heyres le feoffoꝛ. En ceo cas ſi le baron deuy, viuant la feme, deuant aſcun eſtate en le taile fait a eux, ⁊c. donques doit le feoffee per la ley faire eſtate a la feme cy pres le condition, et auxy cy pres lentent de le condition que il poit faire, ceſtaſcauoir, de leſſer la terre al feñ pur terme de vie ſans impeachment de waſt, le remainder apres ſon deceaſe a les heyres de coꝛps ſa baron de luy engendres, ⁊ pur default de tiel iſſue, le remainder as droit heires le baron. Et la cauſe pur que le leaſe ſerra en ceſt cas a la feme ſole ſans impeachment de waſt, eſt pur ceo q̃ le condition eſt, q̃ leſtate ſerra fait al baron ⁊ a ſa feme en taile. Et ſi tiel eſtate vſt eſte fait en le vie le baron, donques apres le moꝛt le baron el vſt ewe eſtate ent en le taile: quel eſtate eſt ſans impeachment de waſt; Et iſſint il eſt reaſon, que cy pres que

the feoffor, and to the wife of the feoffor, to haue & to hold to them and to the heires of their two bodyes engendred, and for default of ſuch iſſue the remainder to the right heires of the feoffor. In this caſe if the husband dyeth liuing the wife before any eſtate in taile made vnto them, &c. then ought the feoffee by the law to make an eſtate to the wife as neere the condition, and alſo as neere to the entent of the condition as he may make it, That is to ſay, to let the land to the wife for terme of life without impeachment of waſte the remainder after his deceaſe to the heires of the body of her husband on her begotten, and for default of ſuch iſſue the remainder to the right heires of the husband. And the cauſe why the leaſe ſhall bee in this caſe to the wife alone without impeachment of waſte is for that the condition is, that the eſtate ſhall be made to the husband & and to his wife in taile. And if ſuch eſtate had been made in the life of the husband, then after the death of the huſband ſhe ſhould haue

ring his life, vnleſſe he be haſtened by the requeſt of the Feoffoꝛ oꝛ the heires of his body, as Littleton ſaith in the next Section.

¶ *Si le baron deuie, &c.* **But in** this caſe if the Feoffee dyeth before any Feoffment made then is the condition broken, becauſe he made not the eſtates, &c. within the time preſcribed by the Law. But if the Feoffment be made vpon condition that the Feoffee before the feaſt of St. Michael the Archangell next following giue the land to the Feoffoꝛ and to his wife in taile vt ſupra, and before the day the Feoffee dyeth, the ſtate of the heire of the Feoffee ſhall be abſolute, becauſe a certaine time is limitted by the mutuall agreement of the parties, within which time the condition becommeth impoſſible by the act of God as hath beene ſaid before, and therefoꝛe it is neceſſary when a day is limited, to adde to the condition, that the Feoffee oꝛ his heires doe perfoꝛme the condition, but when no time is limitted, then the Feoffee at his perill muſt perfoꝛme the condition during his life (although there be no requeſt made) oꝛ elſe the Feoffoꝛ oꝛ his heires may re-enter.

15. H. 7. 13. 33. H. 6. 26. 27. 9. Eliz. Dier. 262. Pl. Com. 456. Lib. 2. fo. 79. Seignior Cromwells caſe.

¶ *Fait a eux, &c.* **Here the** (&c.) implyeth according to the condition with the remainder over.

¶ *Al feoffor & a la feme, &c.* **Here** it appeareth that albeit the Feme bee a ſtranger, yet the Feoffee is not bound to make it within conuenient time, becauſe the Feoffoꝛ who is priuy to the condition is to take

27. E. 3. Dower 135. Seignior Cromwells caſe, Vbi ſupra.

toyntly with her. And ſo it is if the condition be to enfeoffe the Feoffor and an ſtranger, the Feoffee hath time during his life vnleſſe he be haſtened by requeſt. Otherwiſe it is (as hath beene ſaid) where the condition is to enfeoffe a ſtranger or ſtrangers onely.

home poit faire eſtate a lentent de condition, &c. q̃ il ſerroit fait, &c. coment que el ne poit auer eſtate en taile ſi come el puiſſoit auer ſi le done en le taile vſt eſtre fait a ſa baron et a luy en le vie ſa baron.

If a man make a feoffment in fee, vpon condition that the Feoffee ſhal make a gift in taile to the Feoffor, the remainder to a ſtranger in fee, there the Feoffee hath time during his life, as is afore ſayd, had an eſtate in taile, which eſtate is without impeachment of waſte. And ſo it is reaſon, that as neere as a man can make the eſtate to the intent of the condition, &c. that it ſhould bee made, &c. albeit ſhe cannot haue eſtate in taile, as ſhe might haue had if the gift in taile had been made to her husband and to her in the life of her husband, &c.

Seignior Cromwels caſe vb. ſup. because the Feoffor who is partie and priuie to the condition, is to take the firſt eſtate. But if the Condition were to make a gift in taile to a ſtranger, the remainder to the Feoffor in fee, there the Feoffee ought to doe it in conuenient time, for that the ſtranger is not priuie to the condition, and he ought to haue the profits preſently, as before hath beene ſayd.

¶ *De faire eſtate al feme cy pres le condition, & auxy cy pres lentent del Condition que il poet faire, &c.*

A. infeoffe B. vpon condition that B. ſhall make an eſtate in Frankmarriage to C. with one ſuch as is the daughter of the Feoffor; in this caſe he cannot make an eſtate in Frankmarriage, becauſe the eſtate muſt moue from the Feoffee, and the daughter is not of his bloud, but yet he muſt make an eſtate to them for their liues, for this is as neere the Condition as hee can. And ſo it is if the Condition be, to make to A. (which is a meere Lay man) an eſtate in frankalmoigne, yet muſt he make an eſtate to him for his life, for the reaſon heere yelded by Littleton.

A diuerſitie is to be vnderſtood betweene conditions that are to create an eſtate, and conditions that are to deſtroy an eſtate: for here it appeareth, That a condition that is to create an eſtate, is to be performed by conſtruction of Law, as neere the condition as may be, and according to the entent and meaning of the condition, albeit the letter and words of the condition cannot be performed: but otherwiſe it is of a condition that deſtroyeth an eſtate, for that is to be taken ſtrictly, vnleſſe it be in certaine ſpeciall caſes: and of this ſomewhat hath beene ſayd before in this Chapter.

30. H.8. tit. Condit. Br. 190. V. 33. H.8. tit. Ioint. Br. 62. As if a man morgage his land to W. vpon Condition, that if the Morgagor and I. S. pay twentie ſhillings at ſuch a day to the Morgagee, that then he ſhall re-enter, the Morgagor dieth before the day, I.S. payes the money to the Morgagee, this is a good performance of the condition, and yet the letter of the condition is not performed. But if the Morgagor had beene aliue at the day, and he would not pay the money, but refuſed to pay the ſame, and I. S. alone had tendred the money, the Morgagee might haue refuſed it. But if a man make a leaſe for two yeares, with a prouiſo, If the Leſſees die during the terme, the Leſſor ſhall re-enter, one Leſſee alien his part and die, the Leſſee cannot re-enter, but the Aſſignee ſhall enioy the terme ſo long as the Suruiuor liueth, and the reaſon is, becauſe the Leaſe by the prouiſo is, Not to ceaſe till both be dead. But in the former caſe, albeit the Morgagor be dead, yet the act of God ſhall not diſable I. S. to pay the money, for thereby the Morgagee receiues no preiudice: And ſo it is in that caſe, if I.S. had died before the day, the Morgagor might haue payd it.

Lib. 2. fo. 79. to. 81. Seignior Cromwels caſe. 2. H. 4. 5. And here is to be obſerued a diuerſitie when the Feoffee dieth, for then (as hath beene ſayd) the condition is broken, and when the Feoffor dieth, for then the ſtate is to bee made as neere the intent of the Condition as may be.

¶ *Al feme pur terme de ſa vie ſans impeachment de waſt.*

Here it appeareth, That this eſtate for life ought to be without impeachment of waſt, and yet if the wife doth accept of an eſtate for life, without this clauſe, without impeachment of waſt, it is good, becauſe the ſtate for life is the ſubſtance of the Grant, and the priuiledge to be without impeachment of waſt is collaterall, and onely for the benefit of the wife, and the omiſſion of it onely for the benefit of the heire.

2. H 4. 5. Seignior Cromwels caſe vb. ſupra. Alſo if the wife take husband before requeſt made, and then they make requeſt, and the ſtate

is

is made to the husband and wife, during the life of the wife this is a good performance of the condition, albeit the estate be made to the husband and wife: where Littleton saith it is to bee made to the wife, but it is all one in substance, seeing that the limitation is during the life of the wife.

¶ *Sauns impeachment de Wast*, Absque impetione vasti, (**that is**) without any challenge or impeachment of wast, and by force hereof the Lessee may cut downe the Trees and conuert them to his owne vse. Otherwise it is if the words were, Sauns impeachment per aſcun Action de Wast, for then the discharge extends but to the Action, and not to the Trees themselues, and in that case the Lessor shall haue them. *See in my Reports lib. 11. fo 83. Lib. 9. fo. 9. li. 2. 23.*

And it is to be obserued, That after the decease of the husband the state is not to bee made to the wife and the heires of her bodie by her late husband ingendred, and so to haue an estate of Inheritance as she should haue had by surrutuor,, if the estate had beene made according to the condition, but onely an estate for life without impeachment of wast, &c. for that by the authoritie of Littleton is not so neere the intent of the condition, as the case that Littleton putteth. But I will search no further into this case, but leaue it to the learned and iudicious Reader.

¶ *Et apres son decesse a les heires del corp. le Baron de luy engendres.*

Note here, admit that there were two Issues in taile, the remainder shall presently rest only in the eldest, and yet if he dieth without Issue, it shall per formam doni rest in the youngest, as hath beene sayd in the Chapter of Estate taile: and so it is tacite prœmed heere, for otherwise the condition (if there were two issues) could not be performed.

Sect. 353.

¶ Item en ceſt caſe ſi le baron et la feme ont iſſue, et deuiont deuant le done en le Taile fait a eux &c. donques le Feoffee doit faire eſtate al Iſſue et a les heires de corps ſon pere et ſon mere engendres, et pur default de tiel Iſſue le remainder a les droit heires le Baron, &c. Et meſm la Ley eſt en auters caſes ſemblables. Et ſi tiel Feoffee ne voet faire tiel eſtate, &c. quaunt il eſt reaſonablement requiſe per eux que deuoyent auer eſtate per force de le condition, &c. donque poet le Feoffor ou ſes heyres enter.

ALſo in this case if the husband and wife haue Issue, & die before the gift in taile made to them, &c. thē the feoffee ought to make an estate to the Issue, and to the heires of the bodie of his father and his mother begotten, and for default of such Issue, &c. the remainder to the right heires of the husband, &c. And the same Law is in other like cases: and if such a Feoffee will not take such estate, &c. when he is reasonably required by them which ought to haue the state by force of the Condition, &c. then may the Feoffor or his heires enter.

¶ *Quant il eſt reaſonablement requiſe per eux queux deuoient auer eſtate per force de le Condition.*

Note hereit appeareth, That the Feoffee hath time during his life to make the estate, vnlesse he be reasonably required by them that are to take the estate. This is to bee intended of parties or priuies, and not of meere strangers, for there (as hath beene sayd) the state must be made in conuenient time.

And concerning the request it is to be known, that when the request is made, the partie or priuy must request the feoffee at a time certaine, to be vpon the land, and to make the state according to the condition, for seeing no time certaine is prescribed for the making of the state, and it is incertain when the request shall bee made, such request and notice must be made as hath bin sayd before in this chap. of this Section, with the (&c.) there needeth not, vpon that which hath been said, any farther explication.

Sect.

Sect. 354.

¶ *Quere le feoffee re-infeoffera pluſors homes.* By the re-feoffment it is implied to be made to the Feoffors, for a feoffement ouer to ſtrangers cannot be ſayd a Re-feoffement, and if the feoffement ſhould be made ouer to ſtrangers onely, then as hath beene often ſayd, it muſt bee made in conuenient time.

¶ *Item ſi feoffmẽt ſoit fait ſur condition, que le feoffee re-infeoffer pluſs hões a auer et tener a eux et a lour heires a touts iours, et touts ceux que deuoient auer eſtat moront deuant aſcun eſtat fait a eux, donque doit le feoffee faire eſtate al hẽe celuy que ſurueſquiſt de eux, a auer & tener a luy et a les heires celuy que ſurueſquiſt.*

ALſo if a Feoffement bee made vpon condition, That if the feoffee ſhal re-enfeoffe many men, to haue and to hold to them and to their heirs for euer, & al they which ought to haue eſtate, die before any eſtate made to them, then ought the feoffee to make eſtate to the heire of him which ſuruiues of them, to haue & to hold to him and to the heires of him which ſuruiueth.

¶ *Al Heire celuy que ſurueſquiſt, a auer & tener a luy & a les heires celuy que ſurueſquiſt.* Hereupon queſtions haue beene made, wherefore the Habendum is not to the heires of the heire, and for what reaſon it is by Littleton limitted to the heires of the ſuruiuor. And the cauſe is, for that if it were made to the heirs of the heire, then ſome perſons by poſſibilitie ſhould be inheritable to the land, which ſhould not haue inherited if the ſtate had beene made to the Suruiuor and his heires, and conſequently the condition broken.

For example, If the Suruiuor tooke to wife Alice Fairefield, in this caſe if the limitation were to the ſonne and his heires, then if the ſonne ſhould die without heires of his father, the bloud of the Fairefields (being the bloud of his mother) ſhould inherit. But if the limitation be to the right heires of the father, then ſhould not the bloud of the Fairefields by any poſſibilitie inherit, for then it is as much as if the ſtate had beene made to the ſuruiuor and his heires: And therefore theſe words, (Et à les heires celuy que ſurueſquiſt) which many haue thought ſurperfluous, are verie materiall. Note well this kind of Fee ſimple, for it is worthie the obſeruation: but ſufficient hath beene ſayd to open the meaning of Littleton, and therefore I will diue no deeper into this point, but leaue it to the further conſideration of the learned Reader.

vi. Sect. 4.

Section 355.

¶ Littleton hauing ſpoken of defaults of performance, or expreſſe breaches of conditions, ſpeaketh now in what caſes the Feoffee in iudgement of Law doth ſo diſable himſelfe to performe the Condition: And of diſabilities ſome bee by act of the partie, and ſome by act in Law.

¶ *Ou a doner en taile a vn auter, &c.* Here is implied an eſtate for life or for yeares, &c.

¶ *Item ſi feoffmẽt ſoit fait ſur condition, denfeoffer vn auter, ou ô doner en taile a vn auk, &c. ſi le feoffee deuant le pformance del condition enfeoffa vn eſtranger, ou fait vn leaſe pur tme de vie, donques poet le feoffor*

ALſo if a Feoffement be made vpon condition, To enfeoffe another, or to make a gift in taile to another, &c. if the Feoffee before the performance of the Condition, enfeoffe a ſtranger, or make a Leaſe for life, then

for & ſes heires enter, &c. pur ceo que il ad luy meſme diſable de perfoymer le Condition, entant que il ad fait eſtate a vn auter, &c.

may the Feoffor and his heirs enter, &c. becauſe he hath diſabled himſelfe to performe thecõdition in aſmuch as he hath made an eſtate to another, &c.

¶ *Enfeoffe vn Eſtranger, ou fait vn Leaſe pur terme de vie.* This is a diſabilitie by the act of the partie, for herein the Feoffee hath diſabled himſelf to make the Feoffement or other eſtate according to the Condition. And to ſpeake once for all, the Feoffee is diſabled when he cannot conuey the Land ouer according to the Condition in the ſame plight, qualitie and freedome as the Land was conueyed to him, for ſo the Law requireth the ſame, as ſhall manifeſtly appeare hereafter. And here where our Authour ſpeaketh of a feoffment, he includeth an eſtate taile as well as the fee ſimple.

13.H.7.23.b. 32.E.3.barre 264.21.Aſſ.28.38.Aſſ pl.7.

Section 356.

¶ En meſme le manner eſt, ſi le feoffee, deuant le condition perfoyme leſſa meſme la terre a vn eſtranger, pur terme des ans, en ceſt caſe le feoffor et ſes heires poyent enter, &c. pur ceo que le feoffee ad luy diſable de faire eſtate de les tenements accordant a ceo que eſtoit en les tenements, quant eſtate ent fuit fait a luy. Car ſil voile faire eſtate de les tenements accordant a le condition, &c. donques poit le leſſee pur terme dans enter & ouſte meſme celuy a que leſtate eſt fait, &c. et occupier ceo durant ſon terme.

¶ IN the ſame manner it is if the Feoffee before the Condition performed, letteth the ſame land to a ſtranger for tearme of yeares, in this caſe the Feoffor and his heires may enter, &c. becauſe the Feoffee hath diſabled him to make an eſtate of the tenements according to that which was in the tenements when the ſtate thereof was made vnto him. For if hee will make an eſtate of the tenements according to the Condition, &c. then may the Leſſee for yeares enter and ouſte him to whom the eſtate is made, &c. and occupie this during his tearme.

¶ *Si le feoffee deuant le condition performe leſſa meſme la terre a vn eſtranger pur terme des ans, &c.* Here the &c. implyeth a Leaſe to take effect in futuro aſwell as in præſenti, alſo a Leaſe for one yeare or halfe a yeare, &c.

The reaſon of this is euidently ſet downe before. And againe of diſabilities ſome be by Act in præſenti, whereof Littleton hath put two examples, and ſome in futuro, whereof now he will ſpeake in the next Section.

Sect. 357.

¶ ET pluſors ont dit, que ſi tiel feoffement ſoit fait a vn home ſole ſur ñ le condition, & deuant q̃ il ad per-

AND many haue ſaid that if ſuch feoffment be made to a ſingle man vpon the ſame Condition, and before hee hath per-

¶ Firſt here is an example of a diſability both by act in Law, and in futuro, for by marriage the wife is entitled by Law to Dower, after the death of her huſband.

Secondly, It appeareth, that albeit the wife by the marriage is but intitled to haue

(a) 13.H.7.23.b. 34.E.3.dower.127.M.27.E.3 tit. dower 135. 28.Aſſ.Pl.4. 14H.7.7.6. lib.2.fol.59.b.

haue dower, & the eſtate which ſhe is to haue in futuro, viz. after the deceaſe of her huſband, yet it is a preſent cauſe of entrie. As a Leaſe for yeares to begin at a day to come is a preſent diſabilitie and cauſe of reentrie, for that the Land is not in that freedome and plight, as it was conueyed to the Feoffee, and after the ſtate made ouer according to the Condition the land ſhall be charged therewith.

Iulius Winningtons caſe.

¶ *En vn auter plight.* Plight is an old Engliſh word, and here ſignifieth not only the eſtate, but the habit and qualitie of the land, and extendeth to rent charges, and to a poſſibilitie of Dower. Vide Sect. 289. where Plight is taken for an eſtate or intereſt of and in the land it ſelfe, and extendeth not to a Rent Charge out of the Land.

¶ *A vn home ſole.* For if the Feoffee were married at the time of the feoffement, then the Dower can bee no diſabilitie, becauſe the Land ſhall remaine in ſuch Plight as it was at the time of the feoffment made vnto him.

forme meſme la condition il prent feme, donques le feoffor et ſes heires maintenant poient enter, pur ceo que ſil feſoit eſtate accordant a le condition, et puis morust, donques la feme ſerra endowe, et poit recouer ſa dower per briefe de dower, &c. et iſſint per le priſel del feme les tenements ſont mis en vn auter plite que ne fueront al temps del feoffment ſur condition, pur ceo que adonques nul tiel feme fuit dowable, ne ſerroit dowe per la ley, &c.

formed the ſame Condition hee taketh wife, then the Feoffor and his Heires maintenant may enter, becauſe, if hee hath made an eſtate according to the Condition & after dieth, then the wife ſhall be endowed, and may recouer her Dower by a Writ of Dower, &c. and ſo by the taking of a wife, the Tenements bee put in another plight then they were at the time of the feoffment vpon Condition, for that then no ſuch Wife was dowable, nor ſhould bee endowed by the Law, &c.

¶ *Donques le feoffor & ſes heires maintenant poient enter.* Here it appeareth, that ſeeing that for this title or poſſibilitie the Feoffor may preſently enter, that albeit the wife happen to die before the huſband, ſo as this title or poſſibilitie tooke no effect, yet the Feoffor may re-enter, for the Feoffee being diſabled at any time though the ſame continue not, yet the Feoffor may re-enter, for in that caſe, he that is once diſabled is euer diſabled. And herein a diuerſitie is to be obſerued betweene a diſabilitie for a time on the part of the Feoffee, and a diſabilitie for a time of the part of the Feoffor. For if a man maketh a feoffment in fee vpon condition that the Feoffee before ſuch a day ſhall re-enfeoffe the Feoffor, the Feoffee taketh wife, and the wife dyeth before the day, yet may the Feoffor re-enter.

So it is if the Feoffee before the day entreth into Religion, and is profeſſed, and before the day is deraigned, yet the Feoffor may re-enter.

21. E. 4. 55.

So it is if the Feoffee before the day make a feoffment in fee, and before the day take backe an eſtate to him and his heires, yet the Feoffor may re-enter.

Albeit in theſe caſes a certaine day be limited, yet the Feoffee being once diſabled is euer diſabled. And ſo it is when no time is limited by the parties, but the time is appointed by the Law.

But if a man make a feoffment in fee vpon Condition, that if the feoffor or his heires pay a certaine ſumme of money before ſuch a day, the Feoffor commit Treaſon, is attainted and executed, now is there a diſabilitie on the part of the Feoffor, for he hath no heire, but if the heire be reſtored before the day he may performe the Condition, as it was reſolued (*) Trin. 18. Eliz. in Communi Banco in Sir Thomas Wiats caſe, which I heard and obſerued. Otherwiſe it is if ſuch a diſabilitie had growne on the part of the Feoffee, and the reaſon of the diuerſitie is, for that as Littleton ſaith, maintenant by the diſabilitie of the Feoffee, the Condition is broken, and the Feoffor may enter, but ſo it is not by the diſabilitie of the feoffor, or his heires, for if they performe the Condition within the time it is ſufficient, for that they may at any time performe the Condition before the day. And ſo it is if the feoffor enter into Religion, and before the

(*) *Trin. 18. Eliz. in Communi Banco in Sir Thomas Wiats caſe.*

the day is deraigned, he may perfoꝛme the Condition foꝛ the cauſe afoꝛeſaid. Et ſic de ſimilibus. The (&c.) in this Section are ſufficiently explayned.

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¶ Eſm meſme le maner eſt, ſi le feoffee charge la terre per ſon fait dun rent charge deuant le perfoꝛmance del condition, ou ſoit obligie en vn eſtatute de le Staple, ou ſtatute Merchant, en tielx caſes le feoffoꝛ et ſes heires poyent entrer &c. Cauſa qua ſupra. Car quecunque que venuſt a les teneñts per le feoffment de le feoffee, eux couient eſtre liables, et eſtre mis en execution per foꝛce de leſtatute Merchant, ou de ſtatute del Staple, Quære. Mes quãt le feoffoꝛ ou ſes heires, pur les cauſes auantdits, aueront enter, come ils deuoyent, come il ſemble, &c. donques touts tielx choſes que deuant tiel entrie puiſſent troubler ou encumber les tenements iſſint dones ſur condition, &c. quant a meſmes les teneñts ſont ouſterment defeats.

¶ IN the ſame manner it is if the Feoffee charge the land by his Deed with a rent charge before the performance of the Condition, or be bound in a Statute Staple or Statute Merchant, in theſe caſes the Feoffor and his heires may enter, &c. *Cauſa qua ſupra.* For whoſoeuer commeth to the Lands by the feoffment of the Feoffee, they ought to bee lyable, and put in execution by force of the Statute Merchant, or of the Statute Staple. *Quære.* But when the Feoffor or his heires for the cauſes aforeſaid, ſhall haue entred, as it ſeemes, they ought, &c. then all ſuch things which before ſuch entrie might trouble or incumber the Land ſo giuen vpon Condition, &c. as to the ſame Land, are altogether defeated.

¶ *Poyent entrer, &c.* And here it is to bee vnderſtood, that the grant of the rent charge is a preſent diſability of the Feoffee, and therefoꝛe albeit the Grantee doth bring a Writ of Annuitie, and diſcharge the Land of it, ab initio, yet the cauſe of entrie being once giuen by the act of the Feoffee, the Feoffoꝛ may re-enter. And ſo it is if the grant of the rent charge were made foꝛ life, and the Grantee died, befoꝛe any day of payment, yet the Feoffoꝛ may re-enter. 13.H.7.23.b. 44.E 3.9.b. 26.E.3.73. 20.H.6.34. *Iulius Wynningtons ca-ſe.vbi ſupra*

The like Law is of any iudgement giuen againſt the Feoffee where in debt oꝛ damages are recouered.

¶ *On ſoit oblige in vn Statute de la Staple, &c.* If the Feoffee be diſſeiſed, and after bindeth himſelfe in a Statute Staple, oꝛ Merchant, oꝛ in a Recognizance, oꝛ take wife, this is no diſabilitie in him, foꝛ that during the diſſeiſin, the Land is not charged therewith, neyther is the land in the hands of the diſſeiſoꝛ liable thereunto. And in that caſe if the wife die oꝛ the Conuſee releaſe the Statute oꝛ Recognizance, and after the diſſeiſee doth enter, there is no diſabilitie at all, becauſe the Land was neuer charged therewith, and therefoꝛe in that caſe the Feoffee may enter and perfoꝛme the Condition in the ſame plight and freedome as it was conueyed vnto him. *Lib.2.fol.59.60. Iulius Wynningtons caſe.*

And it is to be obſerued, that Littl. putteth theſe caſes as examples, foꝛ there are ſome other diſabilities implyed, that are not here expreſſed. 18.*Aſſ.Pl.vltimo.* 19.E.3.39 *Lib.2.fol.80.b. Sir Cromwels caſe.*

The Lord Clifford did hold his Barony and the Sheriffwicke of Weſtmerland of the King by Grand Seriantie in capite, and the King gaue him Licence that he might infeoffe thereof diuers Chaplyns in fee, ſo that they ſhould giue the ſame to the Lord Clifford and the heires

maies of his body the remainder ouer, &c. the Lord Clifford according to the Licence infeoffed the Chaplyns, and before they made the reconueyance the Lord Clifford dyed, and it was adiudged that the heire might enter for the condition broken. For in this caſe the Feoffees were bound by Law to haue made the gift in tayle to the Lord Clifford himſelfe, albeit he neuer made any requeſt, for otherwiſe they purſued not the Licence, and if they ſhould make the ſtate to the iſſue of the Lord Clifford, then might the King ſeiſe the Barony, &c. for default of a Licence, and that in default of the Feoffees. And then the ſame ſhould not be in the ſame plight and freedome as it was at the time of the feoffment made vpon condition which is worthy of obſeruation.

If a man grant an Aduowſon vpon condition that the Grantee ſhall regrant the ſame to the Grantor in taile. In this caſe if the Church become voyde before the regrant or before any requeſt made by the Grantor, he may take aduantage of the condition, becauſe the Aduowſon is not in the ſame plight as it was at the time of the grant vpon condition. And ſo was it reſolued, (*) Paſch.14.Eliz. in comuni banco, betweene Andrews and Blunt, which I heard and obſerued, and which my Lord Dier hath omitted out of his report of that caſe, and therefore the Grantee in that caſe at his perill muſt regrant it before the Church become voyde, or elſe he is diſabled, otherwiſe he hath time during his life if he be not haſtened by requeſt.

(*) *Paſch.14.Eliz.fol.311.Dier*

If the Feoffee ſuffer a Recouery by default vpon a fayned title, before execution ſued the Feoffor may re-enter for this diſability. Et ſic de ſimilibus.

44.E.3.9.

Sect. 359.

¶ *ET en le fait eſt nul condition, &c.* either in Deed or in Law.

¶ *Et le feoffment eſt en tiel force ſicome nul tiel fait vſt eſte fait.* And the reaſon hereof is, for that the eſtate paſſeth by the Liuery of ſeiſin. And in this caſe the Feoffor vpon the deliuery of ſeiſin muſt expreſſe the ſtate to him and his heires or to the heires of his body, &c.

18.E.3.19.36. 17.Aſſ.p.20. 8.H.5.8. 27.H.6.

¶ Item, ſi vn home fait vn fait de feoffment a vn auter, & en le fait eſt nul condition, &c. & quant le feoffor a luy voyle faire liuerie de ſeiſin per force de meſme le fait, il fait a luy le liuerie de ſeiſin ſur certaine condition, en ceſt cas rien de les tenements paſſa per le fait, pur ceo que le condition neſt compriſe deins le fait, & le feoffment eſt en tiel force ſicome nul tiel fait vſt eſte fait.

ALſo if a man make a deed of feoffment to another and in the deed there is no condition, &c. & when the feoffor will make liuery of ſeiſin vnto him by force of the ſame deed, hee makes liuery of ſeiſin vnto him vpon certain condition, in this caſe nothing of the tenements paſſeth by the deed for that the condition is not compriſed within the deed, & the feoffment is in like force as if no ſuch deed had beene made.

34.Aſſ.pl.1.

If an agreement be made betweene two, that the one ſhall enfeoffe the other vpon condition in ſurety of the payment of certaine money, and after the Liuery is made to him and his heires generally, the ſtate is holden by ſome to be vpon condition in aſmuch as the intent of the parties was not changed at any time, but continued at the time of the Liuery.

13.E.3.tit.Eſſoyne 177. 19.E.3.ibid.184.

If a man make a Charter of feoffment in fee, and the feoffor deliuer ſeiſin for life, the Feoffee ſhall hold it but for life, but if the Liuery be expreſſly for life, and alſo according to the Deed the whole fee ſimple ſhall paſſe becauſe it hath a reference to the Deed.

Sect. 360.

¶ *Item ſi feoffment ſoit fait, &c.* And

¶ Item ſi feoffment ſoit fait ſur tiel condition,

¶ ALſo if a feoffment be made

condition, q̄ le feoffee ne alienera la terre a nulluy, ceſt condition eſt voide, pur ceo que quant home eſt enfeoffe de terres ou tenements il ad power de eux alener a aſcun perſon per la ley. Car ſi tiel condition ſerroit bone donque la condition luy oſteroit de tout le power que la ley luy dona, le quel ſerroit enconter reaſon, & pur ceo tiel condition eſt voide.

vpon this condition that the feoffee ſhall not alien the land to any, this condition is voide, becauſe when a man is infeoffed of lands or tenements he hath power to alien them to any perſon by the law. for if ſuch a condition ſhould bee good; then the cõdition ſhould ouſte him of all the power which the law giues him, which ſhould bee againſt reaſon, & therefore ſuch a condition is voide.

the like Law is of a deuiſe in fee vpon condition that the Deuiſee ſhall not alien, the condition is voide, and ſo it is of a grant, releaſe, confirmation or any other conueyance whereby a fee ſimple doth paſſe. For it is abſurd and repugnant to reaſon that hee, that hath no poſſibility to haue the land reuert to him, ſhould reſtraine his Feoffee in fee ſimple of all his power to alien. And ſo it is if a man be poſſeſſed of a Leaſe for yeares, or of a horſe, or of any other chattell reall or perſonall, and giue or ſell his whole intereſt, or propertie therein vpon condition that the Donee or Vendee ſhall not alien the ſame, the ſame is voide, becauſe his whole intereſt and propertie is out of him, ſo as he hath no poſſibility of a Reuerter, and it is againſt Trade and Traffique, and bargaining and contracting betweene man and man: and it is within the reaſon of our Author that it ſhould ouſter him of all power giuen to him. Iniquum eſt ingenuis hominibus non eſſe liberam rerum ſuarum alienationem, and Rerum ſuarum quilibet eſt moderator, & arbitor. And againe, Regulariter non valet pactum de re mea non alienanda. But theſe are to be vnderſtood of conditions annexed to the grant or ſale it ſelfe in reſpect of the repugnancie, and not to any other collaterall thing, as hereafter ſhall appeare. Where our Author putteth his caſe of a feoffment of land, that is put but for an example: for if a man be ſeiſed of a Seigniory or a Rent, or an Aduowſon or Common or any other inheritance that lyeth in grant, and by his Deede granteth the ſame to a man and to his heyres vpon condition that he ſhall not alien, this condition is voide. But ſome haue ſaid that a man may grant a Rent charge newly created out of lands to a man and to his heyres vpon condition that he ſhall not alien that, that is good, becauſe the rent is of his owne creation, but this is againſt the reaſon and opinion of our Author, and againſt the height and purity of a fee ſimple.

21.H.6.34.a. 8.H.7.10.b. 33.Aſſ.11.24. Dyer & Stud.39.124. 13.H.7.23.

Argumentum ex abſurdo. Vid.Sect.722.

A man before the Statute of Quia Emptores terrarum might haue made a feoffment in fee, and added further, That if hee or his heires did alien without Licence that he ſhould pay a fine, that this had beene good. And ſo it is ſaid, that then the Lord might haue reſtrained the alienation of his Tenant by condition, becauſe the Lord had a poſſibilitie of reuerter, and ſo it is in the Kings caſe at this day becauſe he may reſerue a tenure to himſelfe.

14.H.4.13.H.7.23.

21.H.7.8. Lib.5. 56.Knights caſe.

If A. be ſeiſed of Blacke acre in fee, and B. infeoffeth him of white acre vpon condition that A. ſhall not alien Blacke acre, the condition is good, for the condition is annexed to other land, and ouſteth not the Feoffee of his power to alien the land whereof the feoffment is made, and ſo no repugnancy to the ſtate paſſed by the feoffment, and ſo it is of gifts or ſales of chattells reall or perſonall.

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¶ MEs ſil condition ſoit tiel, que le feoffee ne alienera a vn tiel, noſmant ſon noſme, ou

BVt if the condition be ſuch that the feffee ſhall not alien to ſuch a one, naming his name, or to any of his

¶ If a feoffment in fee bee made vpon condition that the Feoffee ſhall not infeoffe I.S. or any of his heires or iſſues, &c. this is good, for he doth not reſtraine the feoffee of all his power: the reaſon here yeelded by our Author

Pl.Com.79.a. 8.H.7.10.b. 21.E.4.47.a.

Author is worthy of obſeruation. And in this caſe if the Feoffee enfeoffe I.N. of entent and purpoſe that he ſhall enfeoffe I.S. ſome hold that this is a breach of the condition, for Quando al quid prohibetur fieri, directo prohibetur & per obliquum.

10.H.7.11.Dier & Stud.124. 13.H.7.23.

If a feoffment bee made vpon condition that the Feoffee ſhall not alien in Mortmaine, this is good, becauſe ſuch alienation is prohibited by Law, and regularly whatſoeuer is prohibited by the Law, may be prohibited by condition, bee it Malum prohibitum, or malum in ſe. In ancient deeds of feoffment in fee there was moſt commonly a clauſe, Quod licitum ſit donatorio rem datam dare vel vendere cui voluerit exceptis viris religioſis & Iudæis.

Bracton, lib.1.fo.13.a.

a aſcun ô ſes heyres, ou de iſſues ô vn tiel, &c. ou huiuſmodi les q̃x conditiõs ne tollent tout la power dalienation del feoffee, &c. donq̃ tiel condition eſt bone.

heires, or of the iſſues of ſuch a one, &c. or the like, which conditions doe not take away all power of alienation from the feoffee, &c. then ſuch condition is good.

Section 362.

33.Aſſ.11.24. Lib.6.40.41. Mildmayes caſe. 21.H.6.33. 13.H.7.23. 21.H.7.11.

¶ NOte here the double negatiue in legall conſtruction ſhall not hinder the negatiue, viz. Sub conditione quod ipſi nec hæredes ſui non alienarẽt. And therefore the Grammaticall conſtruction is not alwayes in iudgement of Law to be followed.

Vid.Sect.220.acc.

¶ Item, ſi tenemẽts ſoient dones en l'taile ſur tiel condition, que le tenant en le taile ne ſes heyres ne alieneront en fee, ne en le taile, ne pur terme dauter vie, forſq̃ pur lour vies demeſne, &c. tiel condition eſt bone. Et la cauſe eſt, pur ceo que quant il fiſt tiel alienation & diſcontinuance de le taile, il fait le contrarie a lentent le donor, pur que leſtatute de W.2. cap.1. fuit fait, per quel eſtatute les eſtates en le taile ſont ordeines.

ALſo if lands bee giuen in taile vpon condition, that the tenant in taile nor his heires ſhall not alien in fee, nor in taile nor for terme of anothers life but only for their owne liues, &c. ſuch condition is good. And the reaſon is for that when hee maketh ſuch alienation and diſcontinuance of the entaile, hee doth contrary to the intent of the donor, for which the ſtatute of *W.2. cap.1.* was made, by which ſtatute the eſtates in taile are ordained.

¶ *Forſque pur lour vies demeſne, &c.* And yet if a man make a gift in taile vpon condition that hee ſhall not make a Leaſe for his owne life, albeit the ſtate be lawfull yet the condition is good; becauſe the reuerſion is in the Donor. As if a man make a Leaſe for life or years vpon condition, that they ſhall not grant ouer their eſtate or let the land to others, this is good, and yet the grant or Leaſe ſhould bee lawfull. (*) If a man make a a gift in taile vpon condition that he ſhall not make a Leaſe for three liues or 21. yeares according to the Statute of 32.H.8. the condition is good, for the Statute doth giue him power to make ſuch Leaſes which may be reſtrained by condition, and by his owne agreement, for this power is not incident to the eſtate, but giuen to him collaterally by the Act according to that rule of Law, Quilibet poteſt renunciare iuri pro ſe introducto.

21.H.6.33. 13.H.7.23.24. 27.H.8.17.19. 31.H.8. Dier 45.

(*) Dier, 33.H.8.fo.48.49

¶ *Quant il fiſt tiel alienation & diſcontinuance del ſtate taile.* And therefore if a gift in taile be made vpon condition, That the Donee, &c. ſhall not alien, this condition is good to ſome intents, and voyd to ſome: for as to all thoſe alienations which amount to any diſcontinuance of the ſtate taile, (as Littleton here ſpeaketh) or is againſt the Statute of Weſtminſter 2. the condition is good without queſtion. But as to a common recouerie the condition is voyd, becauſe this is no diſcontinuance, but a barre, and this common recouery

Vid.Lib.6.40.41. Sir Anth. Mildmayes caſe.

recouerie is not reſtrained by the ſaid Statute of W. 2. And therefore ſuch a condition is repugnant to the eſtate taile, for it is to be obſerued, that to this eſtate taile there bee diuers incidents. Firſt, To be diſpunished of waſt. Secondly, That the wife of the Donee in Taile ſhall be endowed. Thirdly, That the husband of a Feme Donee after Iſſue ſhall be Tenaunt by the Curteſie. Fourthly, That Tenant in taile may ſuffer a common recouerie: and therefore if a man make a gift in Taile, vpon condition to reſtraine him of any of theſe incidents, the condition is repugnant and voyd in Law. And it is to be obſerued,* that a collateral warrantie or a lineall with aſſets in reſpect of the recompence, is not reſtrained by the Statute of Donis conditionalibus, no more is the common recouerie in reſpect of the intended recompence. And Littleton to the intent to exclude the common Recouerie, ſaith, Tiel alienation & diſcontinuance, ioyning them together.

22.E.3.19.17.El.343.Dier.

(*) 13.H.7.24 b.

If a man before the Statute of Donis conditionalibus, had made a gift to a man and to the heires of his bodie, vpon condition, That after Iſſue hee ſhould not haue power to ſell, this condition ſhould haue been repugnant and voyd. Pari ratione, after the Statute a man makes a gift in taile; the Law tacite giues him power to ſuffer a common recouerie, therefore to adde a Condition, That he ſhall haue no power to ſuffer a common recouerie, is repugnant and voyd.

If a man make a Feoffement to a Baron and Feme in fee, vpon condition, That they ſhall not alien, to ſome intent this is good, and to ſome intent it is voyd: for to reſtraine an alienation by Feoffement, or alienation by Deed, it is good, becauſe ſuch an Alienation is tortious and voydable; but to reſtraine their Alienation by Fine is repugnant and voyd, becauſe it is lawfull and vnauoydable.

10.H.7.11. 13.H.7.22 Lib.6. 41.b. in Sir [illegible] Mildemayes caſe vbi ſup.

It is ſayd, That if a man infeoffe an Enfant in Fee, vpon condition, That he ſhall not alien, this is good to reſtraine Alienations during his minoritie, but not after his full age.

It is likewiſe ſayd, That a man by Licence may giue Land to a Biſhop and his Succeſſors, or to an Abbot and his Succeſſors, and add a Condition to it, That they ſhal not without the conſent of their Chapiter or Couent, alien, becauſe it was intended a Mortmaine; that is, that it ſhould for euer continue in that Sea or houſe, for that they had it en auter droit, for religious and good vſes.

Doctor & Student 124.

¶ *Leſtatute de W.*2. *cap.*1. Hereby it appeareth, That whatſoeuer is prohibited by the intent of any Act of Parliament, may be prohibited by condition, as hath been ſayd.

10.H.7.11. Doct. & Stud. 124. 13.H.7.23.

Section 363.

¶ Car il eſt proue per les parols compriſes en meſme Leſtatute, que la volūt del donor en tiels caſes ſerroit obſerue, et quaunt le Tenant en le Taile fait tiel diſcontinuance, il fait le contrarie a ceo, &c. Et auxy en eſtates en le taile daſcun Tenements, quant le reuerſion de fee ſimple, ou remainder en Fee ſimple eſt en auters perſons, quaunt tiel diſcontinuanc̄ e fait, donques le fee ſimple

FOr it is prooued by the words compriſed in the ſame ſtatute, That the will of the Donor in ſuch caſes ſhall be obſerued, and when the Tenaunt in Taile maketh ſuch diſcontinuance, hee doth contrarie to that, &c. And alſo in eſtates in Taile of any Tenements, when the Reuerſion of the Fee ſimple, or the remainder of the Fee ſimple is in other perſons, when ſuch diſcontinuance is made, thē the fee ſim-

¶ *Quant le reuerſion ou rem' en fee eſt en auters perſons.* Put the caſe that a Man make a gift in Taile to A. the remainder to him and to his heires, vpon condition that he ſhall not alien, as to the eſtate taile the condition is good, for ſuch alienation is prohibited, as hath been ſaid, by the ſayd Statute. But as to the Fee ſimple, ſome ſay it is repugnant and voyd, for the reaſon that Littleton hath yelded: and therefore ſome are of opinion, That this is a good Condition, and ſhall defeat the Alienation for the eſtate taile onely, and leaue the Fee ſimple in the Alienee, for that the Condition did in Law extend onely to the eſtate taile, and not to the remainder.

11.H.7.6. 13.H.7.23.24. Dyer 2.& 3 Phill. & Mar. 127.b.

¶ *Encounter le profit*

fit de ses Issues. Hereby it appeareth, That to restrain tenant in taile from alienation against the profit of his issues, is good, for that agreeth with the will of the Donor, and the intent of the Statute*.

(*) 46.E.3.4.

But a gift in Taile may be made vpon condition, That Tenant in Taile, &c. may alien for the profit of his issues, and that hath been holden to be good, and not restrained by the said Stat. and seemeth to agree with the reason of Littleton, because in that case, Voluntas Donatoris obseruetur, &c. and it must be for the profit of the issues.

en le remainder est discontinue. Et pur ceo que l'Tenant en taile ne fera tiel chose encounter le profit de ses issues & bon droit tiel condition est bon come est auauntdit, &c.

ple in the remainder is discontinued. And because Tenant in Tayle shall doe no such thing against the profit of his issues and good right, such Condition is good, as is aforesayd, &c.

Section 364.

21.H.7.11.

¶ A *Lienont, &c. Et auxy si touts les Issues sont morts, &c.* Note Littleton purposely made parcell of the Condition in the Copulatiue, that the Tenant in Taile should alien, &c. For if a gift in Taile be made to a man and to the heirs of his bodie, and if he die without heires of his body, that then the Donor and his Heires shall re-enter, this is a boyd Condition, for when the issues faile, the estate determineth by the expresse limitation, and consequently the adding of the condition to defeat that which is determined by the limitation of the estate, is boyd, and in that case the wife of the Donee shall be endowed, &c. And therefore Littleton to make the Condition good, added an alienation, which amounted to a wrong, and he restrained not the Alienation onely, (for then presently vpon the Alienation the Donor, &c. might re-enter and defeat the estate Taile)

¶ Item home poit doner Terres en taile, sur tiel condition, Que si le tenant en le Taile ou ses hẽs alienont en fee, ou en taile, ou pur terme dauterbie, &c. et auxy que si touts issues veignants del Tenant en le taile soient morts sans issue, que adonques bñ lirroit al Donor et a ses heires de enter, &c. Et per tiel voy le droit de le taile poet estre salue apres discontinuanc̃ al issue en le taile, si ascun y soit, issint que per voy dentre del Donor, ou de ses heires le taile ne fr̃ my defeat per tiel condition: Quære hoc. Et uncore si le Tenant en l'taile en ceo case, ou ses heires font ascun discontinuance, celuy en le reuersion ou ses heires, apres ceo que le taile est determine, pur default de issue, &c. poyent enter en

ALso a man may giue lands in Taile vpon such condition, that if the Tenant in Taile or his heires alien in fee or in taile, or for terme of another mans life, &c. and also that if all the Issues comming of the Tenant in Taile, bee dead without Issue, that then it shall be lawfull for the Donor and for his heires to enter, &c. And by this way the right of the taile may bee saued after discontinuance, to the issue in taile, if there bee any: so as by way of entrie of the Donor or of his heires, the taile shal not bee defeated by such conditiõ: *Quære hoc.* And yet if the tenant in taile in this Case, or his Heires, make any discontinuance, he in the reuersion, or his Heyres, after that the Taile is determined for default of Issue, &c. may enter into

en le terre per force de meſme le condition, & ne ſerront my cohert de ſuer briefe de formdon en le reuerter.

the Land by force of the ſame Condition, and ſhall not bee compelled to ſue a Writ of Formedon in the reuerter.

but added, and die without iſſue, to the end that the right of the eſtate in tayle might bee preſerued, and not defeated by the Condition, but might bee recouered againe by the iſſue in tayle in a Formedon.

And Littleton expreſſely ſaith, that the Donor and his heires after the diſcontinuance, and after that the eſtate tayle is determined, may re-enter, which is the intention and true meaning of Littleton in this place. And where it is ſaid in this Section (Quære hoc.) this is added by ſome that vnderſtood not this caſe, and is not in the originall.

Note, that in a Condition conſiſting of diuers parts in the coniunctiue, as here in the caſe of Littleton both parts muſt be performed, according to the old rule, (a) Si plures conditiones aſcriptæ fuerunt donationi coniunctim omnibus eſt parendum & ad veritatem copulatiue requiritur quod vtraque pars ſit vera. But otherwiſe it is when the Condition is in the diſiunctiue, for the ſame Author in that caſe ſayth, Si diuiſim cuilibet, vel alteri eorum ſatis eſt obtemperare. Et in diſiunctiuis ſufficit alteram partem eſſe veram. What then if the Condition or Limitation be both in the Coniunctiue and Diſiunctiue: as if a man make a Leaſe to the Huſband and Wife for the tearme of one and twentie yeares, if the Huſband and Wife or any Child betweene them ſo long ſhall liue, and then the Wife dieth without iſſue; ſhall the Leaſe determine, or continue during the life of the Huſband? And the anſwere is, that it ſhall continue, for the diſiunctiue referreth to the whole, and diſioyneth not only the latter part as to the Child, but alſo to the Baron and Feme, ſo as the ſence is, if the Baron, Feme, or any Childe ſhall ſo long liue.

(a) *Bracton lib.2.fol.19. vide Pl.Com.76. in Wimbiſhes caſe. & fo'.107. in Fulmerſtons caſe. Bracton vbi ſupra.*

(b) And ſo it is if an vſe be limited to certaine perſons, vntill A. ſhall come from beyond Sea, and attaine vnto his full age, or die, if he doe come from beyond Sea, or attaine to his full age, the vſe doth ceaſe.

So it was adiudged in Communi Banco paſch.30. Eliz. inter Baldwyn & Cocke commonly called Irupennies caſe.

(b) *Hill.35.Eliz. en treſpaſſe per le Seigniur Mordant vers George Vaux ſo adiudged in the Kings Bench.*

Section 365.

¶ ITem, home ne poit pleder en aſcun action, que eſtate fuit fait en fee, ou en fee taile, ou pur terme de vie, ſur condition, ſil ne voucha vn record de ceo, ou monſtra vn eſcript ſouth ſeale, prouant meſme la condition. Car il eſt vn cõmon erudition, que home per plee ne defeatera aſcun eſtate d'frank-tenement per force daſcun tiel condition ſinon que il monſtra le proofe de condition en eſcript, &c. ſi-

ALſo a man cannot plead in any action, that an eſtate was made in fee, or in fee tayle, or for tearme of life vpon Condition, if hee doth not vouch a Record of this, or ſhew a writing vnder Seale, prooving the ſame Condition. For it is a common learning, that a man by plea ſhall not defeat any eſtate of freehold by force of any ſuch Condition, vnleſſe he ſheweth the proofe of the Condition in writing, &c. vnleſſe it bee

¶ *En aſcun action.* Bee the action reall, perſonall, or mixt, if a Condition be pleaded to defeat a freehold it is regularly true, that a Deed muſt be ſhewed forth (a) in Court. And the reaſon why the deed ſhall bee ſhewed forth to the Court is; for that to euery Deed there be two things requiſite, the one that it be ſufficient in Law, and this is called the Legall part, and therefore the iudgement of that belongeth to the Iudges of the Law: the other concernes matter of Fact, as ſealing and deliuery, and this belongs to the Iurors. And becauſe euery Deed ought to approue it ſelfe, and be proued by others too; it muſt approue it ſelfe vpon the ſhewing of it forth in Court in two manners.

39.E.3.22. 4.E.4.35.a. 9.E.4.25.b.26.a 6.H.7.8.b. 11.H.7.22.b. 7.H.6.7. 14.H.8.22.b. 28.Aſſ.p.1.

(a) *Lib.10.fol.92. Doctor Layfields caſe. 7.E.3.57.25.E.3.41. 41.E.3.10.acc.*

Firſt, as to the compoſition of the words, that it bee

ſufficient in Law, and that the Court ſhall adiudge.

Secondly, of ancient time if the Deed appeared to bee raſed or interlined in places materiall, the Iudges adiudged vpon their view, the Deed to be voyd. But of latter time, the Iudges haue left that to the Iurors to try whether the raſing or interlining were before the deliuerie.

45.E.3.21.a. And there is a difference betweene a rent, and a reentrie, for vpon a gift in taile, or leaſe for life, a rent may bee reſerued without Deed, but a Condition with a reentrie, cannot bee reſerued in thoſe caſes without deed.

¶ *Eſcript de ſouth ſeale.* **Which** Littleton intendeth to be a Deed vnder Seale.

Lib 5.fol.52.53.&c. Pages caſe. 6.R.2.c.p.4. And well ſaid Littleton, A Deed vnder Seale, For though the Deed bee inrolled, yet hee cannot plead the inrolment thereof, though it bee of record. And though it be exemplified vnder the great Seale, (b) yet muſt he ſhew forth the Deed it ſelfe vnder Seale as Littleton here ſaith, and not the exemplification. And ſo when Littleton wrote, no Conſtat or inſpeximus, of the Kings Letters Patents were auaylable to be ſhewed forth in Court, but the Letters Patents themſelues vnder Seale. For both the Conſtat and inſpeximus are but exemplifications of the inrolment of the Charters, or Letters Patents: and this appeareth by the reſolution of two ſeuerall (c) Parliaments, one holden in the third and fourth yeare of King Edward the firſt, and the other in the thirteenth yeare of Queene Elizabeth. But now by thoſe Statutes the exemplification or Conſtat vnder the great Seale of the inrolment of any Letters Patents made ſince the fourth day of Februarie, Anno 27.H.8. or after to be made, ſhall be ſufficient to be pleaded and ſhewed forth in Court; aſwell againſt the King, as any other perſon by the Patentees themſelues (whereof there was ſome doubt (d) conceiued vpon the ſaid Statute of E.6.) and by all and euery other perſon and perſons claiming by from or vnder them. Which Statutes are generall and beneficiall, and eſpecially the Act of 13.Eliz. for that extends not only to Lands, Tenements, and Hereditaments, but to euery other thing whatſoeuer, and ought to be fauourably conſtrued for aduancement of the remedie and right of the ſubiect.

(b) *Vide* 32.H.8. *in Patents Br.* 12.H.7.12. b.

(c) 3.& 4.E.6.cap.4.& 13.Eliz.cap.6.

(d) Dyer.1.Eliz.167.

The difference betweene a Conſtat, Inſpeximus, and a Vidimus you may reade (e) at large in Pages Caſe. But none of them by Law ought to be had, but only of the inrolment of record, and not of a Deed or any other writing that is not of Record, and no Deed, &c. can be inrolled, vnleſſe it be only and lawfully acknowledged.

(e) *Lib.8.fol.8. in the Princes caſe. Vide Pages caſe vbi ſupra.*

non que ceo ſoit en aſcuns eſpeciall caſes, &c. Mes de chattels reals ſicome de leas fait a terme dans, ou de grants de gards fait per gardeins in chiualrie, & huiuſmodi, &c. home poit pleder que tiels leaſes ou grãts fueront faits ſur cõdition &c. ſans monſtre aſcun eſcript de le condition. Iſſint en meſme le maner home poit faire de dones & grants de chattels perſonals & de contracts perſonals, &c.

in ſome ſpeciall caſes, &c. But of Chattels reals, as of a Leaſe for yeares, or of grants of Wards made by Gardeins in Chiualrie and ſuch like, &c. a man may plead that ſuch Leaſes or grants were made vpon Conditon, &c. without ſhewing any writing of the Condition. So in the ſame manner a man may doe of gifts and Grants of Chattels Perſonals, and of Contracts perſonals, &c.

33.E.3.gard.162. 20.E.3. *Garein pleſent.* 13.15.H.6. *tit.monſtrans des faits* 118.

¶ *Si non que ſoit en aſcun eſpeciall caſes, &c.* **Hereby is implyed** that if a Gardein in Chiualrie in the right of the heire entreth for a Condition broken, he ſhall plead the ſtate vpon Condition without ſhewing of any Deed, becauſe his intereſt is created by the Law. And ſo it is (f) of a Tenant by Statute Merchant or Staple, or Tenant by Elegit.

(f) 20.H.7.5.

5.E.3.37. 11.H.4 83. 35.H.6. *tit monſtrans des faits* 11.6.7.H.6.17.H.5.5. 3.H.6.21. 33.H.6.1. 14.H.8.8. Likewiſe Tenant in Dower ſhall plead a Condition, &c. without ſhewing of the Deed. And the reaſon of theſe and the like Caſes, is for that the Law doth create theſe eſtates, and they come not in by him that entred for the Condition broken, ſo as they might prouide for the ſhewing of the Deed, but they come to the Land by authoritie of Law, and therefore the Law will allow them to plead the Condition without ſhewing of it.

(f) But

(f) But the Lord by eſcheat albeit his eſtate be created by Law ſhall not plead a Condition to defeate a freehold without ſhewing of it, becauſe the Deede doth belong vnto him. (f) 35.*H.*6.*vbi ſupra.*

A Tenant by the curteſie ſhall not (g) pleade a condition made by his wife, and a re-entry for the condition broken without ſhewing the Deed, for albeit his eſtate be created by Law, yet the Law preſumeth that he had the poſſeſſion of the Deedes and Euidences belonging to his wife. (g) 35.*H.*6.*vbi ſupra.*

(h) But Leſſees for yeares and all others that claime by any Conueyance from the partie or iuſtifie as ſeruant by Commandement, &c. muſt ſhewe the Deede. (h) 14.*H.*8.8.*Pl.com.*149.

(i) R. brought an Eiectione firmæ againſt E. for Eiecting him out of the Mannor of D. which he held for terme of yeares of the demiſe of C. E. the Defendant pleaded that B. gaue the ſaid Mannor to P. and Katherine his wife in taple who had iſſue E. the Defendant, and after the Donees infeoffed C. of the Mannor vpon condition that hee ſhould demiſe the Mannor for yeares to R. the Plaintife, the remainder to the husband and to the wife, &c. C. did demiſe the land to R. the Plaintife for yeares but kept the reuerſion to himſelfe, wherefore Katherine after the deceaſe of her husband entred vpon the Plaintife, &c. for the condition broken, and died, after whoſe deceaſe the land diſcended to E. the iſſue in taile, &c now defendant, iudgement if action, exception was taken againſt this plea becauſe E. the Def. maintained his entrie by force of a condition broken, and ſhewed forth no Deed, & the plea was ruled to be good, becauſe the thing was executed, and therefore hee need not ſhew forth the Deed. Nota the Defendant being iſſue in taile was remitted to the eſtate taile. (i) 44.*E.*3.22. *See after this chapter. Section* 366.

In a Præcipe quod reddat againſt S. who pleaded that R. was ſeiſed, and infeoffed him in Morgage vpon condition of payment of certaine money at a day, and ſaid that R. paid the money at the day, and entred iudgement of the writ: exception was taken to this plea for that he ſhewed forth no Deed of the condition, and it was ruled that he need not ſhew forth the Deed for two cauſes. 1. That he ought not to ſhew any Deed to the Demandant becauſe the Demandant is a ſtranger. 2. It might be when R. paid the money, and the condition performed, that the Deed was redelled to R. and thereupon the plea was adiudged good, and the writ abated. 11.*E.*3.*tit. Mens. des faits.*175. 45.*E.*3.8.

If land be morgaged vpon condition, and the Morgagee letteth the lands for yeares, reſerving a rent, the condition is performed the Morgagee re-enters, in an action of debt brought for the rent the Leſſee ſhall pleade the condition and the re-entrie without ſhewing forth any Deede. 45.*E.*3.8.*b. Fitzh.*

In an Aſſiſe the Tenant pleades a feoffment of the Anceſtor of the Plaintife vnto him, &c. the Plaintife ſaith that the feoffment was vpon condition, &c. and that the condition was broken, and pleads a re-entrie, and that the Tenant entred and tooke away the Cheſt in which the Deed was and yet detaineth the ſame, the Plaintife ſhall not in this caſe be enforced to ſhew the Deed. 10.*H.*4.9.*b.* 43.*E.*3. *Vid.* 10.*E.*3.41. *Simile in Dower.*

If a woman giue lands to a man and his heires by Deede or without generally, ſhe may in pleading auerre the ſame to be Cauſa matrimonij prælocuti, albeit ſhe hath nothing in writting to proue the ſame, the reaſon whereof ſee Sect.330. 12.*E.*1. *Feoffments & faits*, 114. & *N.B.*205.*b.* 13.*R.*2. *Monſtrans des faits* 165. 4.*E.*4 35. *&c.* 11.*H.*7.22.*b.* 6.*H.*7.8, 9.*E.*4.25 26. 14.*H.*8.22.*b.*

¶ *Mes des chattels realls ſicome leaſe fait a volunt a terme des ans, &c.* This is apparant.

Sect. 366.

¶ Item coment que hõe en aſcun action ne poit pleder vn condition que touch a & concerna franktenement ſauns monſtrer eſcript de ceo, come eſt auantdit, vncore home poit eſtre aide ſur tiel condition per verdict de xii. hões

ALſo albeit a man cannot in any action plead a condition which toucheth & concernes a freehold without ſhewing writing of this as is aforeſaid, yet a man may be aided vpon ſuch a condition by the verdict of 12. men taken at large in an aſſiſe

¶ V *Erdit or verdict de* 12. *homes.* Veredictum quaſi dictum veritatis, as Iudicium eſt quaſi iuris dictum. Et ſicut ad quæſtionem juris, non reſpondent juratores, ſed judices: ſic ad queſtionem facti non reſpondent judices ſed juratores. For Iurors are to trie the fact, and the Iudges ought to iudge according to the Law that riſeth vpon the fact, *Lib.*8.*fo.*155. *Lib.*9.*fo.*13. *Lib.*11.*fo.*10.

fact, for Ex facto Ius oritur.

¶ *Priſe alarge.* There be two kindes of verdicts; viz. one generall, and another at large or eſpeciall. As in an Aſſiſe of Nouel diſſeiſin brought by A. againſt B. the Plaintife makes his plaint, Quod B. diſſeiſiuit eũ de 20. acris terræ cum pertinentijs, the Tenant pleades, Quod ipſe nullam iniuriam ſeu diſſeiſinam præfato A. inde fecit, &c. the recognitors of the Aſſiſe doe finde Quod prædict. A. iniuſte & ſine iudicio diſſeiſiuit prædict. B. de prædict. 20. acris terræ cum pertinent. &c. This is a generall verdict. The like law it is if they finde it negatiuely. And Littleton here putteth a caſe of a Verdict at large or a ſpeciall Verdict, and it is therefore called a ſpeciall Verdict or a Verdict at large, becauſe they finde the ſpeciall matter at large, and leaue the iudgement of Law thereupon to the Court, of which kinde of Verdict it is ſaid, (l) Omnis concluſio boni & veri iudicij ſequitur ex bonis & veris premiſſis & dictis Iuratorum.

(l) *Trin.33.E.1.Coram Rege Nott. in Theſaur.*

And though Littleton here putteth his caſe of a Verdict at large vpon a generall iſſue (which in the caſe hee puts it was neceſſary for the Tenant to pleade) yet when iſſue is ioyned vpon ſome ſpeciall point, the Jury, as ſhall be ſaid hereafter in this Section may finde the ſpeciall matter, if it be doubtfull in Law, for as much doubt may ariſe vpon one point vpon the ſpeciall iſſue as vpon the generall iſſue. And as a ſpecial verdict may be found in Cõmon

43.*Aſſ.31.Stanf.pl.cor.* 164.165. 3.*E.3.Coron.*284. 286.287. 44.*E.3.44.* 41.*E.3.Coron.*451.

priſe a large en Aſſiſe de Nouel diſſeiſin, **ou en aſcun auter action, lou les Juſtices voilent prender le verdict de vij. Jurors alarge. Sicome mittomus q̃ home ſeiſie de certaine terre en fee, leſſa meſm̃ la terre a vn auter pur terme de vie ſans fait, ſur condition ỏ render al leſſor vn certeine rent, & pur default de paiment vn re-entrie, &c. per force de quel le leſſee eſt ſeiſie come de franktenemẽt. et puis l'rent eſt aderere, p̃ que le leſſor enter en la tre, et puis le leſſee arraiñ vn** Aſſiſe de Nouel diſſeiſin, **de la terre enuers le leſſor, le quel plede q̃ il fiſt nul tort, ne nul diſſeiſin, et ſur ceo, laſſiſe ſoit priſe, en ceſt caſe les Recognitors del aſſiſe poyent dire et render a les Juſtices lour verdict alarge ſur tout le matter, come adire que le defendant fuit ſeiſie de la terre en ſon demeſn̄ come de fee, et iſſint ſeiſie meſme la terre leſſe al plaintife pur terme de ſa vie, rendãt al leſſour tiel annuel rent paiable a tiel feaſt, &c. ſur tiel condition, que ſi le rent fuit aderere a aſcun tiel feaſt a que doit**

of *Nouel diſſeiſin*, or in any other action where the Iuſtices will take the verdict of 12. Iurors at large. As put the caſe, a man ſeiſed of certaine land in fee letteth the ſame land to another for terme of life without deed vpon condition to render to the leſſor a certaine rent, and for default of payment, a re-entrie, &c. by force whereof the leſſee is ſeiſed as of freehold, and after the rent is behinde, by which the leſſor entreth into the land, and after the leſſee arraigne an Aſſiſe of *Nouel Diſſeiſin*, of the land againſt the leſſor, who pleads that he did no wrong nor diſſeiſin, and vpon this, the Aſſiſe is taken; in this caſe the Recognitors of the Aſſiſe may ſay and render to the Iuſtices their verdict at large vpon the whole matter, as to ſay that the defendant was ſeiſed of the land in his demeſne as of fee, and ſo ſeiſed, lette the ſame land to the plaintife for terme of his life rendring to the leſſor ſuch a yearely rent payable at ſuch a feaſt, &c. vpon ſuch condition that if the rent were behinde at any ſuch feaſt at which

doit estre pay, donqes bien lirroit al lessor dentrer, &c. per force d quel lease le plaintife fuit seisie en son demesne come de franktenement, et que puis apres le rent fuit adetere a tiel feast, &c. per que le lessor entra en le terre sur le possession le lessee et prieroit le discretion de les Justices, si ceo soit un disseisin fait al plaintife ou nemy, donque p ceo que appiert a les Justices, que ceo fuit nul disseisin fait al plaintife entant que lentrie de le lessour fuit congeable sur luy; les Justices dopent doner iudgement q le plaintife ne prendra riens per son briefe dassise. Et issint en tiel cas le lessor serra aide, et uncore nul escripture unques fuit fait del condition. Car cibien que les Jurors poient auer conusance de le lease, auxybien il poiēt auer conusance de le condition que fuit declare & rehearse sur le leas.

it ought to bee paid, then it should bee lawfull for the lessor to enter, &c. by force of which lease the plaintife was seised in his demesne as of freehold, and that afterwards the rent was behinde at such a feast, &c. by which the lessor entred into the land vpon the possession of the lessee, and prayed the discretion of the Iustices if this bee a disseisin done to the plaintife or not. Then for that it appeareth to the Iustices that this was no disseisin to the plaintife, insomuch as the entrie of the lessor was congeable on him; the Iustices ought to giue iudgement that the plaintife shall not take any thing by his writ of Assise. And so in such case the lessor shall bee aided, and yet no writing was euer made of the condition. For aswell as the Iurors may haue conusance of the lease, they also as well may haue conusance of the condition which was declared & rehearsed vpon the lease.

Pleas, so may it also be found in Pleas of the Crowne, or criminall causes that concerne life or member.

A verdict finding matter incertainly or ambiguously is insufficient and no iudgement shall be giuen thereupon, as if an Executor plead Plein. ment administre, and issue is ioyned thereupon, and the Jury finde, that the Defendant haue goods within his hands to bee administred, but finde not to what value, this is incertaine and therefore insufficient. 40.E.3.15. 20 E.3.amendment.57. 18.E.3.49. in Cessauit. 30.E.3.23. 7.H.4.39.

A Verdict that finde part of the issue, and finding nothing for the residue, this is insufficient for the whole, because they haue not tried the whole issue wherewith they are charged. As if an information of intrusion bee brought against one for intruding into a mesuage, and 100. acres of land, vpon the generall issue the Jury finde against the Defendant for the land, but saith nothing for the house, this is insufficient for the whole and so was it twice adiudged. (m) But if the Jury giue a verdict of the whole issue, and of more, &c. that which is more is surplusage, and shall not (a) stay iudgement, for Vtile per inutile non vitiatur, but necessarie incidents required by law the Jury may finde. 17.E.3.47. 18.E.3.48. 22.E.3.1. 18.E.3.56. 15.E.3.Iudgement.58. 2.H.5.3. 7.H.6.5. 7.E.4.24. 28.H.6.10.

(m) *Hill.*25.*Eliz.* in a writ of Error betweene Brace and the Queene in the Exchequer chamber. *Mich.*28 & 29. *Eliz.* inter Gomersall & Gomersall in account in the Kings bench.

(a) 32.E.3.*Cessauit.*25.

If the matter and substance of the issue bee found, it is sufficient as Littleton himselfe sayeth hereafter. *Vid.Sect.*484.485.

*Vid.Sect.*58. 13.E.3.*garr.*26 15.E.3.*Ass.*322. 17.E.3.6. 18.*Ass.*2. 35.*Ass.*8.

Estoppells which bind the interest of the Land, as the taking of a Lease of a mans owne land by Deed indented, and the like, being specially found by the Jurie, the Court ought to iudge according to the speciall matter, for albeit Estoppels regularly must bee pleaded and relied vpon by an apt conclusion, and the Jurie is sworne ad veritatem dicendam, yet when they find veritatem facti, they pursue well their oath, and the Court ought to adiudge according to Law. (b) So may the Jurie find a Warrantie being giuen in euidence, though it be not pleaded, because it bindeth the right, vnlesse it be in a Writ of Right, when the Wise is ioyned vpon the meere right.

(b) 1.H.4.6.b. 27.H.8.22.b *Pl.Com.*515. *Lib.*4.*fo.*53.*Rawlins case.* & *ibid.Pledals case.* *Hill.*31.*Eliz.* betweene Sturton and Dicons in the Common place, the case of the Lease for yeares by Deed indented. 34.E.3.*Diuis.*29.

(c) 7.R.2. Coron. 108. Plo. Com Fremans Caſe 211. 11.H.4.2. 20.Aſſ. 12. 16.Aſſ.16. 22.Aſſ.23. 5.H.7. 22.

(c) After the verdict recorded, the Jurie cannot varie from it, but before it bee recorded they may varie from the firſt offer of their verdict, and that verdict which is recorded ſhall ſtand: alſo they may varie from a priuie verdict.

An iſſue found by verdict ſhall alwayes be intended true vntill it be reuerſed by attaint, and thereupon vpon the attaint no Superſedeas is grantable by Law.

Paſch.24.H.8. of the Report of Inſt.ce Spilman in the Kings Bench. 11.H.4.17. 35.H.6. Examin 17. 29.H.8.37. Dier. 35.H.8.55. 4.et 5.Eliz. 218 14.H.7.1. 20.H.7.3.

If the Jurie after their euidence giuen vnto them at the Barre, doe at their owne charges eat or drinke either before or after they be agreed on their verdict, it is finable, but it ſhall not auoyd the verdict; but if before they be agreed on their verdict, they eat or drinke at the charge of the Plaintife, if the verdict be giuen for him, it ſhall auoyd the verdict; but if it be giuen for the Defendant, it ſhall not auoyd it, Et ſic è conuerſo. (d) But if after they bee agreed on their verdict they eat or drinke at the charge of him for whom they doe paſſe, it ſhall not auoyd the verdict.

(d) Paſch.6.E.6. in the Common Place.

(e) If the Plaintife after euidence giuen, and the Jurie departed from the Barre, or any for him, doe deliuer any Letter from the Plaintife to any of the Jurie concerning the matter in Iſſue, or any Euidence or any eſcrow touching the matter in iſſue, which was not giuen in Euidence, it ſhall auoyd the verdict, if it be found for the Plaintife, but not if it bee found for the Defendant, & ſic è conuerſo. But if the Jurie carrie away any writing vnſealed, which was giuen in Euidence in open Court, this ſhall not auoyd their verdict albeit they ſhould not haue carried it with them.

(e) 11.H.4.16.17. 3.Mar Iuries Br.8. Vide Dier vbi ſupra.

By the Law of England a Jurie after there Euidence giuen vpon the Iſſue, ought to bee kept together in ſome conuenient place, without meat or drinke, fire or candle, which ſome Bookes (f) call an impriſonment, and without ſpeech with any, vnleſſe it be the Bayliffe, and with him onely if they be agreed. After they be agreed they may in cauſes betweene partie and partie giue a verdict, and if the Court be riſen, giue a priuie verdict before any of the Judges of the Court, and then they may eat and drinke, and the next morning in open Court they may either affirme or alter their priuie verdict, and that which is giuen in Court ſhall ſtand. But in criminall caſes of life or member the Jurie can giue no priuie verdict, but they muſt giue it openly in Court. And hereby appeareth another diuiſion of verdicts, viz. a publique verdict openly giuen in Court, and a priuie verdict giuen out of the Court before any of the Judges, as is aforeſayd.

Taſch.6.E.6. vbi ſupra.

(f) 24.E.3.75.

A Jurie ſworne and charged in caſe of life or member, cannot be diſcharged by the Court or any other, but they ought to giue a verdict. And the King cannot be Non-ſuit, for he is in iudgment of Law euer preſent in Court: but a common perſon may be Non-ſuit.

22.E.3.18.

¶ *En Aſſiſe de Nouel diſſeiſin ou en aſcun auter action, &c.* **Here it is** to be obſerued, That a ſpeciall verdict, or at large, may be giuen in any Action, and vpon any Iſſue, be the Iſſue generall or ſpeciall, and albeit there bee ſome contrarie opinions in our Bookes, yet the Law is now ſetled in this point.

W.2.cap. 30. 7.H.4.11. 8.E.4.29. 9.H.7.13. 23.H.8 tit.Verdit. Br.85. 11.Eliz. Dier 283.284. 3 E.3.Itinere North 284.286 43.Aſſ.31. 26 H.8.5. 44.E.3.44. F.tit.Cor 294. 44.Aſſ.17. 45.E.3.20. Pl.Com.92. 9.H.7.3. Vide Lib.9.12.13. Downans Caſe. And ſee there many other Authorities.

¶ *Per que le Leſſor enter.* **Here it appeareth that the condition is** executed by re-entrie, and yet the Leſſor after his re-entrie ſhall not by the opinion of Littleton, plead the Condition without ſhewing the Deed, becauſe he was partie and priuie to the condition, for the parties muſt ſhew forth the deed, vnleſſe it be by the act and wrong of his aduerſarie, as hath beene ſayd, (m) but an eſtranger which is not priuie to the Condition, nor claimeth vnder the ſame, as in the caſes aboueſayd appeareth, ſhall not after the Condition is executed in pleading, be inforced to ſhew forth the Deed: and by this diuerſitie all the Bookes and authorities in Law which ſeeme to be at variance are reconciled. See alſo for this matter the Section next following.

31.Aſſ.Pl.21. 10.H.4.9. (m) See more before in this Chapter, Sect.365.

¶ *Les Recognitors del Aſſiſe poient dire, &c.* **Here it appeareth that** the Iurors may find the fact, albeit the Deed be not ſhewed in euidence, and the rather for that the Condition vpon the Liuerie (as hath beene ſayd) is good, albeit there be no Deed at all.

10.Aſſ.p.9. 21.Aſſ.28. 17.Aſſ.20. 31.Aſſ.21. 33.Aſſ.2. 39.E.28.44.E.3. 22. 10.H.4.9. 7.H.5.5. 9 E.4 26. 18.E.4.12. 15.E.4.26.17. 21.H.7.22.

¶ *Et prieront le diſcretion des Iuſtices.* **That is to ſay, They** (hauing declared the ſpeciall matter) pray the diſcretion of the Juſtices, which is as much to ſay, as That they would diſcerne what the Law adiudgeth thereupon, whither for the Demaundant, or for the Tenant: ſo as by the authoritie of Littleton, Diſcretio eſt diſcernere per legem, quid ſit iuſtum, that is, to diſcerne by the right line of Law, and not by the crooked cord of priuate opinion, which the Vulgar call Diſcretion: Si à iure diſcedas, Vagus eris, & erunt omnia omnibus incerta; and therefore Commiſſions that authorize any to proceed. Secundum ſanas diſcretiones veſtras is as much to ſay, as Secundum legem & conſuetudinem Angliæ.

Lib.10.fo.4.caſe de Sewers.

¶ *Car cibien come les Iurors poient auer conuſance, &c.* **Hereby it appeareth,** That they that haue Conuſance of any thing, are to haue Conuſance alſo of all Incidents and Dependants thereupon, for an Incident is a thing neceſſarily depending vpon another.

If

If a Deed be made and dated in a forreine Kingdome, of Lands within England, yet if Liuerie and Seisin be made, secundum formam cartæ, the land shall passe, for it passeth by the Liuerie. *1.E.3.19. in Gracyes case.*

*Sect.*367.

¶ Mesme le manner est de Feoffement en Fee, ou done en le Taile sur Condition, coment que nul escripture vnque fuit fayt de ceo. Et sicome est dit de verdict a large en Assise, &c. En mesme le manner est en briefe dentr̄ founde sur disseisin, et en touts eux actions, ou les Justices voilent prender le verdict a large p la ou tiel verdict a large est fait, la manner del entrie entire est mis en lissue, &c.

IN the same manner it is of a Feoffement in Fee, or a Gift in Taile, vpon condition, although no Writing were euer made of it. And as it is sayd of a Verdict at large in an Assise, &c. In the same manner it is of a Writ of Entrie founded vpon a disseisin, & in all other Actions where the Iustices will take the Verdict at large, there where such Verdict at large is made, the manner of the whole entrie is put in the Issue, &c.

¶ AND it is to bee obserued, That the Court cannot refuse a speciall verdict, if it bee pertinent to the matter put in Issue. See the Section next preceding.

¶ *Verdict alarge.* It is called a Verdict at large because it findeth the matter at large, and leaues it to the iudgement of the Court: or it is called a speciall Verdict, because it findeth the speciall matter, &c. So as hereby it appeareth, That a Verdict (as hath beene sayd) is two fold, viz. a Verdict at large, or a speciall Verdict, (which is all one) whereof Littleton here speaketh; and a generall Verdict that is generally found according to the Issue, as if the Issue be not guiltie, to find the partie guiltie or not guiltie generally, & sic de cæteris. There is also a Verdict giuen in open Court, and a priuie verdict giuen out of Court before any of the Iudges of the Court, so called because it ought to be kept secret and priuie from each of the parties, before it be affirmed in Court. *See the Section next following.* *See the next preceding Section.*

Sect. 368.

¶ ITem en tiel case lou Lenquest poit dire lour verdict a large, sils voilent p̄nō sur eux le Conusance de la ley sur le matter, ils poient dire lour verdict generalment, come est mis en lour charge, cōe en le case auantdit, ils poient bien dire que le Lessor ne disseisa pas le Lessee, sils voilent, &c.

ALso in such case where the Enquest may giue their verdict at large, if they will take vpon them the knowledge of the Law vpon the matter, they may giue their verdict generally as is put in their charge, as in the case aforesaid they may well say, That the lessor did not disseise the Lessee, if they will, &c.

¶ ALthough the Iurie, if they will take vpon them (as Littleton here saith) the knowledge of the Law, may giue a generall verdict, yet it is dangerous for them so to doe, for if they doe mistake the Law, they runne into the danger of an Attaint, therefore to find the speciall matter is the safest way where the case is doubtfull.

Sect.

Sect. 369.

¶ *Pur ceo que il nad aſcũ eſcripture de ceo.* Hereby it alſo appeareth, That albeit the Condition was executed by re-entrie, yet the leſſor cannot plead it without ſhewing of a Deed. But of this matter ſufficient hath beene ſayd before in the two next preceding Sections.

¶ *Quel eſt bone plea en Barre.* In a caſe where there haue beene ſome varietie of opinions in our Bookes, Littleton here cleereth the doubt, and that vpon a good ground. For hee himſelfe reporteth in our Bookes, That it was holden by all the Iuſtices of England, That a leaſe for life, the reuerſion to the Plaintife, was a good barre in an Aſſiſe, and alſo that a Leaſe for yeares, the reuerſion to the Plaintife, might be pleaded in an Aſſiſe: and ſo of a Feoffement in Fee with warrantie. And hereby the diuerſitie of pleading is to be obſerued, for in the caſe here put by Littleton of a Leaſe for life, the Tenaunt ſhall plead it in Barre. But in a caſe of a Leaſe for yeares,

18.E.4.16. 12.Aſſ.38. 19.Aſſ.16.26.Fl.6.Barre 9. 38.Aſſ.26.4. 31.Aſſ.26. 39.Aſſ.3. 43.Aſſ.18. 44.Aſſ.3. 18.E.3.Aſſ.77. 31.E.3.ibid.97. 18.Aſſ.22.

4.Eliz.Dyer 207 8.Eliz.Dyer 246.

¶ Item en meſme le caſe ſi l'caſe fuit tiel, que apres ceo, que le Leſſor auoit enter pur default de payment, &c. que le Leſſee vſt enter ſur le leſſor et luy diſſeiſiſt, en ceſt caſe ſi le Leſſor arraigne vn Aſſiſe enuers l'Leſſee, le Leſſee luy puit barre de laſſiſe. Car il poit pleader enuers luy ẽ bar, coment le Leſſor que eſt Plaintife fiſt vn leaſe al Defendant pur terme de ſa vie, ſauant le reuerſion al Plaintife, quel eſt bone plea en Barre, entant que il conuſt l'reuerſion eſtre al Plaintife, en ceſt caſe le Plaintife nad aſc̃ matr̃ de luy ayd̃ forſque le condition fait ſur le Leas, et ceo il ne poet pleader pur ceõ que il nad aſcun eſcripture de ceo. Et entant que il ne poet reſponder al barre il ſerra barre. Et iſſint en ceſt caſe poyes veier que home eſt diſſeiſie, et vncore il naura Aſſiſe. Et vncore ſi le Leſſee ſoit Plaintife, et le Leſſor Defendant il barrera le Leſſee per verdict daſſiſe, &c. Mes en ceſt caſe lou le Leſſee eſt Defendant, ſi il ne voil̃ plead le dit plea en Barre, mes plead nul tort, nul diſſeiſin, donqs le leſſor recoũa per Aſſiſe, Cauſa qua ſupr̃.

ALſo in the ſame caſe, if the caſe were ſuch, That after that, that the Leſſor had entred for default of payment, &c. that the Leſſee had entred vpon the Leſſor, and him diſſeiſed; in this caſe if the Leſſor arraigne an Aſſiſe againſt the Leſſee, the Leſſee may barre him of the Aſſiſe: for hee may plead againſt him in Bar, how the Leſſor who is pr̃, made a leaſe to the def. for term of his life, ſauing the Reuerſion to the Pr̃, which is a good plea in bar inſomuch as hee acknowledges the reuerſion to be to the Pr̃. In this caſe the plaintif hath no matter to ayd himſelfe, but the conditiõ made vpon the leaſe & this he cãnot plead, becauſe he hath not any writing of this: and inaſmuch as hee cannot anſwere the bar he ſhal be barred. And ſo in this caſe you may ſee that a man is diſſeiſed, & yet he ſhal not haue aſſiſe. And yet if the leſſee be pr̃ and the leſſor def. he ſhall bar the leſſee by verdit of the Aſſiſe, &c. but in this caſe where the Leſſee is def. if he wil not plead the ſaid plea in bar, but plead *nul tort, nul diſſ.* thẽ the leſſor ſhal recouer by aſſiſe, *Cauſa qua ſupra.*

yeares, or of an eſtate of Tenant by Statute or Elegit, the Defendant ſhall not plead in barre, as to ſay, Aſſiſa non, &c. but iuſtifie by force of the Leaſe, &c. and conclude, & iſſint ſans tort. And if the Tenant of the Freehold be not named, he ſhall plead, Nul tenant de franktenement noſme en le breife: and in the caſe of the feoffment with warrantie, hee muſt relie vpon the warrantie.

Section 370.

¶ Item, pur ceo q̄ tielx conditions ſont plus communement mis & eſpecifies en faits endentes, aſcū petit choſe ſerra icy dit (a toy mon fits) de endenture & de fait Poll concernants conditions. Et eſt aſcauoir, que ſi lendenture ſoit bipartite, ou tripartite, ou quadripartite, touts les partes de lendenture ne ſont que vn fait en ley, & cheſcun part de lendenture eſt de auxy grande force et effect, ſicome touts les parts enſemble.

AND for that ſuch Conditions are moſt commonly put and ſpecified in Deeds indented, ſomewhat ſhall bee here ſaid (to thee my ſonne) of an Indenture, and of a Deed Poll concerning Conditions. And it is to bee vnderſtood, that if the Indenture be bipartite, or tripartite, or quadripartite, all the parts of the Indenture are but one Deed in Law, and euery part of the Indenture is of as great force and effect as all the parts together bee.

¶ *En faits endentes.* Thoſe are called by ſeuerall names, as Scriptū indentatum, carta indenta, Scriptura indentata, Indentura, Literæ indentatæ. An Indenture is a writing containing a Conueyance, Bargaine, Contract, Couenants or agreements betweene two or more, and is indented in the top or ſide anſwerable to another that likewiſe compreheudeth the ſelfe ſame matter, and is called an Indenture, for that it is ſo indented, and is called in Greeke συμγραφον. *Pl. Sect.* 215.

If a Deed beginneth, Hæc Indentura, &c. and in troth the Parchment or Paper is not indented, this is no Indenture, becauſe words cannot make it indented. But if the deed be actually indented, and there is no words of Indenture in the Deed, yet it is an Indenture in Law, for it may bee an Indenture without words, but not by words without indenting. *Lib.*5.*fol.*20. *Stiles caſe.*

¶ *En faits indent.* And here it is to be vnderſtood that it ought to bee in Parchment or in Paper. For if a writing bee made vpon a peece of wood, or vpon a peece of Linnen, or in the barke of a tree, or on a ſtone, or the like, &c. and the ſame bee ſealed or deliuered, yet is it no Deed, for a Deed muſt bee written eyther in Parchment or Paper as before is ſaid, for the writing vpon theſe is leaſt ſubiect to alteration or corruption. *14.E.2.Ley 79. 4.E.2 Fines 116. 4.E.2. Ley 68 2.R.2. Dr 4. 27.H.6.9. F.N.B.122 I.*

¶ *Si lendenture ſoit bipartite, ou tripartite, ou quadripartite, &c.* Bipartite is when there be two parts and two parties to the Deed. Tripartite when there are three parts and three parties, and ſo of Quadripartite, Quinquepartite, &c.

¶ *Et de fait poll.* A deed poll is that which is plaine without any indenting, ſo called, becauſe it is cut euen or polled, euery Deed that is pleaded ſhall be intended to be a Deed poll, vnles it be alleaged to be indented.

¶ *Touts les parts del endenture ne ſont que vn en ley.* If a man by deed indented make a gift in tayle, and the Donee dyeth without iſſue, that part of the Indenture which belonged to the Donee doth now belong to the Donor, for both parts doe make but one Deed in Law. *38.H.6.22.25. 9.H.6.35.35.H.6.34. 9.E.3.18. 9.E.4.18. Pl.Com.134.*

¶ *Et cheſcun part del Indenture eſt de auxy grand force, &c.* This is manifeſt of it ſelfe, and is proued by the Bookes aforeſaid.

It is to be obſerued, that if the Feoffor, Donor, or Leſſor ſeale the part of the Indenture belonging to the Feoffee, &c. the Indenture is good, albeit the Feoffee neuer ſealeth the Counterpart belonging to the Feoffor, &c.

Section 371.

¶ Et feasance de Indenture est en deux maners. Un est de faire eux en le tierce person. Un auter est de faire eux en le primer person. Le feasance en le tierce person est come en tiel forme.

Hæc Indentura facta inter R. de P. ex vna parte, & V.de D. ex altera parte, Testatur, quod prædictus R. de P. dedit & concessit, & hac præsenti carta indentata confirmauit præfato. V.de D. talem terram, &c. Habendum & tenendum, &c. sub conditione, &c. In cuius rei testimonium partes prædictæ sigilla sua præsentibus alternatim apposuerunt. *Vel sic* : in cuius rei testimonium vni parti huius Indenturæ penes præfatum V.de D. remanenti, prædict' R. de P. sigillum suum apposuit, alteri verò parti eiusdem Indenturæ penes R.de P. remanenti idem V. de D. sigillum suum apposuit. Datum,&c.

¶ Tiel Endenture est appel endenture fait en le tierce person, pur ceo que les Verbes, &c. sont en la tierce person. Et tiel forme dendentures est de pluis sure feasance, pur ceo que est pluis communement vse, &c.

And the making of an Indenture is in two manners. One is to make them in the third person. Another is to make them in the first person. The making in the third person is as in this forme.

This Indenture made betweene R. of P. of the one part, and V. of D. of the other part, witnesseth that the said R. of P. hath granted, and by this present Charter indented confirmed to the aforesaid V. of D. such Land &c. To haue and to hold, &c. vpon Condition, &c. In witnesse whereof the parties aforesaid to these presents interchangeably haue put their Seales, Or thus. *In witnesse whereof to the one part of this Indenture, remayning with the said V. of D. the said. R. of P. hath put his Seale, and to the other part of the same Indenture remayning with the said R. of P. the said V. of D. hath put his seale. Dated, &c.*

Such an Indenture is called an Indenture made in the third person, because the Verbes, &c. are in the third person. And this forme of Indentures is the most sure making, because it is most commonly vsed,&c.

9.E.3.18. *Vide the Bookes aforerehearsed.*

¶ *Et le feasance del Indenture est en deux maners, &c.* **Here is another** of our Authors perfect diuisions. In this & the next Section following. Littleton doth illustrate his meaning by setting down formes and examples which do effectually teach.

Vide 40.E.3.2.7.H.7.14. *Dier* 28.H.8.19 *Lib.*2.*fol.* 4.*&* 5.*Godards case.*

In these two formes there are to bee obserued (amongst other) three generall parts of the same, viz. the Premisses, the Habendum, and the In cuius rei testimonium. But hereof hath beene spoken at large, Sect 1.4.& 40. for Littleton speaketh not here of the deliuery, but only of the Contert or words of the Deed.

¶ *Pur ceo que est le pluis communement vse.* **Here it appeareth that** which is most commonly vsed in Conueyances is the surest way. A communi obseruantia non est recedendum, & minime mutanda sunt quæ certam habuerunt interpretationem. Magister rerum Vsus. It is prouided by the Statute of 38.E.3.cap.4. that all penall Bonds in the third

17.*Eliz. Dier* 342. 1.R.3. 14.H.6.28.*Bab.* 12.H.4.12. 30.*Ass.*31.

person

perſon be void and holden for none, wherein ſome of our Bookes (d) ſeeme to differ, but they being rightly vnderſtood, there is no difference at all. For the Statute is to bee intended of Bonds taken in other Courts out of the Realme, and ſo it appeareth by the Preamble of that Act. And it was principally intended of the Courts of Rome, and ſo it appeareth by Iuſtice Hankford in 2.H.4. in which Courts Bonds were taken in the third perſon. So as ſuch Bonds made out of the Realme are void, but other Bonds in the third perſon, are reſolued to be good, as well Indentures in the third perſon, by the opinion of the whole Court in 8.E.4.

(d) 40.E.3.1. 2.H.4.10. 8.E.4.5.

Sect. 372.

CLE feasance de Indenture en le primer perſon eſt come en tiel forme. Omnibus Chriſti fidelibus ad quos præſentes literæ indentatæ peruenerint, A. de B. ſalutem in Domino ſempiternam. Sciatis me dediſſe, conceſſiſſe, & hac præſen' carta mea indentata confirmaſſe C. de D. talem terram, &c. *Vel ſic*: Sciant præſentes & futuri, quod ego A. de B. dedi, conceſſi, & hac præſenti carta mea indentata confirmaui C. de D. talem terram, &c. Habendum & tenendum, &c. ſub conditione ſequenti, &c. In cuius rei teſtimonium tam ego præd' A. de B. quam prædict' C. de D. his Indenturis ſigilla noſtra alternatim appoſuim'. *Vel ſic*: In cuius rei teſtimonium ego præfatus A. vni parti huius Indenturæ ſigillum meum appoſui, alteri verò parti eiuſdem Indenturæ prædict' C. de D. ſigillum ſuum appoſuit, &c.

THe making of an Indenture in the firſt perſon is, as in this forme. *To all Chriſtian people whom theſe preſents indented ſhall come, A. of B. ſends greeting in our Lord God euerlaſting: Know yee mee to haue giuen, granted, and by this my preſent Deed indented, confirmed to C. D. ſuch land, &c.* Or thus: *Know all men preſent and to come that I A. of B. haue giuen, granted, and by this my preſent Deed indented, confirmed to C. of D. ſuch land, &c. To haue and to hold, &c. vpon Condition following, &c. In witneſſe whereof, aſwell I the ſaid A. of B. as the aforeſaid C. of D. to theſe Indentures haue interchangeably put our Seales.* Or thus: *In witneſſe whereof I the aforeſaid A. to the one part of this Indenture haue put my Seale, and to the other part of the ſame Indenture, the ſaid C. of D. hath put his Seale, &c.*

THere Littleton ſets downe three formes of Deeds indented in the firſt perſon, Breuis via per exempla, longa per precepta. It is requiſite for euery Student to get Preſidents and approued formes not only of Deeds according to the example of Littleton, but of Fines, and other Conueyances, and Aſſurances, and ſpecially of good and perfect pleading, and of the right entries and formes of Iudgements which will ſtand him in great ſtead: both whilſt he ſtudie, and after when he ſhall giue councell. It is a ſafe thing to follow approued Preſidents, for Nihil ſimul inuentum eſt perfectum.

*Vide Sect.*371.

Section 373.

CET il ſemble que tiel endenture que eſt fait en le primer perſon eſt auxy bone en la ley,

AND it ſeemeth that ſuch Indenture which is made in the firſt perſon is as good in law as the

ley, ſicome lendenture fait en le tierce perſon, quant ambideux parties ont a ceo miſe lour ſeals, car ſi ẽ lendenture fait en ł tierce perſon, ou en le prĩmer perſon, mention ſoit fait que le grantor auoit miſe ſolement ſon ſeale, ꝛ nemy le grauntee, donques eſt lendenture tantſolement le fait le grauntor. Mes lou mention eſt fait que le grantee ad mis ſon ſeale a lendenture, ꝛc. donques eſt lendenture auxybien le fait le grantee come le fait le grauntor. Iſſint il eſt le fait dambideux, ꝛ auxy cheſcun part de lendenture eſt le fait dambideux parties en tiel caſe.

Indenture made in the third perſon, when both parties haue put to this their ſeales, for if in the Indenture made in the third perſon, or in the firſt perſon, mention be made that the grantor only hath put his ſeale, and not the grantee, then is the Indenture only the deed of the grantor. But where mention is made that the grantee hath put to his ſeale to the Indenture, &c. then is the Indenture as well the deed of the grantee as the deed of the grantor. So is it the deed of them both, and alſo each part of the Indenture is the deed of both parties in this caſe.

HEre is to be obſerued, that albeit the words in this Indenture be only the words of the Feoffor, yet if the Feoffee put his Seale to the one part of the Indenture, it is the Deed of them both. And in this ſpeciall caſe to make it the Deed of the Feoffee, it appeareth by Littleton, that mention muſt be made in the Deed, that hee hath put to his Seale. for that he is no way made partie to make it, being made in the firſt perſon, but only by the clauſe of putting his Seale thereunto. Otherwiſe it is of a Deed indented in the third perſon as before it appeareth, for there he is made partie to the Deed in the beginning. And Littletons rule is true, that euery part of an Indenture is the Deede of both parties, for as it hath beene ſaid both parts make but one Deed in Law in that caſe.

*Sect.*374.

SUr *certaine condition, &c.* Here by this (&c.) is implied, that the condition in this caſe doth extend both to the eſtate for life, ꝛ to the remainder, but by ſpeciall limitation it may extend to euery one of them, and not to the other. And albeit he in the remainder be no partie to the Indenture (the parties thereunto only being the Leſſor and the Tenant for life) yet when hee in the remainder entreth and agreeth to haue the lands by force of the Indenture, hee is bound to performe the conditions contained in the In-

¶ Item ſi eſtate ſoit fait p Indenture a vn home pur terme de ſa vie, le remainder a vn auter en fee ſur certaine condition, ꝛc. ꝛ ſi le tenant a terme d vie auoit mis ſon ſeale al part de lendenture, ꝛ puis mozuſt, ꝛ il que eſt en le remainder ent̃ en la terre, per force de ſon remainder, ꝛc. en ceſt cas il eſt tenus de perfozmer touts les conditiõs compriſe en lenden-

ALſo if an eſtate bee made by Indenture to one for terme of his life, the remainder to another in fee vpon a certaine condition, &c. and if the tenant for life haue put his ſeale to the part of the Indenture, and after dieth, and he in the remainder entreth into the land by force of his remainder, &c. In this caſe hee is tied to performe all the conditions compriſed

lendenture, ſicome le tenant a terme de vie, deuoit faire en ſa vie, & vncore ceſtuy en le remainder ne vnques enſeale alcun part del endenture. Mes la cauſe eſt, que entant que il enter et agreea dauer les terres per force del endenture, il eſt tenus de performer les conditions deins meſme lendenture ſil voile auer la terre, &c.

in the Indenture, as the tenant for life ought to haue done in his life time, and yet hee in the remainder neuer ſealed any part of the Indenture. But the cauſe is, for that inaſmuch as hee entred and agreed to haue the lãds, by force of the Indenture hee is bound to performe the conditions within the ſame Indenture if hee will haue the land, &c.

denture. And here is alſo a diuerſitie to be vnderſtood that any eſtranger to the Indenture may take by way of remainder, but he cannot in this caſe take any preſent eſtate in poſſeſſion, becauſe he is an eſtranger to the Deede.

If A. by Deed indented betweene him and B. letteth lands to B. for life, the remainder to C. in fee reſeruing a rent, Tenant for life dieth, he in the remainder entreth into the lands, he ſhall bee bound to pay the rent, for the cauſe and reaſon before pæided by Littleton. An Indenture of Leaſe is ingroſſed betweene A. of the one part, and D. and R. of the other part, which purporteth a demiſe for yeares by A. to D. and R. A. ſealeth and deliuereth the Indenture to D. and D. ſealeth the Counterpane to A. But R. did not ſeale and deliuer it. And by the ſame indenture it is mentioned, that D. and R did grant to be bound to the Plaintife in 20. pound in caſe that certaine conditions compriſed in the Indenture were not performed. And for this 20. pound A. brought an Action againſt D. only, and ſhewed forth the Indenture. The Defendant pleaded, that it is proued by the Indenture that the demiſe by indenture was made to D. and R. which R. is in full life and not named in the Writ, Iudgement of the Writ. The Plaintife replyed that R. did neuer ſeale & deliuer the Indenture, & ſo his Writ was good againſt D. ſole. And there the counſell of the Plaintife tooke a diuerſity betweene a rent reſerued which is parcell of the Leaſe, and the land charged therewith, and a ſumme in groſſe, as here the 20. pound is, for as to the rent they agreed that by the agreement of R. to the Leaſe, he was bound to pay it, but for the 20. pound that is a ſumme in groſſe and collaterall to the Leaſe, and not annexed to the land, and groweth due only by the Deed, and therefore R. ſaid they was not chargeable therewith for that he had not ſealed and deliuered the Deed. But in aſmuch as he had agreed to the Leaſe which was made by Indenture he was chargeable by the Indenture for the ſame ſumme in groſſe, and for that R. was not named in the Writ, it was adiudged that the Writ did abate.

50.E.3.22.3.H.6,26.b.

38.E.3.8.a.3.H.6.26.b. *Vide* 45.E.3.21.12.

¶ *Auer la terre, &c.* Here is implyed an ancient maxime of the Law, viz. Qui ſentit commodum ſentire debet & onus, Et tranſit terra cum onere.

Section 375.

¶ Item ſi feoffment ſoit fait p fait Poll ſur condition, & pur ceo que le condition neſt pas performe, le feoffor entra & happa la poſſeſſion de le fait Poll, ſi le feoffee port vn action de cel entrie enuers le feoffor, il ad eſte queſtion ſi le feoffor poit pleder le condition per le dit fait Poll encounter le feoffee. Et aſcuns ont dit que non, entant que il ſemble

ALſo if a feoffment bee made by deed Poll vpon condition, and for that the condition is not performed, the feoffor entreth and getteth the poſſeſſion of the deed Poll, if the feoffee brings an action for this entrie againſt the feoffor, it hath beene a queſtion if the feoffor may plead the condition by the ſaid deed Poll againſt the feoffee. And ſome haue ſaid

ſemble a eux que vn fait Poll, & le propertie de meſme le fait appertient a celuy a que le fait eſt fait, & nemy a celuy que fiſt le fait. Et entant que tiel fait ne attient al feoffor, il ſemble a eux que il ne poit pas ceo pleder. Et auters ont dit le contrarie, et ont monſtre diuers cauſes. Un eſt, ſi le caſe fuit tiel, que en action perenter eux, ſi le feoffee pleder meſme le fait et monſtre eſt al Court, en ceſt cas entant que le fait eſt en Court, le feoffor poit monſtrer al court coment en le fait ſont diuers conditions deſtre perfoymes de le part le feoffee, &c, et pur ceo que ils ne fueront perfoymes, il enter, &c. et a ceo il ſerra reſceiue, per ñ le reaſon quant le feoffor ad le fait en poigne, et ceo monſtra a le court, il ſerra bien reſceiue de ceo pleder, &c. et noſment quant le feoffor eſt priuie al fait, car couient eſtre priuie al fait quant il fiſt le fait, &c.

hee cannot, inaſmuch as it ſeemes vnto them that a deed Poll and the property of the ſame deed belongeth to him to whom the deed is made, and not to him which maketh the deed. And inaſmuch as ſuch a deed doth not appertaine to the feoffor. It ſeemes vnto them that he cannot plead it. And others haue ſaid the contrary, and haue ſhewed diuers reaſon, one is, if the caſe were ſuch that in an action betweene them if the feoffee plead the ſame deed and ſhew it to the Court, in this caſe inſomuch as the deed is in Court, the feoffor may ſhew to the Coutt how in the deed there are diuers conditions to be performed of the part of the feoffee, &c. and becauſe they were not performed, he entred, &c. and to this he ſhall be receiued. By the ſame reaſon when the feoffor hath the deed in hand, and ſhew this to the court, he ſhall well be receiued to plead it, &c. and namely when the feoffor is priuy to the fait, for he muſt bee priuie to the deed when he makes the deed, &c.

(a) Vid. Sect. 170. 302. 349.

THere the latter opinion is cleere Law at this day, and is Littletons owne opinion (a) as before hath beene obſerued.

¶ *Ont monſtre diuers cauſes.*

Fœlix qui potuit rerum cognoſcere cauſas,
Et ratio melior ſemper prævalet.

14. E. 3. 73. 45. E. 3. *Monſtrans de faits.* 55.
(b) 40. *Aſſ.* 34. *lib.* 5. 75. *b. Wymarks caſe.*
(c) 12. H. 4. 8. 42. E 3. 27. *Wymarks caſe, vbi ſupra.* 38. H. 6. 2. 41. *Aſſ.* 29. 12. H. 4. 8. 7. H. 4. 39. 11. H. 4. 73. 45. E. 3. 11. F. N. B. 243.

¶ *Entant que le fait eſt en Court. &c.* And herewith do agree (b) many Authorities in Law. (c) And if the Deed remaine in one Court, it may be pleaded in another Court without ſhewing forth; Qui lex non cogit ad impoſſibilia.

¶ *De part le feoffee, &c.* Here alſo is implyed if the condition bee to be perfoymed on the part of the Feoffor or by a ſtranger, and it is to be vnderſtood that when a Deed is ſhewed forth to the Court the Deed ſhall remaine in Court all that tearme in the cuſtody of the Cuſtos breuium, but at the end of the Tearme (if the Deed be not denied) then the Law adiudgeth the Deed in the cuſtody of the partie to whom it belongeth, for a mans euidences are as it were the ſinewes of his land. But if the Deed be denied, then the Deed in iudgement of Law remaineth in court vntill the plea be determined. The reſidue of this Section needeth no explication.

Sect.

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¶ Auxy ſi deux homes ſont vn treſpas a vn auter, le quel releaſe a vn ô eux per ſon fait touts actions perſonals, & nient obſtant il ſuiſt action ô treſpaſſe enuers lauter, le Defendant bien poit monſtrer que le treſpaſſe fuit fait per luy et per vn auter ſon companion, et que le Plaintife per ſon fait q̃ il monſtre auant releſſa a ſon companion touts actions perſonals, iudgemẽt ſi action, &c. Et vncore tiel fait appertient a ſon companion, et nemy a luy, mes pur ceo que il poit auer aduantage p le fait ſi voit monſtrer le fait al Court, il poit ceo bien pleder, &c. Per meſme le reaſon poit le feoffor en lauter cas quant il doit auer aduantage per le condition compris deins le fait Poll.

ALſo if two men doe a treſpaſſe to another, who releaſe to one of them by his deed all actions perſonalls, and notwithſtanding ſueth an action of treſpaſſe againſt the other, the defendãt may well ſhew that the treſpaſſe was done by him and by an other his fellow, and that the Plaintife by his deed (which he ſheweth forth) releaſed to his fellow all actions perſonalls, and demand the iudgement, &c. and yet ſuch deed belongeth to his fellow and not to him, but becauſe hee may haue aduantage by the deed if hee will ſhew the deed to the Court, hee may well plead this, &c. by the ſame reaſon may the feoffor in the other caſe when he ought to haue aduantage by the condition compriſed within the deed Poll.

¶ *Si deux homes ſont vn treſpaſſe a vn auter, &c.* Here by this Section it is to bee vnderſtood that when diuers doe a treſpaſſe, the ſame is Ioynt or Seuerall at the will of him to whom the wrong is done, yet if he releaſe to one of them; all are diſcharged, becauſe his owne Deed ſhall be taken moſt ſtrongly againſt himſelfe, but otherwiſe it is in caſe of appeale of death, &c. as if two men be ioyntly and ſeuerally bounden in an Obligation, if the Obligee releaſe to one of them; both are diſcharged, and ſeeing the Treſpaſſers are parties and priuies in wrong, the one ſhall not plead a Releaſe to the other without ſhewing of it forth, albeit the Deede appertaine to the other.

27.E.3.83. 13.E.4.2. 15.E.4.26. 21.E.4.72. 22.E.4.7. 8.H.6.15. 20.H.6.41. 21.H.6. *Arbitrement*, 41. 2.R.3.9.a. 14.H.8.10. 34.H.8.tit.*Estrange alfait* 22. 3.H.6.18.36.

If an action of debt vpon an Obligation be brought againſt an heire, he may pleade in barre a Releaſe made by the Obligee to the Executors. But albeit the Deed belong to another, yet muſt he ſhew it forth, for both of them are priuie to the Teſtator.

13.E.2.tit.*Monſtrans de faits*, 42.

¶ *Per meſme le reaſon.* Vbi eadem Ratio, ibi idem Ius.

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¶ Auxy ſi le feoffee donaſt ou grãtaſt le fait Poll al feoffor, tiel grant ſerra bone, et donques le fait & le propertie del

ALſo if the feoffee granteth the deed to the feoffor, ſuch grant ſhall bee good, and then the deed and the propertie therof belongeth

¶ *Le property del fait appertient al feoffor.* Hereby it appeareth that a man may giue or grant his Deed to another, and ſuch a grant by Paroll is good.

And

And it is alſo implied, That if a man hath an Obligation, though he cannot graunt the thing in Action, yet hee may giue or grant the Deed, viz. the Parchment and Ware to another, who may cancell and vſe the ſame at his pleaſure.

¶ *Serra plus toſt entend que il vient al fait per loyall meane, que per tortious meane.* Omnia præſumuntur legitimè facta, donec probetur in contrarium. Iniuria non præſumitur.

¶ Quære de dubijs. There be three kind of vnhappie men.

1 Qui ſcit & non docet, Hee that hath knowledge and teacheth not.

2 Qui docet & non viuit, Hee that teacheth and liueth not thereafter.

3 Qui neſcit, & non interrogat, He that knoweth not, and doth not enquire to vnderſtand. Therefore Littleton ſaith, Quære de dubijs.

fait appertient al Feoffor, &c. Et q̃n le Feoffor ad le Fait en poigne, et eſt plead al Court, il ſera plus toſt entendue que il vient al Fait per loyal meane, que per tortious meane. Et iſſint a eux ſemble que le Feoffor poet bien pleader tiel fait polle que compient condition, &c. q̃l ad le fait en poigne. Ideo ſemper quære de dubijs, quia per rationes peruenitur ad legitimam rationem &c.

to the Feoffor, &c. and when the Feoffor hath the deed in hand, and is pleaded to the Court, it ſhall be rather intended, That he commeth to the Deed by lawfull meanes, than by a wrongfull mean: & ſo it ſeemeth vnto them, That the feoffor may well plead ſuch deed poll which compriſeth the condition, &c. if he hath the ſame in hand. *Ideo ſæpe quære de dubijs, quia per rationes peruenitur ad legitimam rationem &c.*

Infœlix cuius nulli ſapientia prodeſt.
Infœlix qui recta docet, cum viuit inique.
Infœlix qui pauca ſapit ſpernitque doceri.

¶ Quia per rationes peruenitur ad legitimam rationem. For Ratio is Radius diuini Luminis, And by reaſoning and debating of graue learned men the darkneſs of ignorance is expelled, and by the light of legall Reaſon the Right is diſcerned, and thereupon Iudgment giuen according to Law, which is the perfection of Reaſon. This is of Littleton here called Legitima ratio, whereunto no man can attaine but by long ſtudie, often conference, long experience, and continuall obſeruation.

Certaine it is, That in matters of difficultie the more ſeriouſly they are debated and argued, the more truly they are reſolued, and thereby new inuentions iuſtly auoyded.

Inter cuncta leges & perconſtabere doctos.

Section 378.

¶ *Condition en Ley, &c.* Littleton having ſpoken of Conditions in Deed, now according to his owne diuiſion commeth to ſpeake of Conditions in law.

¶ *Que ne ſoit ſpecifie en Eſcript.* A Condition in Law is that which the Law intendeth or implieth without expreſſe words in the Deed.

¶ Eſtates que homes ont ſur condition en ley ſont tiels eſtates que ont vn condition per la ley a eux annex, coũt que ne ſoit ſpecifie en eſcript. Si come hõe grant per ſon fait a vn auter loffice de Par-

EStates which men haue vpon Condition in Law, are ſuch Eſtates which haue a Condition by the law to them annexed, albeit that it bee not ſpecified in writing. As if a man graunt by his Deed to another the

Parkerſhip de vn park a aũ & occupier meſme loffice pur terme de ſon vie, leſtate que il ad en loffice eſt ſur condition en ley, ceſtaſcauoir, que le parker bien & loyalment gardera le park. & ferra ceo q̃ a tiel office appertiẽt a faire, ou auterment bien lirroit a! graunt̃or & a ſes heires de luy ouſte, & de granť ẽ a vn auter ſil voit, &c. Et tiel condition que eſt entendus per la ley eſtre annexe a aſcun choſe, eſt auxy fort ſicome la condition fuiſſoit miſs en eſcript.

the office of Parkerſhip of a Parke, to haue and occupie the ſame office for terme of his life, the eſtate which he hath in the office is vpon Condition in Law, to wit, that the Parker ſhall well and lawfully keepe the Parke, and ſhall doe that which to ſuch office belongeth to doe, or otherwiſe it ſhal be lawful to the grãtor, & his heires to ouſt him, and to grant it to another if hee will, &c. And ſuch Condition as is intended by the Law to be annexed to any thing, is as ſtrong as if the Condition were put in writing.

¶ *Que le Parker bien & loyalment garde. rale Parke, &c.* Parke, this ſhould be written Parque which is a French word, and ſignifieth that which we vulgarly call a Parke of the French Verbe Parquer, to impark, to incloſe. It is called in Domeſday Parcus. In law it ſignifieth a great quantitie of ground incloſed, priuiledged for wild beaſts of chaſe by preſcription, or by the Kings grant.

The beaſts of Parque, or Chaſe properly extend to the Bucke, the Doe, the Fore, the Hatron, the Roe, but in a common and legall ſence, to all the beaſts of the Forreſt. There bee both Beaſts and Foules of the Warren. Beaſts, as Hares, Coneies, and Roes called in Records (d) Capreoli. Fowles of twofolds, viz. Terreſtres and Aquatiles, Terreſtres of two ſorts. Silueſtres and Campeſtres: Campeſtres as Partridge, Quaile, Rule, &c. Silueſtres, as Pheſant, Woodcocke, &c. Aquatiles, as Mallard, Herne, &c. whereof I haue ſeen this Record. (*) Rex conceſſit Iohanni de Beuerly Armigero ſuo quod ipſe cum quibuſcunque canibus ſuis ad quaſcunque beſtias, feras Regis in quibuſcunque foreſtis, parcis ſuis quotieſcunque voluerit venari poſſit, & quoſcunque Falcones poſſit permittere volare ad quaſcunque aues de Warrena in quibuſcunque riparijs, &c.

(d) *Hil.* 13. *E.* 3. *coram Rege in Theſaur.*

(*) 38. *E.* 3. *rot. patent. par* 3. *m.* 10.

It is reſolued (e) by the Iuſtices and the Kings Councell, that Capreoli, id eſt, Roes, non ſunt Beſtiæ de foreſta, eo quod fugant alias feras. Beaſts of Forests, be properly Hart, Hind, Bucke, Hare, Beare and Wolfe, but legally all wild beaſts of Venery.

(e) *Hil.* 13. *E.* 3. *coram Rege in Theſaur.*

A Forreſt and Chaſe are not, but a Parke muſt bee incloſed. The Forreſt and Chaſe doe differ in Offices and Lawes: euery Forreſt is a Chaſe, but euery Chaſe is not a Forreſt. A ſubiect may haue a Forreſt by eſpeciall grant of the King, as the Duke of Lancaſter, and the Abbot of Whitbie had.

Vid. Sect. 1.

Ockam cap. quid Regis Foreſta ſaith, Foreſta eſt tuta ferarum manſio non quarum liber, ſed ſilueſtrium, non quibuſ bet in locis, ſed certis, & adhoc idoneis, vnde Foreſta E mutata in O. quaſi foreſta; hoc eſt, ferarum ſtatio.

Vide Bract fol 221. & 316. *Britton fol.* 34. *Flata lib* 2. *cap.* 34. 35.

Pudzeld or Woodgeld is to be free from payment of money for taking of Wood in any Forreſt. But let vs now returne to our Littleton.

In this Section Littleton putteth an example of a Condition in Law annexed to the office of the Keeper of a Parke, but this example muſt bee vnderſtood with a diſtinction, for if the Parker doth not attend on the Parke one or two, &c. dayes, this is no forfeiture of the Office of Parkerſhip, but if in his default any Deere be killed, and ſo a damnage to the Lord, that is a forfeiture; for (that it may be ſaid once for all) non-vſer of it ſelfe without ſome ſpeciall damnage is no forfeiture of priuate Offices, but non-vſer of publique Offices which concerne the adminiſtration of Iuſtice, or the Common wealth, is of it ſelfe a cauſe of forfeiture.

5. *E.* 4. 15. 6. *E.* 3. *E.* 4. 26. *Pl. Com.* 379. 380.

8. *H.* 7. 12. 39. *H.* 6. 32. &c.

¶ *Luy ouſter ſil voit, &c.* Littleton here ſpeaketh of an Ouſter by force of a Condition in Law, therefore it is to bee ſeene in what other caſes the Grantor may lawfully ouſt his Officer.

There is a diuerſitie betweene Officers that haue no other profit, but a Collaterall certaine fee, for there the Grantor may diſcharge him of his ſeruice, as to be a Bayly, Receiuer, Sur-

18.E.4.8. 31.H.8. grants. Br.134 34.H.8.ibid.93.11. Eliz. Dier.285.

ueyor, Audit or, or the like, the exerciſe whereof is but labour and charge to him, but hee muſt haue his fee: for the maine rule of Law is, That no man can fruſtrate or derogate from his owne grant to the preiudice of the Grantee. And where albeit the Grantee hath no other profit but his fee, yet that fee is to bee perceiued and taken out of the profits appertayning to the Lord within his Office, for there the Grantor cannot diſcharge him of his ſeruice or attendance, for that may turne to the preiudice of the Grantee, if the Grantor will not grant the Office at all. But in all caſes where the Officer relinquiſheth his Office, and refuſeth to attend, he loſeth his Office, Fee, Profit and all.

There is another diuerſitie where the Grantee beſides his certaine fee hath profits and auayles by reaſon of his Office, there the Grantor cannot diſcharge him of his ſeruice or attendance, for that ſhould be to the preiudice of the Grantee. As if a man doth grant to another the Office of the Stewardſhip of his Courts of his Mannors with a certaine fee, the Grantor cannot diſcharge him of his ſeruice and attendance, becauſe he hath other profits and fees be-
22.H.6.12.3.6.E.6.Dier 71. longing to his Office, which he ſhould loſe, if he were diſcharged of his Office. And as in the caſe which Littleton here putteth of the Office of the Keeper of a Parke, for that hee hath not only his fee certaine, but profits and auayles alſo, in reſpect of his office, as Deere Skinnes, Shoulders, &c. But now let vs proceed and ſee what other particular forfeitures in Law bee of this Office here ſpoken of by Littleton, and ſomewhat of Conditions in Law in generall.

15.E 4.3.1.5.E.4.26. 28.H.8.Bendloes enter Eueſq de Londres & Hieron. lib.9. fol.50.95.96.99. And it is to be vnderſtood, that if any Keeper kill any Deere without warrant, or fell or cut any Trees, Woods, or Vnderwoods, and conuert them to his owne vſe, it is a forfeiture of his Office, for the deſtruction of vert is, by a meane, deſtruction of Veniſon. So it is if he pul down the lodge or any houſe within the Park for putting of Hay into it for feeding of the Deere or ſuch like, it is a forfeiture, and the reaſon wherefore the Office in theſe and in like caſes ſhall be forfeited (f) is quia in quo quis delinquit in eo de iure eſt puniendus.

(f) Mich.33.E.1. coram Rege in Theſaur. Leueſque de Durhams caſe. As to Conditions in Law, you ſhall vnderſtand they bee of two Natures, that is to ſay, by the Common Law, and by Statute. And thoſe by the Common Law are of two Natures, that is to ſay, the one is founded vpon Skill and Confidence, the other without Skill or Confidence: Vpon Skil and Confidence, as here the Office of Parkerſhip, and other Offices in the next Section mentioned, and the like.

Pl.Com.379.a. Sir Henrie Nevils caſe. 21 E.4.20.93. Touching Conditions in Law without Skill, &c. ſome bee by the Common Law, and ſome by the Statute. By the Common Law, as to euery eſtate of Tenant by the Courteſie, Tenant in Taple after poſſibilitie of iſſue extinct, Tenant in Dower, Tenant for Life, Tenant for Yeares, Tenant by Statute Merchant, or Staple, Tenant by Elegit, Gardein, &c. there is a Condition in Law ſecretly annexed to their Eſtates, that if they alien in fee, &c. that he in the reuerſion or remainder may enter, and ſic de ſimilibus, or if they clayme a greater Eſtate in Court of Record, and the like.

Lib.8.fol.44. Wittinghams caſe. Concerning Conditions in Law founded vpon Statutes, for ſome of them an entrie is giuen, and for ſome other a recouery by action: Where an entrie is giuen, as vpon an alienation in Mortmaine, &c. and the like. Where an action is giuen, as for waſte againſt Tenant for life and yeares, and the like.

¶ *Et tiel Condition que eſt entendue per la ley eſtre annex a aſcun choſe eſt auzi fort, &c.* Here it is worthy the obſeruation to take a view of the diuiſions aforeſaid in ſome particular caſe. As for example. Admit that an Office of Parkerſhip be granted or diſcend to an Infant or Feme Couert, if the Conditions in Law annexed to this Office which require Skill and Confidence bee not obſerued and fulfilled, the Office is loſt for euer, becauſe as Littleton ſaith, here it is as ſtrong as an expreſſe Condition. But if a Leaſe for life be made to a Feme Couert, or an Infant, and they by Charter of feoffment alien in fee, the breach of this Condition in Law, that is without Skill, &c. is no abſolute forfeiture of their eſtate. So of a Condition in Law giuen by Statute, which giueth an Entrie only. As if an Infant or a Feme Couert with her huſband aliens by Charter of feoffment in Mortmaine, this is no barre to the Infant, or Feme Couert. But if a recouery be had againſt an Infant or Feme couert in an Action of waſte, there they are bound and barred for euer.

Lib.8.fol.44. Wittinghams caſe. And it is to be obſerued, that a Condition in Law by force of a Statute which giueth a recouery is in ſome caſe more ſtrong then a Condition in Law without a recouery. For if Leſſee for life make a Leaſe for yeares, and after enter into the land, and make waſte, and the Leſſor recouer in an Action of waſte, he ſhall auoid the Leaſe made before the waſte done. But if the Leſſee for life make a Leaſe for yeares, and after enter vpon him, and make a feoffment in fee this forfeiture ſhall not auoid the Leaſe for yeares. Nor in any of the ſaid caſes a precedent Rent granted out of the Land ſhall be auoyded. For if Leſſee for life grant a Rent charge, and after doth waſte, and the Leſſor recouereth in an Action of waſte, he ſhall hold the Land charged

ged during the life of the Tenant for life, but if the rent were granted after the waste done, the Lessor shall auoid it.

And the reason wherefore the Lease for yeares in the case aforesaid, shall be auoyded, is because of necessitie the Action of waste must be brought against the Lessee for life, which in that case must bind the Lessee for yeares, or else by the Act of the Lessee for life the Lessor should bee barred to recouer Locum vastatum, which the Statute giueth.

If a man hath an Office for life which requireth Skill and confidence, to which Office he hath a house belonging, and chargeth the house with a Rent during his life, and after commit a forfeiture of his Office, the Rent charge shall not be auoyded during his life, for regularly a man that taketh aduantage of a Condition in Law shall take the Land with such charge as he finds it. And therefore Littleton is here to be vnderstood, that a Condition in Law is as strong as a condition in deed, as to avoide the estate or interest it selfe, but not to auoide precedent charges, but in some particular cases as by that which hath beene said appeareth.

There be at this day more conditions in Law annexed to offices then were when Littleton wrote; for example, for offices in any wise touching the administration or execution of Iustice, or Clerkship in any Court of Record, or concerning the Kings Treasure, Reuenus, Account, Customes, Pinage, Iudicature, Kings Surueyor, or keeping of any of his Maiesties Castles, Forts, &c. For if any of these officers bargaine or sell any of the said offices or any Deputation of the same, or take any money or profit, or any promise, couenant, bond or assurance, to haue any money or reward for the same, the person so bargaining or selling, or that shall take any such promise, couenant, bond or assurance shall not only forfeit his estate, but also euery person so buying, giuing or assuring be adiudged a disabled person to haue or enioy the same office or offices, deputation or deputations, &c. And that all such bargaines, sales, promises, couenants and assurances, as be before specified, shall be voide, except as in the said Act is excepted. 3.H.7.ca.12. *Auditor, Receiuer, Bailise, Keeper of a Castle, Master of the game Keeper or Parker, of any Forrest, Parke, Chase &c.* 7.E.6.ca.1. *Treasurer, Receiuer Collector, Bailise, &c.* 5.E.6.ca.16.

Sir Robert Vernon Knight being Coferer of the Kings house of the Kings gift, and hauing the receit of a great summe of money yearely of the Kings Reuenue, did for a certaine summe of money bargaine and sell the same to Sir A.I. and agreed to surrender the said office to the King, to the entent a grant might be made to Sir A. who surrendred it accordingly: and thereupon Sir A. was by the Kings appointment admitted and sworne Coferer. And it was resolued by Sir Thomas Egerton Lord Chancellor, then chiefe Iustice and others to whom the King referred the same, that the said office was voyde by the said Statute, and that Sir A. was disabled to haue or take the said office, and that no Non obstante could dispence with this act to enable the said Sir A. for the reason and cause before-mentioned, Sect.180. And hereupon Sir A. was remoued, and Sir Marmaduke Darnell sworne (by the Kings commandement) in his place. And note that all promises, bonds and assurances aswell on the part of the bargainer, as of the bargainee are voyde by the said act. (*) Nulla alia re magis Romana respublica interiit, quam quod magistratus officio venalia erant. *Mich.*13.*Iacobi Regis.* *Lib.*3.*fo.*83.*Colshills case.* * *Tacit. fo.*353. (g) *Salust.*

(g) Iugurthum going from Rome, said to the Citie, Vade venalis ciuitas, mox peritura si emptorem inuenias.

Therefore by the Law of England it is further prouided that no Officer or Minister of the King shall be ordained or made for any gift or bribage, fauour or affection, nor that any which pursueth by him or any other, priuily or openly to be in any manner of office, shall bee put in the same office or in any other, but that all such officers shall be made of the best and most lawfull men and sufficient. A Law worthy to be written in letters of gold, but more worthy to be put in due execution. For example, neuer shall Iustice be duly administred, but when the Officers and ministers of Iustice be of such quality, and come to their places in such manner as by this law is required. 12.R.2.ca.2.

¶ *Tiel condition que est entendus per la ley estre annex a ascun chose, est auxi fort si come la condition fuit mise in escript.* And this accords with that ancient rule; Vtiquè fortior & potentior est dispositio legis quam hominis. *Vid.Sect.*419.429.432.

Sect. 379.

¶ Item maner est de grants de offices de Seneschall, Constabular, Bedelary, Bailiwick, ou auts

IN this manner it is of grants of the offices of Steward, Constable, Bedelarie, Bayliwick, or other offices, &c. But if

¶ *Seneschall.* Of this I haue spoken before. 21.E.4.20.*Pl.Com.*379.

¶ *Constabularie.* of this likewise something hath beene spoken before. 8.E.4.6

before. But a Constable is often taken in the law for a Warden or keeper, as Constabularius castri de Douer & 5. portuum; for the warden of the Castle of Douer and the Cinque-ports, &c. So as in this sence Constabularius is taken for Castellanus, and this is proued by the Statute (*) of W.1.ca.7. Des prises des Constables ou Castellains faitz des auters, &c. And Magna Carta cap. 19. nullus constabularius vel ejus balivus capiat blada vel alia catalla alicujus qui non sit de villa vbi castrum suum situm est, &c. Stanford, fo. 152. Constabularius Turris London, for Custos turris, 32.H.8.ca.28. Constable of the Forrest, for the keeper of the Forrest.

(*) W.1.ca.7.

(a) Magna Carta ca.19.

Stanf. fo.152. 32.H.8.ca.28.

Si tiel office soit grant a vn hom, a auer & occupier per luy ou son deputie, donq; si loffice soit occupy p luy, ou per son deputie sicom il deuoit per le ley estre occupie, ceo suffist pur luy, ou autrement le grantor & ses heires poient ouste le grantee, come est auantdit.

such office bee granted to a man To haue and to occupie by himselfe or his deputie, then if the office bee occupied by him or his deputie, as it ought by the law to bee occupied, this sufficeth for him, or otherwise the grantor and his heires may ouste the grantee as is aforesaid.

¶ *Bedelarye.* **Bedell is deriued of the French word** Beadeau, which signifieth a messenger of the Court or vnder Baylife, in Latyn Bedellus.

And the oath of a Bedell of a Mannor is that he shall duly and truly execute all such Attachements and other Proces as shall be directed to him from the Lord or Steward of his Court, and that he shall present all pound Breaches, which shall happen within his office, and all chattells wayued, and estrayes.

¶ *Bayliwicke.* **Of this sufficient hath beene said before.**

Sect. 380.

HEre Littleton termeth words of limitation to bee Conditions in law; for his first example is;

¶ Item estates de fres ou tenemẽts purront estre sur condition en ley, coment que sur lestate fait, ne fuit aleun mention ou rehersal fait de le condition. Sicome mittomus q̃ vn leas soit fait a le baron et a sa feme, a auer et tener a eux durant l' couerture enter eux, en cest cas ils ont estate pur termẽ de lour deux vies sur condition en ley, ſ. si vn de deux deuie, ou que deuorce soit fait enter eux, donque bien lirroit

¶ *Durant le couerture enter eux.* Durante coopertura inter eos This word (Durãte) is properly a word of limitation, as Durante viduitate, or Durante virginitate, or Durante vita, &c. And properly a Condition in Law is as hath beene said where the Law createth the same without any expresse words.

Dum, also maketh a limitation, as if a Lease be made, Dum sola fuerit, or Dum sola & casta vixerit. Dummodo is also a word of limitation as Dum-

37.H.6.17. 3.E.3.15. 8.Ass. Pl.

ALso estates of lands or tenements may bee made vpon condition in law, albeit vpon the estate made there was not any mention or rehersall made of this condition. As put the case that a leasé be made to the husband and wife, to haue and to hold to them during the the couerture betweene them. In this case they haue an estate for terme of their two liues vpon condition in law, s. if one of them dy, or that there be a diuorce betweene

lirroit a le leſſor et a ſes heires dentrer, &c. them, then it ſhall bee lawfull for the leſſor and his heires to enter, &c. modo ſolueret talem reddium. Quamdiu alſo is a word of limitation, for if a man grant a rent out of the Mannor of D. 14.*E.*2.*Grant* 92.

Quamdiu the Grantor ſhall bee dwelling vpon the Mannor, this is good, or Quamdiu ſe bene geſſerit. 37.*H.*6.27.

And ſo be theſe words, Donec, Quouſque, Vſque ad, Tam diu, Vbicunque. 10.*Aſſ* 4.6.*E.*3.8.9.31. 3.*E.*3 18. *Annuity* 40. 19.*H.*6.54. *Temps E* 1. *Annuity* 130. 11.. *Aſſ p.*8. 21.*Aſſ p.*18. 26.*E.*3.63. 7.*E.*4.16. 9.*E.*4.25.26. 9.*H.*6.37. 14.*H.*8.13. * 47.*E.*3.27. 39.*E.*3.32.33. 11.*H.*4.14.76. *Bracton fo.*298. 18.*E.*4.28. 24.*H.*8.*baſtards Br.*44. 39.*E.*1.*baſtard* 21. 22.*E.*4.tit *Conſultat.*5. 6.*E*3.249. 25.*E.*3.39.

¶ *Si lun de eux deuie, &c.* For if one of them die the couerture is diſſolued, and conſequently the ſtate determined by the limitation.

¶ *Ou que diuorce ſoit fait enter eux, &c.* Here is a diſtinction to be vnderſtood: for there be two kinde of diuorces, viz. one a Vinculo matrimonij, * and the other A menſa & thoro. Diuortium dicitur à diuertendo, or Diuortendo quia vir diuertitur ab vxore. Diuorces A vinculo matrimonij are theſe Cauſa Præcontractus, Cauſa Metus, Cauſa Impotentiæ ſeu Frigiditatis, Cauſa Affinitatis, Cauſa Conſanguinitatis, &c. And I reade in an ancient Record Coram Rege Termino Paſch. 30.E.1. William de Chadworthes caſe, that he was diuorced from his wife for that he did carnally know her daughter before he married the mother; All which are cauſes of Diuorce preceding the marriage.

A menſa & Thoro, as Cauſa Adulterij which diſſolueth not the marriage A vinculo Matrimonij, for it is ſubſequent to the marriage. And the Diuorce that Littleton here ſpeaketh of is intended of ſuch Diuorces, as diſſolue the marriage A vinculo matrimonij, and maketh the iſſue baſtard, becauſe they were not luſtæ nuptiæ. And therefore in Littletons caſe though the husband and wife be diuorced Cauſa Adulterij, yet the freehold continueth, becauſe the Couerture continueth. And it is further to be vnderſtood that many Diuorces that were of force by the Cannon Law, when Littleton wrote, are not at this day in force, for by the Statute of 32.H.8.ca.38. it is declared that all perſons be lawfull (that is, may lawfully marry) that be not prohibited by Gods lawe to marry, that is to ſay, that be not prohibited by the Leuiticall degrees. (*) *Vid. Sect.*399. 32.*H.*8.*ca.*38.

A man married the daughter of the ſiſter of his firſt wife, and was drawne in queſtion in the Eccleſiaſticall Court for this marriage alledging the ſame to be againſt the Cannons, and it was reſolued (n) by the Court of Common-Pleas vpon conſideration had of the ſaid Statute that the marriage could not be impeached, for that the ſame was declared by the ſaid Act of Parliament to be good, in aſmuch as it was not prohibited by the Leuiticall degrees, Et ſic de ſimilibus. (n) *Tr.*2 *Iac. Rot.*1034. *Richard Parſons caſe.*

*Sect.*381.

¶ Et que ils ont eſtate pur terme de lour deux vies, Probatur ſic, cheſcun home que ad eſtate de frankstenement en aſcun terres ou tenements, ou il ad eſtate en fee, ou en fee taile, ou pur terme de ſa vie demeſne, ou pur terme dauter vie, et per tiel leaſe ils ount frankstenement, mes ils nont p ceſt grant fee, ne fee taile, ne pur terme dauter vie, Ergo, ils ont eſtate pur terme de lour vies, mes ceo eſt ſur condition en ley, en le forme auantdit, et en ceſt cas ils ſeront waſt, le feoffor auera enuers eux briefe de waſt ſuppo-

And that they haue an eſtate for term of their two liues, is proued thus, euery man that hath an eſtate of freehold in any lands or tenements, either he hath an eſtate in fee, or in fee taile, or for terme of his own life, or for terme of another mans life, & by ſuch a leaſe they haue a freehold, but they haue not by this grant fee, nor fee taile, nor for terme of anothers life, *Ergo*, they haue an eſtate for terme of their owne liues, but this is vpon condition in lawe in forme aforeſaid, and in this caſe if they ſhal do waſt, the feoffor ſhall

ſuppoſant per ſon breife, Quod tenet ad terminum vitæ,&c. **mes en ſon count il declare coment & en quel maner le leas fuit fait.**

haue a writ of waſte againſt them ſuppoſing by his writ, *Quod tenet ad terminũ vitæ,&c.* but in his count hee ſhall declare how, and in what manner the leaſe was made.

Pl.Com 561.b. Vi.Sect.345 finale.

¶ *Probatur ſic.* **By this argument logically drawne** a diuiſione, it appeareth, How neceſſarie it is that our Student ſhould (as Littleton did) come from one of the Vniuerſities, to the ſtudie of the Common Law, where he may learne the liberall Arts, and eſpecially Logicke, for that teacheth a man not onely by iuſt argument to conclude the matter in queſtion, but to diſcerne betweene truth and falſehood, and to vſe a good method in his ſtudye, and probably to ſpeake to any Legall queſtion, and is defined thus, Dialectica eſt ſcientia probabiliter de quouis themate diſſerendi, whereby it appeareth how neceſſarie it is for our Student.

37.H.6.27.

¶ *Suppoſant per ſon briefe* Qd tenet ad terminum vitæ,*&c.* **This and** the reſt of this Section is euident and plaine.

Sect. 382.

Vi.Brack.lib.5.414.

¶ *SI vn Abbe.* So it is of a Biſhop, archDeacon, and other Eccleſiaſticall or temporall Bodie Politique or Corporate, or of any Officer or Graduate, or the like.

¶ *Reſigne ou ſoit depoſe.* And ſo it is of a Tranſlation and Ceſſion.

¶ **EN meſme le maner eſt, ſi vn Abbe fait vn Leaſe a vn hõe, a auer et tener a luy durant le temps que il leſſor eſt Abbe, en ceſt caſe le Leſſee ad eſtate pur terme de ſa vie demeſn, mes ceo eſt ſur condition en ley, ſ, que ſi labbe reſigna, ou ſoit depoſe, que bien lirroit a ſ ſucceſſor dentrer,&c.**

IN the ſame manner it is if an Abbot make a leas to a man for yeares, to haue and to hold to him during the time that the Leſſor is Abbot; in this caſe the leſſee hath an Eſtate for term of his own life: but this is vpon condition in Law, s. That if the Abbot reſigne or be depoſed, that then it ſhall be lawfull for his ſucceſſor to enter,&c.

Section 383.

¶ *LIVRE Daſſiſes* is a Booke of the Repoꝛts of Caſes in the raigne of King Edward the third, and it is called the booke of Aſſiſes, becauſe the greateſt part of the caſes therin are vpon writs of Aſſiſes brought, as hath been ſaid, and which hath beene cited before.

¶ *Deuiſa les Tenements a vendre per ſon Executor.* **This muſt**

¶ **ITem hõe pott veier en le Liuꝛ Daſſiſe**, viz. anno 38.E.3.p.3. **vn pl Dall. en ceſt forme que enſuiſt: ſ, Vn Aſſiſe de** Nouel Diſſeiſin **auterfoits fuit poꝛt vers A. que pleda al Aſſiſe, et troue fuit per verdict, Que laun-**

ALſo a man may ſee in the Booke of Aſſiſes, *Anno* 38.*E.* 3.*p.*3. a plea of Aſſiſe in this form following, s. An Aſſiſe of *Nouel Diſſeiſin* was ſometime brought againſt A. who pleaded to the Aſſiſe, and it was found by verdict, that

launcestor le plaintif deuisa les Tenemts a vendre per le Defendant, que fuit son Executor, et de faire distribution des deniers pur son alm: Et fuit troue que maintenant apres la mort le Testator, vn home luy tendist certaine summe de deniers pur les Tenements, mes non pas al value, & que le Executor puis auoit tenus les Tenements en sa main demesne per deux ans, al entent deles vender pluis chier a ascun auter, et troue fuit q̄ il auoit tout temps prist les profits de les Tenements a ꝰ vse demesne sans riē faire pur lalme le mort, &c. Moubray Justice disoit, Lexecutor en tiel case est tenus p la ley a faire le vender a plus toft que il purroit apres la mort son Testator, et troue est que il refuse de faire vendē, & issint il auoit vn default en luy, et̄ issint per force del deuise il fuist tenus dañ mts touts le profits auenants de les Tenements al vse l mort, et troue est que il ad

the Ancestour of the Plaintife deuised his lands to bee sould by the Defendant who was his Executor, and to make distribution of the money for his Soule. And it was found, That presently after the death of the Testator, one tendred to him a certaine sum of mony for the lands, but not to the value, and that the Executor afterwards held the lands in his own hands two yeares, to the entent to sell the same deerer to some other, and it was found that he had all the time taken the profits of the lands to his own vse, without doing any thing for the soule of the deceased, &c. *Moubray* Iustice said, The Executor in this case is bound by the Law to make the sale as soone as hee may after the death of his Testator, and it is found that hee refused to make sale, and so there was a default in him, and so by force of the Deuice he was bound to put all the profits comming of the lands to the vse of the Dead, and it is found that he tooke them to his

be intended to bee of Lands deuisable by Custome, for Lands by the Common law were not deuisable, (as hath beene sayd:) for in this Section is implied a Diuersity, viz. when a man deuiseth that his Executor shall sell the Land, there the lands discend in the meane time to the heire, and vntill the sale bee made, the heire may enter and take the profits. But when the Land is deuised to his Executor to be sould, there the deuise taketh away the discent, and vesteth the state of the land in the Executor, and he may enter and take the profits, and make sale according to the deuise. And here it appeareth by our Author, That when a man deuiseth his Tenements to be sould by his Executors, it is all one as if he had deuised his Tenements to his executors to be sould: and the reason is, because he deuiseth the tenements, whereby hee breakes the Discent.

¶ Mowbray. Iohn Mowbray was a reuerend Iudge of the Court of Common pleas, and discended of a Noble Familie.

¶ *Lexecutor en tiel case est tenus per la Ley a faire le vender a pluis toſt que il purroit apres la mort son Testator, &c.* And the reason hereof is, for that the meane profits taken before the sale, shall not bee Assets, so as he may be compellable to pay debts with the same, and therefore the law will enforce him to sell the lands as soone as hee can, for otherwise hee shall take aduantage of his owne laches: But if a man deuise that his Executor shall sell his land, there hee may sell it at any time, for that hee hath but a bare power, and no profit. And by this case it appeareth, what construction the Law maketh for the spædie payment of debts. And here is to bee obserued, That many words

words in a will doe make a Condition in Law, that make no Condition in a deed: as here to deuiſe lands to an Executor ad vendend', ſo if lands be deuiſed to one ad ſolvendum 20.l. to I.S. or paying twentie pounds to I.N. this amounts to a Condition. And Crickmers caſe was this, A man ſeiſed of certaine lands holden in Socage had iſſue two daughters A. and B. and deuiſed all his lands to A. and her heires, to pay vnto B. a certaine ſumme of money at a certain day and place, the money was not payd, and it was adiudged, That theſe words, To pay, &c. did amount in a will to a Condition, and the reaſon was, for that the land was deuiſed to A. for that purpoſe, otherwiſe B. to whom the money was appointed to be paid, ſhould be remedileſſe, Et intereſt reipublicæ ſuprema hominum teſtamenta rata haberi: and the Leſſee of B. vpon an actuall Electment recouered the moitie of the land againſt A.

Mich.31.& 32.El. in the Kings Bench, Crickmers caſe adiudge. D.7.6.2.6 fo.74. 7.E.6.76.

pꝛiſe a ſ̃ vſe ỽmeſne, et iſſint auter default en luy: Per que fuit adiudge que le plaintife recouera. Et iſſint appiert per le dit iudgement, que per force del dit deuiſe, lexecutor nauoit Eſtate ne poier en les Tenements, forſque ſur condition en ley.

owne vſe, and ſo another default in him. Wherefore it was adiudged, That the Pl ſhould recouer. And ſo it appeareth by the ſayd Iudgement, That by force of the ſayd Deuiſe the Executour had no eſtate nor power in the lands, but vpon condition in law.

¶ *Et iſſint appiert per le iudgement, &c.* This concluſion vpon a Iudgement is of great authoritie in Law, Quia Iudicium pro veritate accipitur, and as it hath beene ſayd, Iudicium is quaſi iuris dictum.

Sect. 384.

p.L.436.

¶ HEreby it appeareth That Limitations which (as hath bin ſayd, Littleton termeth Conditions in Law) may be pleaded without Deed, and the reaſon of our Author is obſeruable, becauſe the Law in it ſelfe purporteth the Condition, whereof ſomewhat hath beene ſayd before: and therefore looke backe to the Conditions in Law, or words of limitation, and withall that a ſtranger may take aduantage of a limitation, as hath beene ſayd.

Vi.Sect.328.

Littleton hauing ſpoken at large of Conditions in Deed and in Law, ſomewhat ſeemeth neceſſarie to be ſayd of defeaſances, whereby the ſtate or right of Freehold or Inheritance may bee defeated and auoyded.

¶ ET mults autres choſes et caſes y ſont deſtates ſ̃ condition ẽ la Ley, et en tiels caſes il ne beſoigne dauer monſtre aſcun fait rehearſant la Condition, pur ceo que la Ley en luy meſme purpoꝛt l' Condition, &c.

Ex paucis dictis intendere plurima poſſis.

¶ Plus ſerra dit de Conditions en le pꝛochein Chapter, en le Chapter de Releaſes, et en le Chapter de Diſcontinuance.

AND many other things there are of Eſtates vpon Condition in Law, and in ſuch caſes hee needed not to haue ſhewed any Deed, rehearſing the condition, for that the Law it ſelfe purporteth the Condition, &c.

Ex paucis dictis intendere plurima poſſis.

More ſhall bee ſayd of Conditions in the next Chapter, in the Chap. of Releaſes, and in the chapter of Diſcontinuance.

Bract.li.2.fo 16.17. Aſſ.p.2. 3.E.3. 42 E.3.1.43.E.3.17 43. Aſſ. 12.7.H.6.43. 8.H.6.23. 32.E.3. Annu. 30 3.E.3. Annuitie 44.

¶ *Defeaſance*, Defeiſantia is fetched from the French word De faire, i. to defeat or vndoe, infectum reddere quod factum eſt. There is a diuerſitie betweene Inheritances executed, and Inheritances executorie, as Lands executed by Liuerie, &c. cannot by Indenture of Defeaſance be defeated afterwards. And ſo if a Diſſeiſee releaſe to a Diſſeiſor, it cannot be defeated by Indentures of Defeaſance made afterwards, but at the time of the releaſe or feoffement, &c. the ſame may be defeated by Indentures of Defeaſance, for it is a Maxime in Law, Quę incontinenti fiunt in eſſe videntur.

30.Aſſ.p.1. 30.Aſſ.p.11. 31.Aſſ.32.

But

But Rents, Annuities, Conditions, warranties, and ſuch like that bee Inheritances Executorie may be defeated by Defeaſances made either at that time, or at any time after. And ſo the Law is of Statutes, Recognizances, Obligations, and other things Executory. 20. *Aſſ.pl.*7.7.*E.*4.29. *Browning & Beſtons caſe. Pl. Com.*131. 28.*H.*8.*Dier* 6. 27.*H.*8.15. 19.*R.*2.*dower* 10. *Albanies caſe lib.*1.107.

¶ *Ex paucis dictis intendere plurima poſſis.*

Verſes at the firſt were inuented for the helpe of memory, and it ſtandeth well with the gravitie of our Lawyer to cite them. By this Verſe of our Author, Inferences and Concluſions in like caſes are warrantable.

Laſtly, ſomewhat were neceſſary to be ſpoken concerning clauſes of prouiſoes, containing Power of Reuocation, which ſince Littleton wrote, are crept into voluntarie Conueyances, which paſſe by rayſing of vſes, and executed by the (*) Statute of 27.H.8. and are become very frequent, and the Inheritance of many depend thereupon. As if a man ſeiſed of Lands in fee, and hauing iſſue diuers Sonnes by Deed indented, couenanteth in conſideration of Fatherly loue, and the aduancement of his Bloud, or vpon any other good conſideration to ſtand ſeiſed of three Acres of Land to the vſe of himſelfe for life, and after to the vſe of Thomas his eldeſt Sonne in tayle, and for default of ſuch iſſue to the vſe of his ſecond Son in tayle, with diuers like remainders ouer. With a Prouiſo that it ſhall be lawfull for the Couenantor at any time during his life to reuoke any of the ſaid vſes, &c. This Prouiſo being coupled with an vſe, is allowed to bee good, and not repugnant to the former States. But in caſe of a Feoffement, or other Conueyance, whereby the Feoffee or Grantee, &c. is in by the Common Law, ſuch a Prouiſo were meerely repugnant and void. (*) 27.*H.*8.*cap.*10.

And firſt in the caſe aforeſaid, if the Couenantor who had an eſtate for life doe reuoke the vſes according to his power, he is ſeiſed againe in fee ſimple without entry or clayme.

Secondly, he may reuoke part at one time, and part at another.

Thirdly, If he make a feoffment in fee, or leuie a fine, &c. of any part, this doth extinguiſh his power but for that part, whereas in that caſe the whole Condition is extinct. But if it be made of the whole, all the power is extinguiſhed. So as to ſome purpoſes, it is of the nature of a Condition, and to other, in nature of a limitation. *Lib.*1.*fol.*173.174. *Digges caſe. Lib.*1.*fol.*107. *Albanies caſe. Lib.*10.*fol.*143. *Scropes caſe. Lib.*7 *fol.*12.13. *Sir Francis Engleſields caſe.*

Fourthly, If hee that hath ſuch power of reuocation hath no preſent intereſt in the Land, nor by the Ceſſor of the ſtate ſhall haue nothing, then his feoffment or fine, &c. of the Land is no extinguiſhment of his power, becauſe it is mere collaterall to the Land.

Fiftly, By the ſame Conueyance that the old vſes bee reuoked, by the ſame may new bee created or limited, where the former ceaſe ipſo facto by the reuocation, without entrie or clayme.

Sixtly, That theſe reuocations are fauourably interpreted, becauſe many mens Inheritances depend on the ſame. And here I may apply the aboueſaid verſe.

Ex paucis dictis intendere plurima poſſis.

Chap.6. Diſcents que tollent Entries. *Sect.*385.

¶ Diſcents, q̄ tollent Entries ſont en deux maners, ceſtaſcauoir, ou diſcent eſt en fee, ou en fee taile: Diſcents en Fee que tollent entries ſont, ſicome home ſeiſie de certaine terres ou tenements eſt

Diſcents which toll Entries are in two mãners, to wit, where the diſcent is in fee, or in fee taile. Diſcents in fee which toll entries are, as if a man ſeiſed of certaine lands or tenemẽts is by another diſſeiſed, and the diſſeiſor hath iſſue, and dieth of

¶ *Diſcents.* This word cõmeth of the Latin word diſcendere, id eſt, ex loco ſuperiore in inferiorem mouere, and in legall vnderſtanding it is taken when Land, &c. after the death of the Anceſtor is caſt by Courſe of Law vpon the heire, which the Law calleth a Diſcent. And this is the nobleſt and worthieſt meanes whereby Lands are deriued from one to another, becauſe *Mirror.cap.*2.§.5. *Bracton lib.*5.*fol.*370. & 434. *Britton fol.*115.215. *Vide Sect.*5.

becauſe it is wrought and beſted by the Act of Law, and Right of Bloud, to the worthieſt and next of the Bloud and Kindred of the Anceſtor, and therefore it hath not in the Common Law altogether the ſame ſignification, that it hath in the Ciuil Law, for the Ciuilians call him, Hæredem qui ex teſtamento ſuccedit in vniuerſum ius teſtatoris. But by the Common Law hee is only Heire which ſucceedeth by Right of Bloud. And this agreeth well with the Etymologie of the word (Heire) to whom the Lands diſcend, for Hæres dicitur ab hærendo, quia qui hæres eſt hæret, hoc eſt, proximus eſt ſanguine illi cuius eſt Hæres. So as hee that is Hæres, ſanguinis eſt hæres & hærus hæreditatis.

p vn auter diſſeiſie, & le diſſeiſor ad iſſue & mozuſt de tiel eſtate ſeiſie, oze les tenements diſcendont al iſſue del diſſeiſor per courſe de la ley come heire a luy: Et pur ceo que la ley mitte les terres ou tenements ſur liſſue per force del diſcent, iſſint que liſſue vient a les tenements per courſe de ley, & nemy per ſon fait demeſne, lentrie le diſſeiſee eſt tolle, & il eſt mis de ſuer vn briefe Dentre ſur diſſeiſin **enuers le heire le diſſeiſor, de recouerer la terre.**

such eſtate ſeiſed, now the Lands diſcend to the iſſue of the diſſeiſor by courſe of Law, as heire vnto him. And becauſe the Law caſt the lands or tenements vpon the iſſue by force of the Diſcent, ſo as the iſſue commeth to the lands by courſe of Law, and not by his owne Act, the entrie of the Diſſeiſee is taken away, and hee is put to ſue a Writ of Entrie *ſur diſſeiſin* againſt the heire of the Diſſeiſor, to recouer the Land.

¶ *Diſcents que tollent entries ſont en deux Manners.* **Here is** an exact and perfect diuiſion made by our Authour, and withall plaine & perſpicuous.

Now as a Diſcent is the worthieſt meanes to come to Lands, &c. ſo hath the Heire more priuiledges, then any that by other order or meanes come to the Lands, &c. as ſhall appeare hereafter.

(*) *Bracton lib.4.fol.162.& 209. Britton fol.115. Fleta lib.4.cap.2.*

Nota, In ancient time (*) if the Diſſeiſor had bin in long poſſeſſion, the Diſſeiſee could not haue entred vpon him. (a) Likewiſe the Diſſeiſee could not haue entred vpon the Feoffee of the Diſſeiſor, if he had continued a yeare and a day in quiet poſſeſſion. But the Law is changed in both theſe Caſes, only the dying ſeiſed being an Act in Law doth hold at this day, and this ſeemeth to be very ancient, for this was the Law before the Conqueſt. (b) Porro autem quam maritus ſine lite & controuerſia ſedem incoluerit, eam coniux & proles ſine controuerſia poſſidento, ſi qua in illum his fuerit illata viuentem, eam hæredes ad ſe (perinde atque is viuus) accipiunto.

(a) *50.E.3.21.1.Aſſ.13. 30.H.3.Aſſ.432.9.Aſſ.15. 29.Aſſ.54. 26.Aſſ.12. 21.Aſſ.28.43.Aſſiſe 17.*
(b) *Lamb.explicat.fol.120. 70.*

And one of the reaſons of this ancient Law may be, that the heire cannot ſuddenly by entendement of Law, know the true ſtate of his Title. And for that many aduantages follow the poſſeſſion and Tenant, the Law taketh away the entrie of him that would not enter vpon the Anceſtor, who is preſumed to know his Title, and driueth him to his Action againſt him, that may be ignorant thereof.

¶ *Et mornſt de tiel eſtate ſeiſie.* **To a Diſcent that taketh away an** entrie, a dying ſeiſed is neceſſary, as heere it appeareth, but a man to other purpoſes may haue Lands by Diſcent, though his Anceſtor died not ſeiſed, as hath beene ſaid before.

11.H.7.12. 49.E.3.24.

¶ *Des terres ou tenements.* **That is of ſuch tenements as bee** corporeall, and doe lie in liuery, and not of Inheritances, which lie in grant, as Aduowſons, Rents, Commons in groſſe, and ſuch like which be Inheritances Incorporeall, and yet are included within this word (tenements) For Diſcents of them doe not put him that right hath to an Action, and the reaſon of this diuerſitie is, for that houſes ſerue for the habitation of men, and Lands to be manured for their ſuſtenance, and therefore the heire after a Diſcent ſhall not be moleſted or diſturbed in them by entrie.

33.E.3.gard.362.6.H.4.4. 39.E.3.36.15.E.4.14. F.N.B.143.q. 7.H.4.32.5.2.Aſſ.p 9. 21.E.3.2.

¶ *Eſt pur vn auter diſſeiſie.* **The like Law is, of an abatement** or intruſion, and of the Feoffees, or Donees, &c.

Upon

Upon the words of Littleton a diuerſitie may be collected, that if a recouery be had by A. againſt B. and before execution B. die ſeiſed, this Diſcent ſhall not take away the entrie of the Recoueror. But if after execution B. had diſſeiſed the Recoueror and died ſeiſed this diſcent ſhall take away the entrie of the Recoueror within the expreſſe words of Littleton: and ſo it is in caſe of a Fine.

33.E.3.*title* 3. *Entre congé* 51.45 E.3.*quar. Imp* 139. 27.E.3.88. 9 H.6.49. 21.H.6.17. 3.E.4.6. 12.E.4.19. 3.H.7.3, 6.E.4. 11.7.H.7.15. 5.H.7.31. 10.H.7.5.b.

(n) A recouery is had againſt Tenant for life, where the remainder is ouer in fee, Tenant for life dieth, he in remainder entreth before execution, and dieth, the entrie of the recoueror is lawfull, becauſe hee is priuie in eſtate, otherwiſe it is if the Diſcent had beene after execution.

(n) 5.H.7.2.

A. recouereth an Aduowſon againſt B. in a writ of Right, and hath iudgement finall, the Incumbent dieth. B. by vſurpation preſents to the Church, and his Clarke is admitted and inſtituted, B. dieth, A. is put out of poſſeſſion, and the heire of B. is not ſo bound by the iudgement either in bloud or eſtate, but he ſhall preſent (o) B. leaue a fine to A. of an Aduowſon to him and his heires, after the Church become void. B. preſent by vſurpation, and his Clarke is admitted and inſtituted, this ſhall put A. the Conuſee out of poſſeſſion. And the reaſon of theſe two caſes is for that at the Common Law, euery preſentation to a Church did put the rightfull Patron out of poſſeſſion, and did put him to his writ of Right, whether the preſentation were by Title or without, and therefore albeit the vſurpation were in both the ſaid caſes before execution, yet it put the rightfull Patron out of poſſeſſion. So note a diuerſitie betweene a recouery of Land, and of an Aduowſon.

45.E.3.*quare Imp.* 139.

(o) 8.E.2.*quare Imp.* 166.

¶ *Lentrie le diſſeiſee eſt tolle.* **Here is one of the priuiledges which** the Law giueth to the heire by Diſcent of Houſes and Lands.

(p) At the Common Law if the Diſſeiſor, Abator, or Intrudor had died ſeiſed ſoone after the wrong done, the Diſſeiſee and his heires had beene barred of his and their entrie without any time limited by Law, but now by the Statute (q) made ſince Littleton wrote, it is enacted, that except ſuch Diſſeiſor hath beene in the peaceable poſſeſſion of ſuch Mannors, Lands, &c. whereof he ſhall die ſeiſed by the ſpace of fiue yeares next after ſuch diſſeiſin, &c. without entrie or continuall clayme, &c. that there ſuch dying ſeiſed, &c. ſhall not take away the entrie of ſuch perſon or perſons, &c. But after the fiue yeares the Diſſeiſee muſt make ſuch continuall clayme as our Author hath taught vs, the learning whereof is neceſſary to be knowne. And it is ſaid that Abators and Intrudors are out of this Statute, becauſe the Statute is penall and extends only to a Diſſeiſor, and that was the moſt common miſchiefe. Et ad ea quæ frequentius accidunt iura adaptantur.

(p) *Leſtatut de* 32.*H.*8.*ca.*33 *Vide Sect.*422.426.

(q) 37.H.6.1.

The Feoffee of a Diſſeiſor is out of the ſaid Statute, & remayne at the Common Law. But to a Diſſeiſor the ſtatute is taken fauourably for aduancement of the ancient right: for whether the diſſeiſin be without force, or with force it is within the Statute. And albeit the Statute ſpeake of him that at the time of ſuch Diſcent had title of entry, &c. or his heires, yet the ſucceſſors of bodies Politique or Corporate, ſo you hold your ſelfe to a diſſeiſin, are within the remedie of this Statute, for the Statute extended clearely to the Predeceſſor, being diſſeiſed; and conſequently without naming of his Succeſſor extendeth to him, for he is the perſon that at the time of ſuch Diſcent had title of entrie.

*Pl. Com.*47.*in Wimbeſhes caſe.*

*Mich.*4.&5.*Eliz. Dier* 219. *acc.*

But if a man make a Leaſe for life, and the Leſſee for life is diſſeiſed, and the Diſſeiſor dies ſeiſed, the Leſſee for life may enter within fiue yeares, but if he die before hee doth enter, it is ſaid that the entry of him in the Reuerſion is not lawfull, becauſe his entry was not lawfull vpon the Diſſeiſor at the time of the Diſcent, as the Statute ſpeaketh. But if Leſſee for life had dyed firſt, and then the Diſſeiſor had died ſeiſed, he in the Reuerſion had beene within the remedie of the Statute, becauſe he had title of entry at the time of the Diſcent, as the Statute ſpeaketh, and ſo within the expreſſe letter of the Statute, albeit, the Diſſeiſin was not immediate to him, and the like is to be ſaid of a remaynder, &c.

*Vide Pl. Com.*47. *vbi ſupra.*

¶ *Breiſe dentrie ſur diſſeiſin,* Breue de ingreſſu ſuper diſſeiſinam. Of this writ ſomewhat ſhall be ſaid in the next Section.

*F.N.B.*191.

Section 386.

¶ **Diſcēts Etaile que tollēt entries ſont, ſicome home eſt diſſeiſie, et**

Diſcents in Tayle which take away Entries are, as if a man bee diſſeiſed, and the

¶ *Moruſt de tiel eſtate ſeiſie.*

If a Diſſeiſor make a gift in tayle, and the Donee diſcontinueth in fee, and diſſeiſe the

the Diſcontinuæ, and dyeth ſeiſed, this diſcent ſhall not take away the entrie of the diſſeiſee for the diſcent of the fee ſimple is vaniſhed and gone, by the Remitter, and albeit the iſſue be in by force of the eſtate taile, yet the Donee dyed not ſeiſed of that eſtate, and of neceſſitie there muſt be a dying ſeiſed as hath beene ſaid, which is a point worthy of obſeruation, and implyeth many things.

le diſſeiſor dona m̃ la terre a vn auter en le taile, & le tenant en le tail ad iſſue & morust de tiel eſtate ſeiſie, & liſſue enter, en ceſt caſe lentre l' diſſeiſee eſt tolle, & il eſt mis de ſuer enuers liſſue de l' tenant e taile vn briefe. Dentre ſur diſſeiſin.

diſſeiſor giueth the ſame land to another in taile, and the tenant in taile hath iſſue and dieth of ſuch eſtate ſeiſed and the iſſue enter, in this caſe the entrie of the diſſeiſee is taken away & he is put to ſue againſt the iſſue of the tenant in taile a writ of *Entrie ſur diſſeiſin*.

¶ *En ceſt caſe lentrie le diſſeiſee eſt tolle.* But if a Diſſeiſor make a gift in taile, and the Donee hath iſſue and dyeth ſeiſed, now is the entrie of the Diſſeiſee taken away, but if the iſſue die without iſſue, ſo as the eſtate taile which diſcended is ſpent, the entrie of the Diſſeiſee is reuiued, and he may enter vpon him in the reuerſion or remainder.

9.H.6.24.

So if there be Grandfather, Father and Son, and the ſon diſſeiſeth one, and infeoffeth the Grandfather who dieth ſeiſed, and the land diſcendeth to the Father, now is the entrie of the Diſſeiſee taken away; but if the Father dieth ſeiſed, and the land deſcendeth to the Sonne, now is the entrie of the Diſſeiſee reuiued, and he may enter vpon the ſonne, who ſhall take no aduantage of the diſcent, becauſe he did the wrong vnto the diſſeiſee. But in the caſe aboueſaid ſome haue ſaid that where after ſuch diſcent to the Father, he made a Leaſe to the ſon for terme of another mans life vpon whom the Diſſeiſee entred, the Sonne brought an Aſſiſe and recouered, and the reaſon that hath beene yelded is for that the Sonne had not a fee ſimple which he gained by diſſeiſin, but is a purchaſer of the freehold only from the Father, and the diſcent remaine not purged. Contrary it were as it is there ſaid if the Sonne were heire to the diſcent But the booke cited there in Fitzherb. tit. Title Placit. 6 doth not warrant that caſe, and I hold the Law to be contrary, viz. that the diſſeiſee in that caſe ſhall enter vpon the Diſſeiſor, aſwell as if the Father had conueyed the whole fee ſimple to the Sonne, for in that caſe the diſcent of the Father is not purged. If a Diſſeiſor make a Leaſe to an Infant for life, and he is diſſeiſed, and a diſcent caſt, the Infant enters, the entrie of the Diſſeiſee is lawfull vpon him. More ſhall be ſaid of the like matter in this chapter hereafter in his proper place, Sect. 393.395.

15.H.4.8.9.
33.H.6.5.b. per Moyle.
34.H.6.11.a. per Curiam.
Vid.Sect.395.

13.E.3. Br.tit.Entrie Cong.127.

¶ *Breife dentrie ſur diſſeiſin.* Breue de ingreſſu ſuper diſſeiſinam. This writ lyeth only vpon a diſſeiſin made to the Demandant or to ſome of his Anceſtors, and of this writ there be foure kindes; Firſt the writ that lyeth for the Diſſeiſee againſt the Diſſeiſor vpon a diſſeiſin done by himſelfe, and this is called a writ of entrie in the nature of an Aſſiſe. The ſecond is a writ of Entrie ſur diſſeiſin en le Per whereof Littleton here ſpeaketh, for the heire by diſcent is in the Per by his Anceſter: ſo it is if the Diſſeiſor make a feoffment in fee, a gift in taile, or a Leaſe for life, for they are in the Per by the Diſſeiſor. (*) The third is a writ of Entrie Sur diſſeiſin en le Per & Cui, as where A. being the Feoffee of D. the Diſſeiſor maketh a feoffment ouer to B. there the Diſſeiſee ſhall haue a writ of Entrie Sur diſſeiſin of Lands, &c. in which B. had no entrie but by A. to whom D. demiſed the ſame, who vniuſtly and without iudgement diſſeiſed the Demandant. Theſe are called Gradus, Degrees which are to be obſerued or elſe the writ is abatable for Sicut natura non facit ſaltum, ita nec lex.

19.H.6.56. 5.H.5.9.

Bracton.lib.5.fo.239.b. & 318.Britton.fo.264.265. Fleta lib.5.cap.35. 5.E.3.216. (*) 22.E.3.2.b.7.E.3.25. F.N.B.192.

The fourth is a writ of Entrie ſur diſſeiſin in le poſt, which lyeth when after a diſſeiſin the land is remoued from hand to hand beyond the degrees, and it is called In le Poſt, becauſe the words of the writ be Poſt diſſeiſinam quam D. iniuſte, &c. fecit, &c. the formes of theſe writs you ſhall reade in the Regiſter and F.N.B. and therefore it were needleſſe to recite them here. So as a degree is of two ſorts, either by act in Law, whereof Littleton here putteth an example of a Diſcent, or by act of the partie by lawfull conueyance as is aforeſaid. But it is to be vnderſtood, that at the Common Law, if the lands were conueyed out of the degrees, the Demandant was driuen to his writ of right, in reſpect of his long poſſeſſion in ſo many diuers hands, which the Law doth euer reſpect and fauour. And therefore by the Statute (a) of Marlebridge the Writ of Entrie in le poſt is giuen, Prouiſum eſt etiam quod ſi alienationes illæ de quibus breue de ingreſſu dari conſueuit, per tot gradus fiant, per quot breue illud in forma prius viſitata fieri non poſſit, habeant conquerentes breue ad recuperandã ſeiſinam ſuam ſine mentione

14.H.4.4b.

(a) Malebr.c.28. 34.E.3.70.

mentione graduum, adcuiuſcunque manus per huiuſmodi alienationes res illa deuenerit, per breue originale, & per commune conſilium domini regis inde prouidendum, &c.

Now it is neceſſary to be knowne what doth make a degree. Firſt no eſtate gained by wrong doth make a degree, and therefore neither Abatement, Intruſion, or Diſſeiſin vpon Diſſeiſin doth make a degree. Neither doth euery change by lawfull title worke a degree, as if a Biſhop or an Abbot, or the like diſſeiſe one and die, and his ſucceſſor is in by lawfull title, for though the parſon be altered, yet the right remaines where it was, viz. in the Church, and both of them ſeiſed in the ſame right, viz. in the right of the Church, and therefore in the very caſe Bracton (b) demands the queſtion An faciunt gradum de Abbate in abbatem ſicut de hærede in hæredem? Et videtur quod non magis quam in computatione diſcenſus, quia etſi alternetur perſona, non propter hoc alternatur dignitas ſed ſemper manet. And herewith agreeth (c) Fleta.

Bracton, vbi ſupra.
Britton, vbi ſupra.
Fleta vbi ſupra.
4.E.2.bre.790. 21.H.6.3.

(b) *Bracton, lib.4.fo.321.* *5.E.3.38.5.E.2.entrie 66.* *11.H.4.83.*

(c) *Fleta.lib.5.ca.34.* *3.E.3.entrie.1 r. 22.E.3.7.* *F.N.B.191.k.*

Alſo an eſtate made to the King doth make no degree, and therefore if a Diſſeiſor by Deede inrolled conuey the land to the King, and the King by his Charter granteth it ouer, the Diſſeiſee cannot haue a Writ of Entrie in le per & Cui, but in le Poſt, for the Kings Charter is ſo high a matter of record as it maketh no degree.

Alſo an eſtate of a Tenant by the Curteſie, or of the Lord by eſcheate, or of an execution of an vſe by the ſtatute of 27.H.8. or by iudgement, or recouery, or of any other that come in in the poſt, worke no degree. (d) But a tenancie in dower by Aſſignement of the heire doth worke a degree, becauſe ſhe is in by her husband, but Aſſignement of Dower by a Diſſeiſor worketh no degree, but is in the Poſt, as hereafter ſhall be ſaid in his proper place.

5.E.2.entrie 66. *7.E.3.360.* (d) *36.H.6.dower 30.*

When the degrees are paſt, ſo as a Writ of entrie in the Poſt doth lye, yet by euent it may be brought within the degrees againe, as if the Diſſeiſor infeoffe A. who infeoffes B. who infeoffe C. or if the Diſſeiſor die ſeiſed, and the land diſcend to A. and from him to C, now are the degrees paſt, and yet if C. infeoffe A. or B. now it is brought within the degrees againe.

44.E.3.4.5. 39.E.3.25. *5.H.7.6. 3.H.6.38.*

If the Diſſeiſor make a Leaſe for life, the remainder in fee, Tenant for life dyeth, he in the remainder is in the Per, becauſe he now claimeth immediately from the Diſſeiſor, and both theſe eſtates make one degree.

50.E.3.27.

Note there be diuers other Writs of entrie, then a Writ of entrie Sur diſſeiſin whereof Littleton here ſpeakes, as a Writ of entrie Ad terminum qui præterijt, in caſu prouiſo, in conſimili caſu, ad communem legem, ſine aſſenſu capituli, dum fuit infra ætatem, dum non fuit compos mentis, cui in vita, Sur cui in vita, Intruſion, Ceſſauit, and the like, and that which hath beene ſaid of one may be applyed to all.

Sect. 387.

¶ E Tenota que en tiels diſcents, que tollent entries, il couient que home morust ſeiſie en ſon demeſne come de fee, ou en ſon demeſne come de fee taile. Car vn morant ſeiſie pur terme de vie, ne pur terme dauter vie, ne vnquez tollent entre.

AND note that in ſuch diſcents which take away entries, it behooueth that a man die ſeiſed in his demeſne as of fee, or in his demeſne as of fee taile; for a dying ſeiſed for terme of life, or for terme of another mans life doth neuer take away an entrie.

¶ If a Diſſeiſor make a Leaſe to a man and to his heires during the life of I.S. and the Leſſee dieth this ſhall not take away the entrie of the Diſſeiſee, becauſe he that died ſeiſed had but a freehold only, and heires in that caſe were added to preuent the occupant, for the heire in that caſe ſhall not haue his age as it was adiudged in (d) Lambs caſe.

Dier.8.Eliz.253. *7.H.4.46. 8.H.4.15.* *17.E.3.48. 11.H.4.42.*

But if he in the reuerſion diſſeiſe his Tenant for life, and dyeth ſeiſed, this diſcent ſhall take away the entrie of the Tenant for life.

(e) *Paſch.16. Eliz. in Communibance.*

3.E.3.tit. Entr. Cong. *58.F.N.B.145.m.* *9.H.7.25.a.*

So it is if there be Tenant for life, the remainder in taile, the remainder in fee, and Tenant in taile diſſeiſeth the Tenant for life and dyeth ſeiſed, this ſhall take away the entrie of the Tenant for life.

9.H.7.25.

But if the Kings Tenant for life be diſſeiſed, and the Diſſeiſor die ſeiſed, this diſcent ſhall not take away the entrie of the Leſſee, becauſe the Diſſeiſor had but a bare eſtate during the life of the Leſſee, and Littleton ſaith, that a diſcent of an eſtate for terme of another mans life ſhall not take away an entrie.

¶ *En ſon demeſne come de fee.* If an infant bee diſſeiſed, and the

Tempt E.1.Reliefe.12. Dier 14.Eliz.308. 40.E.3.9.b. (*) 24.E.3.47.

Diſſeiſor die ſeiſed, and after the infant commeth to full age, the heire of the Diſſeiſor die] before he entreth, albeit he dyed not ſeiſed of an actuall ſeiſin, but of a ſeiſin in Law, yet that ſhall take away the entrie of the Diſſeiſee. (*) And yet in pleading the ſecond heire ſhall (as hath beene ſaid) make himſelfe heire to the diſſeiſor, and that land ſhall not be recouered in value for the warrantie made of other lands by the firſt heire, and though the firſt heire had but a ſeiſin in Law, yet he is within the words of Littleton, For he was ſeiſed in his demeſne as of fee,

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AND therefore if a Diſſeiſor make a Leaſe for yeares, and die ſeiſed of the Reuerſion, this diſcent ſhall take away the entrie of the Diſſeiſee, becauſe hee died ſeiſed of the Fee and Franktenement. Like Law it is if the Land be extended vpon a Statute, Iudgment or Recognizance, and ſo it is in caſe of a Remainder.

But if he had made a Leaſe for life, and die ſeiſed of the Reuerſion, this diſcent ſhall not take away the entrie of the Diſſeiſee, for that though he had the Fee, yet he had not the Franktenement.

Vi.Sect.302.393. So it is of a Tenaunt in Taile mutatis mutandis, and note the Law doth euer giue great reſpect to the Eſtate of Freehold, though it be but for terme of life.

ITem vn diſcent de reuerſion, ou de Remainder, ne vnques tollent entrie, iſſint que en tiels caſes que tollent entries, per force de diſcents, il couient que celuy que mourſt ſeiſie ad Fee et Franktenemẽt al temps de ſon morant, ou Fee taile et Franktenement al temps de ſon morant, ou autrement tiel diſcent ne tolle entre.

ALſo a Diſcent of a Reuerſion or of a Remainder, doth not take away an Entrie. So as in thoſe caſes which take away Entries by force of Diſcents, it behooueth that hee dieth ſeiſed of Fee and Freehold at the time of his deceaſe, or of Fee taile and Freehold at the time of his death, or otherwiſe ſuch diſcent doth not take away an Entrie.

If a Diſſeiſor make a Leaſe for terme of his owne life, and dieth, this diſcent ſhall not take away the entrie of the Diſſeiſee, for though the Fee and Franktenement diſcend to the Iſſue, yet the Diſſeiſor died not ſeiſed of the Fee and Franktenement: and Littleton ſaith, That vnleſſe he hath the Fee and Franktenement at the time of his deceaſe, ſuch diſcent ſhall not take away the entrie.

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BY this it appeareth, that a Diſcent in the Collaterall Line doth take away an entrie, as well as in the Lineall.

ITem come eſt dit de Diſcents que diſcendont al iſſue de ceux que mouront ſeiſies, &c. Meſme la Ley eſt lou ils nont aſcun iſſue, mes les tenements diſcendont al frere, ſoer, vncle, ou auter coſin de celuy que mourſt ſeiſie.

ALſo as it is ſayd of Diſcents which diſcend to the Iſſue of them which die ſeiſed, &c. the ſame Law is where they haue no iſſue, but the lands diſcend to the Brother, Siſter, Vncle, or other Coſine of him which dieth ſeiſed.

Mourſt ſeiſie &c Here (&c.) implieth Fee ſimple, or Fee taile.

Sect.

Sect. 390.

¶ Item ſi ſoit Seignior et tenant, et le Tenant ſoit diſſeiſie, et le diſſeiſor aliena a vn auter en fee, et la lienee deuie ſaunz heire, et le Seignior enter come en ſon eſcheat, en ceſt caſe le Diſſeiſee poet entrer ſur le Seignior, pur ceo que le Seignior ne vient a le Terre per diſcent, mes per voy deſcheat.

ALſo if there bee Lord and Tenant, and the Tenant be diſſeiſed, and the Diſſeiſor alien to another in Fee, and the Alienee die without iſſue, and the Lord enter as in his Eſcheat: In this caſe the Diſſeiſee may enter vpon the Lord, becauſe the Lord commeth not to the Land by Diſcent, but by way of Eſcheat.

¶ *LE Diſſeiſee poet enter ſur le ſeignior, &c.* For albeit the Diſſeiſor die ſeiſed, and the Lord by Eſcheat commeth to the Land by act in Law, yet becauſe the land diſcendeth not to him, the entrie of the Diſſeiſee in reſpect of the Eſcheat ſhall not be taken away. For a dying ſeiſed, and a diſcent, and not a dying ſeiſed and an Eſcheat, doth take away an entrie: for (as hath beene ſayd) the diſcent is the worthier title. But in that caſe, if the Lord by Eſcheat die ſeiſed, and the Land diſcend to his heire, that diſcent ſhall take away the entrie of the Diſſeiſee. So it is if the Diſſeiſor die ſeiſed, and the heire of the Diſſeiſor dieth without heire, the Diſſeiſee cannot enter vpon the Lord by Eſcheat. So as there is a diuerſitie as touching the diſcent, when after a diſcent caſt, the Iſſue in Taile dieth without Iſſue, and when after a diſcent the heire in fee ſimple dieth without heire, for he in the Reuerſion, or one vpon the eſtate taile claimeth in abone the ſtate taile, and the Lord by Eſcheat claimeth in vnder the heire in Fee ſimple. § 7.*H.*6.1.9.*H.*7.24.b.

Section 391.

¶ Item ſi home ſeiſie de certaine Terre en fee, ou en Fee taile, ſur condition de render certaine rent, ou ſur auter condition, coment que tiel Tenãt ſeiſie en fee, ou en fee taile, mozuſt ſeiſie, vncoze ſi le condition ſoit enfreint en lour vies, ou apres lour deceaſe, ceo ne tollera pas lentrie del Feoffor, ou del Donor ou de lour heires, pur ceo que le Tenancie

ALſo if a man bee ſeiſed of certain land in Fee or in Fee taile, vpon condition to render certain rent, or vpon other condition, albeit ſuch Tenaunt ſeiſed in Fee or in Fee Tayle, dyeth ſeiſed, yet if the Condition bee broken in their liues, or after their deceaſe, this ſhall not take away the entrie of the Feoffor or Donor, or of their heires, for that the Tenancie is char-

¶ VPon theſe two Sections is to be obſerued a diuerſitie betweene a right, for the which the Law giueth a remedie by Action, and a title for the which the Law giueth no remedie by Action, but by entry onely. For example, The Feoffee vpon Condition in this caſe hath a right to the Land, therefore his entry may be taken away, becauſe hee may recouer his right by Action, but the Feoffor or Donor that hath but a Condition, his title of entrie cannot be taken away by any diſcent, becauſe he hath no remedie by Action to recouer the Land, and therefore if a Diſcent ſhould take away his entrie, it ſhould barre him for euer. And the Law is all one whether the diſcent were before the condition broken, or after. 33.*Aſſ.*11.24. 21.*H.*6.17. 33.*Aſſ.*11.24.

Alſo

Brooke tit. Mortmaine 6. 47.E.3.11. 21.E.3.17.

40.Aſſ.13.

Alſo he that hath a title to enter vpon a Mortmain, ſhall not be barred by a diſcent, becauſe then he ſhould bee without al remedie. And ſo it is in caſe where a woman that hath a title to enter, cauſa matrimonij prælocuti, no diſcent ſhall take away her entrie, becauſe ſhe hath but a title, and no remedie by Action.

If a man be ſeiſed of lands in fee, and by his laſt will in writting deuiſeth the ſame to another in fee, and dieth, after whoſe deceaſe the Freehold in Law is caſt vpon the deuiſee, the heire before any entrie made by the Deuiſee, entreth, and dieth ſeiſed, this ſhall not take away the entrie of the Deuiſee, for if the diſcent, which is an Act in Law, ſhould take away his entrie, the Law ſhould barre him of his right, and leaue him vterly without remedie. And ſo it is for him that entreth for conſent to a rauiſhment, & ſo it was reſolued in the caſe of Martyn Trotte of London,(n) Paſchæ 32.El. in Com̃ Banco. And accordingly was the opinion of the Court of Common Pleas, (o) Paſch.1.Ia. Reg. To this may bee added as a like caſe, the Kings Patentee before he enter, &c. Another reaſon wherefore a diſcent ſhall not take away the entrie of him that hath a title to enter by force of a condition, &c. is, for that the Condition remaines in the ſame eſſence that it was at the time of the creation of it, and cannot be deueſted or put out of poſſeſſion as lands and tenements may.

(n) *Paſch.32.Eliz. in communi Banco. 7.R.2. Seir. Fac.3. 41.E.3. 14. per Finchden.*

(o) *Paſch.1.Ia.Regis in Com. Banco.*

Item ſi tiel tenant ſur condic̃ ſoit diſſeiſie et le diſſeiſor deuie ent ſeiſie, & la t̃ deſcẽdiſt al heire le diſſeiſor, ore le entrie le tenant ſur condition, que fuiſt diſſeiſie eſt toll: Mes vncore ſi le condition ſoit enfreint, donque poet le Feoffor ou le Donor que fierent eſtate ſur condition, ou lour heirs entrer, Cauſa qua ſupra.

Alſo if ſuch Tenant vpon Condition be diſſeiſed, and the Diſſeiſor die therof ſeiſed, and the land diſcend to the Heyre of the Diſſeiſor, now the entrie of the Tenant vpon condition, who was diſſeiſed, is taken away. Yet if the Condition be broken, the Feoffor or the donor which made the eſtate vpon condition, or their heirs may enter, *Cauſa qua ſupra.*

Sect.392.

Section 393.

Deuie ſeiſie, &c. viz. in fee ſimple, or in fee tayle.

Et ſon heire enter, &c. So as hee hath an actuall fee ſimple.

De la 3. part de les tenements, &c. id eſt, in ſeueraltie.

By this Section it appeareth, that an entry being taken away by the Diſcent, is reuiued by the endowment, albeit the Tenant in Dower ſhall haue it but for her life. And the cauſe is, for that although the heire entred, yet

Item ſi vn diſſeiſor deuie ſeiſie, &c. & ſon heire enter, &c. le quel endowa la feme le diſſeiſor d̃ la tierce part d̃ les tenements, &c. En ceſt cas quant a ceſt tierce part que eſt aſſigne a la feme en dower maintenant apres ceo que la feme enter, & ad le poſ-

Alſo if a Diſſeiſor die ſeiſed, &c. and his heire enter, &c. who indoweth the wife of the Diſſeiſor of the third part of the Land, &c. In this caſe as to this part which is aſſigned to the wife in Dower, preſently after the wife entreth and hath the poſſeſſion of the ſame third

poſſeſſion de meſme la tierce part, le diſſeiſee poit loyalment enter ſur la poſſeſſion le feme en meſme la tierce part. Et la cauſe eſt, pur ceo que quant la feme ad ſon dower, el ſerra adiudge eins immediate per ſon baron, & nemy per lheire, & iſſint quãt a le franktenement de meſme la tierce part, le diſcent eſt defeate. Et iſſint poies veir, que deuant le endowmẽt le diſſeiſee ne poit enter en aſcun part, &c. & apres le dowment il poit enter ſur la fẽe &c. mes vncore il ne poit enter ſur les auters deux parts que lheire le diſſeiſor ad per le Diſcent.

part, the diſſeiſee may lawfully enter vpon the poſſeſſion of the wife into the ſame third part. And the reaſon is for that when the Wife hath her dower, ſhee ſhall bee adiudged in immediately by her Husband and not by the heire. And ſo as to the Freehold of the ſame third part, the Diſcent is defeated. And ſo you may ſee that before the endowment the Diſſeiſee could not enter into any part, &c. and after the endowment hee may enter vpon the wife, &c. but yet hee cannot enter vpon the other two parts which the heire of the Diſſeiſor hath by the Diſcent.

when the Wife is endowed ſhe ſhall not be in by the heire, (a) but immediately by her husband being the Diſſeiſor, which is in for her life by a Title Paramount the dying ſeiſed and diſcent, and therefore in iudgement of Law, the Diſcent as to the Freehold, and the poſſeſſion which the heire had is taken away by the endowment; for the Law adiudgeth no meane ſeiſin betweene the husband and the wife.

(a) 8.E.2.Entrie 75. 19.E.2.Dower 171. 5.E.2.Entrie 66. 24.E.3.32.40. 38.Aſſ.Pl.26.

43.E.3.32.45.E.3.9.b. 11.H.4.11. 7.H.5.3. 10.E.3.27.28. 36.H.6.Dower 30.

If there bee Lord, Meſne and Tenant, the Meſne doth grant to the Tenant to acquite him againſt the Lord and his heires, the Lord dies his Wife hath the Seigniorie aſſigned to her for her dower, and diſtraines the Tenant; albeit the grant was only to acquite him againſt the Lord and his heires only, yet becauſe ſhe continued the eſtate of her husband, and the reuerſion remayned in the heire, the grant did extend to the wife, which is a notable caſe.

31.E.1.*meſne* 55.

If after the dying ſeiſed of the Diſſeiſor, the Diſſeiſee abate, againſt whom the wife of the Diſſeiſor recouer by confeſſion in a Writ of dower, in that caſe, though the Diſcent be anoyded as Littleton here ſaith, yet the Diſſeiſee ſhall not enter vpon the Tenant in Dower, becauſe the recouerie was againſt himſelfe; but if he had aſſigned Dower to her in paiis, ſome ſay hee ſhould enter vpon her.

A man makes a gift in tayle reſerving twentie ſhillings Rent, the Donee takes wife, and dieth without iſſue, the heire entreth and endoweth the wife, ſhee is ſeiſin of the eſtate of her husband, that albeit the eſtate tayle be ſpent, and the rent reſerued thereupon determined, yet after ſhe be endowed, ſhe ſhall be attendant to the heire in reſpect of the ſaid rent. And ſo it is of Lord and Tenant, the wife that is endowed, ſhall be attendant for the due Seruices, but if any ſeruices be incroached, albeit that incroachment ſhall bind the heire, yet the wife ſhall be contributory, but for the ſeruices of right due.

10.E.3.26.

¶ *Iſſint poies veir que deuant le dowment, le diſſeiſee ne poet enter, & apres lendowment il poet enter, &c.* The like hath beene ſaid before in this Chapter. Sect 386. where the entry of the Diſſeiſee may be taken away for a time, and by matter ex poſt facto reuiued againe.

Nota, albeit the Diſſeiſor after a Diſcent taketh to him but an eſtate for life, yet when the Diſſeiſee doth enter vpon him, he ſhall thereby deueſt the Reuerſion, for the eſtate of Freehold is that whereupon a Præcipe doth lie, and therefore the entrie of the diſſeiſee is as auayleable in Law, as if he had recouered it in a Præcipe. And ſo it is if a Diſſeiſor make a Leaſe for life, and grant the Reuerſion to the King, the entrie of the Diſſeiſee vpon the Tenant for life ſhall deueſt the Reuerſion out of the King in the ſame manner, as if the Diſſeiſee had recouered the lands againſt the Tenant for life in a Præcipe.

*Vide Sect.*302.388.

25.E.3.48.*Pl.Com.*553.

Sect. 394.

¶ EN *ceſt caſe ieo poye enter ſur le poſſeſſion liſſue, &c.*

Vide 9.H.7.24.& 37.H.6.1.

For here was but a Diſcent of a Reuerſion: at the time of the dying ſeiſed, for the ſtate of a Tenant by the curteſie, had cõmencement by the hauing of iſſue, and is conſummate by the death of the wife, ſo as a fee and frankt-enement did not after the deceaſe of the wife diſcend to the heire, and albeit the Tenant by the courteſie dieth afterwards, and the frankt-enement is caſt vpon the heire, ſo as now hee hath the fee and frankt-enement by Diſcent, yet becauſe the heire came not to the Fee and Frankt-enement immediately after the deceaſe of the wife, ſuch a mediate Diſcent ſhall not take away the entrie of the Diſſeiſee. On the other ſide an immediate Diſcent may take away an entry for a time, and mediately may be auoyded by matter ex poſt facto as hath beene ſaid. But if a dying ſeiſed taketh not away the entry of him that right hath at the time of the Diſcent, it ſhall not by any matter ex poſt facto take away his entry.

See before the Chapter of Homage.

¶ Item, ſi vn feme ſoit ſeiſie de terre en fee, dont ieo aye droit & title dentre, ſi la feme prent baron, & ont iſſue enter eux, et puis la feme deuie ſeiſie, & apres le baron deuie, et liſſue enter, &c. en ceſt cas ieo poy enter ſur le poſſ. liſſue, pur ceo que liſſue ne tiēt a les tenemts immediate per Diſcent apres la mort ſa mere, & eins per le mort del pier.

¶ Contrarium tenetur P.9.Hen.7. per tout le court, & M.37. H.6. ¶.

ALſo if a woman be ſeiſed of land in fee, whereof I haue right and title to enter if the woman take husband and haue iſſue betweene them, and after the wife die ſeiſed, and after the husband die, and the iſſue enter, &c. In this caſe I may enter vpon the poſſeſſion of the iſſue, for that the iſſue comes not to the lands immediately by Diſcent after the death of the mother &c. but by the death of the father.

¶ *Contrarium tenetur P.9.H.7. per tout le court, & M.37.H.6.¶.*

If a Diſſeiſor die without heire his wife priuement enſeint with an iſſue, and after the iſſue is borne, who entreth into the Land, he hath the Land by Diſcent, and yet thereby the entry of the Diſſeiſee ſhall not be taken away, becauſe as Littleton here ſaith, the iſſue commeth not to the Lands immediately by Diſcent after the deceaſe of the Father.

And ſo it is if a Diſſeiſor make a gift in tayle, the remaynder in fee, and the Donee dyeth without iſſue leauing his wife priuement enſeint with a Sonne, and he in the remaynder enter, and after the Sonne is borne, and entreth into the Land, this Diſcent ſhall not take away the entry of the Diſſeiſee, Cauſa qua ſupra.

¶ *Contrarium tenetur, &c.* This is an addition, and therefore to be paſſed ouer. And at this day this caſe of Littleton is holden for cleere Law.

Sect. 395.

¶ Item ſi vn diſſeiſor enfeoffa ſon pier en fee, & le pier muſt de tiel eſtate ſeiſie, per q̄ les tenēts diſcendont a l' diſſeiſor come fits et heire &c. en ceſt caſe l' diſſeiſee bien poit enter ſur le diſſeiſor, nient obſtant le diſcent, pur

ALſo if a Diſſeiſor enfeoffe his father in fee, and the father die ſeiſed of ſuch eſtate, by which the Land diſcend to the Diſſeiſor, as ſonne and heire, &c. In this caſe the Diſſeiſee may well enter vpon the Diſſeiſor notwithſtanding the

pur ceo que quant al diſſeiſin, le diſſeiſor ſerra adiudge eins forſque come diſſeiſor, nient obſtant le diſcent, Quia particeps criminis.

diſcent for that as to the diſſeiſin, the diſſeiſor ſhall bee adiudged in but as a diſſeiſor notwithſtanding the diſcent, *Quia particeps criminis.*

OF this ſufficient hath beene ſaid before in this chapter Sect. 386. And regularly it is true that albeit a diſcent be caſt, and the entrie of the Diſſeiſee taken away, yet if the Diſſeiſor commeth to the land againe either by diſcent or purchaſe, of any eſtate or freehold which is implied in the (&c.) the Diſſeiſee may enter vpon him, or haue his aſſiſe againſt him, as if no diſcent or meane conueyance had beene, Quia particeps criminis,

15.E.4.23.a. 11 E.4.2. 18.E.4.25.a. 34.H.6.11. 12.H.8.9. 24.H.8.30. 18.H.8.5. 5.H.7. 29. fol.54. 39.E.3.25.26.

Sect. 396.397.

¶ Item ſi home ſeiſie de certaine terre en fee ad iſſue deux fits, & moruſt ſeiſie, & le puiſne fits entra per abatement en la terre, quel ad iſſue, & de ceo moruſt ſeiſie, et les tenements diſcendōt al iſſue, et l'iſſue entra en la terre, en ceſt caſe le fits eigne, ou ſon heire, poit enter p la ley ſur iſſue del fits puiſne, nient contrieſtant le diſcent, pur ceo que quant le fits puiſne abatiſt en la terre apres le mort ſon pier denāt aſcun entrie per le fits eigne fait, la ley intendra que il entra en claymant come heyre a ſon pier, & p ceo que leigne fits clayma per meſme le title, ceſtaſcauoir, come heyre a ſon pier il & ſes heires poient enter ſur iſſue de puiſne fits, nient obſtant le diſcent, &c. pur ceo que ils clay-

ALſo if a man ſeiſed of certaine land in fee haue iſſue two ſons, and die ſeiſed, and the younger ſonne enter by abatement into the land and hath iſſue, and dieth ſeiſed thereof, and the land diſcend to his iſſue, and the iſſue enters into the land. In this caſe the eldeſt ſonne or his heire may enter by the law vpon the iſſue of the younger ſon notwithſtanding the diſcent, becauſe that when the younger ſon abated into the land after the death of his father before any entrie made by the eldeſt ſonne, the law entend that hee entred clayming as heire to his father. And for that the eldeſt ſonne claimes by the ſame title, that is to ſay, as heire to his father, he and his heires may enter vpon the iſſue of the younger ſon notwithſtāding the diſ-

¶ EN *ceſt caſe le fits eigne, &c. poet entrer ſur liſſue del fitz puiſne, &c.* And the reaſon hereof is for that the law intendeth the youngeſt ſonne entred clayming the land as heire to his father, and becauſe the eldeſt ſonne claymeth alſo by the ſame title viz as heire to his father, therefore hee and his heires may enter vpon the ſecond ſonne and his heires in reſpect of the priuity of the bloud betweene them, and of the ſame clayme by one title, albeit the youngeſt ſonne gained a fee ſimple by his entrie: for Littleton here calleth it an abatement, which proueth the gaining of a fee ſimple.

And it is to bee obſerued that Aſſiſa mortis anteceſſoris non tenet inter coniunctas perſonas ſicut fratres & ſorores, &c. for theſe are priuie in bloud but it lyeth againſt ſtrangers, and then damages are to bee recouered againſt a ſtranger, but not againſt his brother.

Bract. lib.4.fo.261 282.283. Britton fo.180.181. Fleta lib 5.ca.1.2.&c. 20.E.3.Dart.preſent 13. 12.H.3 Mord.placitum. 13.E.1.Mord.47 29.Aſſ.11.F.N.B.196.b.

Lands were giuen to the huſband and wife, and to the heires of their two bodies they had iſſue a daughter, the wife died, the huſband had iſſue by another wife foure ſons and dyed, the eldeſt ſonne

Paſch.3.E.3. Coram Rege Banc.in Treſam.

abate

abated and died ſeiſed, this diſcent did take away the entrie of the daughters becauſe they claymed not by one title. And in ancient bookes the eldeſt ſonne is called Hæres propinquus, and the younger ſonne Hæres remotus. And albeit the eldeſt ſonne hath iſſue and dieth, and after his deceaſe the youngeſt ſonne or his heire entreth, and many diſcents bee caſt in his line, yet may the heires of the eldeſt enter in reſpect of the priuitie of the bloud, and of the ſame clayme by one title; but if the youngeſt ſonne make a feoffment in fee, and the feoffee die ſeiſed, that diſcent ſhall take away the entrie of the eldeſt in reſpect the priuity of the blood faileth. And admit that the youngeſt ſonne be of the halfe bloud to his brother, yet he is of the whole bloud to his father, and therefore if he entreth and dieth ſeiſed, it ſhall not barre his elder brother of his entrie. But if the eldeſt ſonne entreth, and gaineth an actuall poſſeſſion and ſeiſin, then the entrie of the youngeſt is a diſſeiſin. And then a dying ſeiſed ſhall take away the entrie of the eldeſt, for Poſſeſsio terræ muſt bee Vacua when the youngeſt ſonne enter by abatement as Littleton ſaith, becauſe hee hath more colour in that caſe to clayme as heire to his father who laſt was actually ſeiſed. Therefore if after the deceaſe of the father an eſtranger doth firſt enter and abate, vpon whom the youngeſt ſonne entreth and diſſeiſe him and die ſeiſed, this diſcent ſhall not binde the eldeſt, for he entred by diſſeiſin and not by abatement.

If a man be ſeiſed of

3.E.2. Aſſ.380.
40.E.3.24.b. 29.Aſſ.24

vid. Brooke tit. Entrie 27.

mont per vn meſme title. Et en meſme le maner il ſerra, ſi fueront pluſors diſcents de vn iſſue a vn anter iſſue del puiſne fits.

cent, &c. becauſe they claime by the ſame title. And in the ſame manner it ſhall be, if there were more diſcents from one iſſue to another iſſue of the younger ſonne.

*Sect.*397.

CMES en tiel caſe, ſi le pier fuit ſeiſie d certaine terres en fee, et ad iſſue deux fits, et deuie, et leigne fits enter, & eſt ſeiſie, &c. et puis le puiſne frere luy diſſeiſiſt, per quel diſſeiſin il eſt ſeiſie en fee, et ad il eſt ſeiſie en fee, et ad iſſue, & de tiel eſtat mozuſt ſeiſie, donques leigne frere ne poit entrer, mes eſt mis a ſon briefe, Dentre ſur diſſeiſin, &c. **de recouerer la terre. Et la cauſe eſt, pur ceo que le puiſne frere vient a les tenemẽts per tozcions diſſeiſin fait a ſon eigne frere, et per cel tozt la ley ne poit entender que il claime come heire a ſon pier, nient pluis que vn eſtrange perſon que vſt diſſeiſie leigne frere q̃ nauoit aſcun title, &c. Et iſſint poyes veier la diuerſitie, lou le puiſne frere enter apres le mozt le pier deuant aſcun entrie fait**

BVt in this caſe if the father were ſeiſed of certaine lands in fee, and hath iſſue two ſons and die, and the eldeſt ſonne enter & is ſeiſed, &c. and after the yonger brother diſſeiſeth him, by which diſſeiſin he is ſeiſed in fee, and hath iſſue, and of this eſtate dieth ſeiſed, then the elder brother cannot enter, but is put to his Writ of *Entrie ſur diſſeiſin, &c*, to recouer the land. And the cauſe is for that the youngeſt brother commeth to the lands by wrongfull diſſeiſin done to his elder brother, and for this wrong the law cannot entend that he claimeth as heire to his father, no more then if a ſtranger had diſſeiſed the elder brother which had no title, &c. And ſo you may ſee the diuerſitie where the younger brother entereth after the death of the father before any entrie made by

per

per leigne frere en tiel cas, et ou leigne frere enter apres la mort ſon pier, et puis eſt diſſeiſie p le puiſne frere, lou le puiſne frer puis mourſt ſeiſie.

the elder brother in this caſe, and where the elder brother enters after the death of his father, and after is diſſeiſed by the younger brother, where the younger after dieth ſeiſed.

lands of the nature of Burgh Engliſh and hath iſſue two ſonnes and die, and the eldeſt ſonne before any entry made by the youngeſt entereth into the land by abatement and dieth ſeiſed, this ſhall not take away the entrie of the youngeſt brother. Et ſic de ſimilibus. And theſe and the like caſes are all within the reaſon and rule of our Author. And where our Author ſpeaketh only of an abatement, ſo it is of an intruſion, For if the father make a Leaſe for life and hath iſſue two ſonnes and dieth, and the Tenant for life dieth, and the youngeſt ſonne intrude, and die ſeiſed, this diſcent ſhall not take away the entrie of the eldeſt. But if the father had made a Leaſe for yeares it had beene otherwiſe, for that the poſſeſſion of the Leſſee for yeares maketh the actuall freehold in the eldeſt ſonne. And it is to be obſerued that the reaſon of Littleton in this caſe (for that both brethren hold by one title) holdeth alſo in many other caſes.

If two Copercners make partition to preſent be turne, and one of them diſurpe in the turne of the other, this diſurpation ſhall not put the other out of poſſeſſion becauſe they claime by one title. 22.E.4.4.

If two Copercners be, and they ſeuerally preſent to the Ordinary, yet the Church is not litigeous, becauſe they claime all by one title. *Doctor. & Stud.ca.30.fo.117*

If vpon a Writ of Diem clauſit extremum, the youngeſt ſonne be found heire, the eldeſt ſon had no remedy by the Common Law becauſe they clymed by one title, but otherwiſe it is if they claime by ſeuerall titles as it appeareth in our bookes. But this is now holpen by a (*) Statute made ſince Littleton wrote. 12.E.4.18. (*) 2.E.6.cap.8.

If two perſons be in debate for tithes, which amount aboue the fourth part, and one man is Patron of both Churches, no Iudicauit doth ipe, for that both incumbents clayme by one and the ſame Patron, Et ſic de ſimilibus. 2.H.7.12.a. *See the Section next following.*

And where Littleton ſaith, ſeiſed of lands in fee, the ſame law it is if a man be ſeiſed of lands in taile, and hath iſſue two ſonnes Mutatis mutandis.

¶ *Et eſt ſeiſie, &c.* (That is to ſay) actually ſeiſed either by entrie as Littleton here putteth it, or by poſſeſſion of the Leſſee for yeares or the like.

¶ *Nauoit aſcun title, &c.* That is to ſay, any pretence or ſemblance of title, as the younger brother here hath, and in many other caſes there is a great diuerſity holden in our bookes (o) where one hath a colour or pretence of right, and when he hath none at all, whereof you may reade plentifully in our bookes. (o) 2.E.2.baſtardy 19. 21.E.3.34. 22.Aſſ 85. 39.E.3.26. 17.E.3.59. 11.E.3.Aſſ.88. 21.H.6.14. 11.E.3.ca.3. *Vid.Sect.400.& cap Garran.*

Sect. 398.

¶ En meſme le maner eſt, ſi home ſeiſie de certaine tre en fee ad iſſue deux files & deuie, leigne file entra en la terre claymant tout la terre a luy, et ent ſolemẽt preſt les profits, et ad iſſue & mourſt ſeiſie, per que ſon iſſue enter, quel iſſue ad iſſue & deuie ſeiſie, & le ſecond iſſue enter, *& ſic vltra*, uncore le puiſne file ou ſon iſſue, quant a le moitie poyt enter ſur quecunque iſſue de leigne file, nient obſtant tiel diſcent,

IN the ſame manner it is, if a man ſeiſed of certaine land in fee hath iſſue two daughters & dieth, the eldeſt daughter entereth into the land clayming all to her, and thereof only taketh the proffits, and hath iſſue and dieth ſeiſed, by which her iſſue enter, which iſſue hath iſſue and dieth ſeiſed, and the ſecond iſſue enter, *& ſic vltra*, yet the younger daughter or her iſſue as to the moity may enter vpon any iſſue whatſoeuer of the elder

diſcent pur ceo que ils claimont per vn meſme title, &c. mes en tiel caſe ſi ambideux Soers auoyent enter apres la mort lour Pier, et ent fueront ſeiſies, et puis leigne Soer vſt diſſeiſie la puiſne Soer de ceo que a luy afficrt, et ent fuit ſeiſie en fee et ad iſſue, et de tiel eſtate mozuſt ſeiſie, per que les Tenements diſcendont al Iſſue del eigne Soer, donque le puiſne Soer, ne ſes heires ne poient enter, &c. Cauſa qua ſupra, &c.

daughter notwithſtāding ſuch diſcent, for that they claime by one ſame title, &c. but in ſuch caſe where both ſiſters haue entred after the death of their father, and were therof ſeiſed, and after the eldeſt ſiſter had diſſeiſed the yonger of her part, & was thereof ſeiſed in Fee, and hath Iſſue, and of ſuch Eſtate dieth ſeiſed, whereby the lands diſcend to the Iſſue of the elder ſiſter, then the yonger Siſter nor her heires cannot enter, &c. *Cauſa qua ſupra, &c.*

21. Aſſ. 19. 21. E. 3. 7. 27. 32. 26. Aſſ. 2. 27. Aſſ. 48. 36 Aſſ. p. 1. 43. E. 3. 19. 4. H. 7. 16. 16. H. 7. 4.

¶ *Claimont tout la terre.* Here it appeareth, That when the one Coparcener doth ſpecially enter, claiming the whole land, and taking the whole profits, that ſhe gaine the one moitie, viz. of her ſiſter by abatement, and yet her dying ſeiſed ſhall not take away the entrie of her ſiſter, whereas when one Coparcener enters generally, and taketh the profits, this ſhall be accounted in Law the entrie of them both, and no diueſting of the moitie of her ſiſter.

See more of this in the chapter of Warrantie, Sect. 710.

If one Coparcener enter claiming the whole, and make a Feoffement in Fee, and take back an eſtate to her and her heires, and hath Iſſue and die ſeiſed, this diſcent ſhall take away the entrie of the other ſiſter, becauſe by the Feoffement the priuitie of the Coparcenarie was deſtroyed.

28. Aſſ. 30. Vi. Sect. 710.

¶ *Claimont per vn meſme title, &c.* Of this ſufficient hath bin ſaid in the next precedent Section.

¶ *Ne poient enter, &c.* Of this there hath beene alſo ſpoken in the ſame Section.

Section 399.

Pl. Com. 57. 39. E. 3. Le dar-reine caſe.

¶ *Eiſie en fee.* For this holds not in caſe of an eſtate taile.

Li. 8. fo. 101. 102. Sir Rich. Lechfords caſe.

¶ *Mulier, ſeu filius mulieratus. Mulier* hath three ſignifications; Firſt Sub nomine mulieris continetur quælibet Fœmina. Secondly, Proprie ſub nomine mulieris continetur Virgo. Thirdly, Appellatione mulieris in legibus Angliæ continetur Vxor. Et ſic filius natus vel filia nata exiuſta vxore appellatur in Legibus Angliæ filius mulieratus ſeu filia mulierata, a ſonne mulier, or a daughter mulier, Sicut Baſtardus dicitur à Græco verbo Baſſaris, i. Meretrix, ſeu Concubina, quia procreatur ex meretrice ſeu

Glanu. li. 7. ca. 2. Bract. li. 5. ca. 19. Brit. ca. 70.

Vi. Sect. 188.

¶ Item ſi home eſt ſeiſie de certaine Terre en fee, et ad iſſue deux fits, et leigne fits eſt Baſtard, et l' puiſne free eſt mulier, et le Pier deuie, et le Baſtard enter enclaimant cõe heire a ſon pier, & occupia la terre tout ſa vie ſans aſcun entre fait ſur luy per l' mulier, et le Baſtard ad iſſue et mozuſt ſeiſie de tiel eſtate en fee, et

ALſo if a man bee ſeiſed of certaine Lands in Fee, and hath Iſſue two Sonnes, and the elder is a Baſtard, and the younger *Mulier*, and the father die, and the Baſtard entreth claiming as heire to his Father, and occupieth the Land all his life, without any entrie made vpon him by the *Mulier*, and the Baſtard hath Iſſue and dieth ſeiſed

et la Terre diſcendiſt a ſon Iſſue, et ſon Iſſue enter, &c. En ceſt caſe le mulier eſt ſauns remedie, Car il ne poit enter, ne auer aſcun Action pur recouerer la Terre, pur ceo que eſt vn antient Ley en tiel caſe vſe, &c.

of ſuch eſtate in Fee, and the Land diſcend to his Iſſue, & his iſſue entreth, &c. In this caſe the *Mulier* is without remedie, for he may not enter, nor haue any Action to recouer the lād, becauſe there is an antient Law in this caſe vſed, &c.

concubina. In Engliſh he is called baſe borne, and thereupon ſome ſay, That a Baſtard is as much to ſay as one that is a Baſe Naturall, for Aërd ſignifieth Nature. I read in Fleta, (p) That there be three kind of Baſtards, viz, Manſer, Nothus, & Spurius, which are deſcribed in two old verſes,

Manſeribus ſcortum, Notho mœchus dedit ortum.
Vt ſeges è ſpica, ſic Spurius eſt ab amica.

(p) *Flet. lib. 1. ca. 5. V. Sect. 380.*

But we terme them all by the name of Baſtards, that be borne out of lawfull marriage. By the Common Law, (r) if the husband be within the foure Seas, that is, within the Iuriſdiction of the King of England, if the wife hath Iſſue, no proofe is to be admitted to prooue the child a Baſtard, (for in that caſe, Filiatio non poteſt probari) vnleſſe the husband hath an apparant impoſſibilitie of procreation, as if the husband be but eight yeares old, or vnder the age of procreation, ſuch Iſſue is Baſtard, albeit hee be borne within marriage. (ſ) But if the Iſſue be borne within a moneth or a day after marriage betweene parties of full lawfull age, the child is legitimate.

(r) *Bract. li. 4 fo. 278. 279. 7. H. 4. 9. 43. E. 3. 19. 41. E 3 7. 44. E. 3. 10. 29. Aſſ. 54. 98. Aſſ. 24. 1. H. 6. 7. 19. H. 6. 17. 39. E. 3. 13.*
(ſ) *18. E. 4. 28.*

¶ *Diſcendiſt a ſon Iſſue.* **For if the Baſtard dieth ſeiſed without** Iſſue, and the Lord by Eſcheat entreth, this dying ſeiſed ſhall not barre the Mulier, becauſe there is no diſcent. If the Baſtard enter, and the Mulier dieth, his wife priuement enſeint with a ſonne, the Baſtard hath iſſue and dieth ſeiſed, the ſonne is borne, his right is bound for euer. But if the Baſtard dieth ſeiſed, his wife enſeint with a ſonne, the Mulier enter, the ſon is borne, the Iſſue of the Baſtard is barred: for Littleton putteth his caſe, that there muſt not onely be a dying ſeiſed, but alſo a diſcent to his Iſſue.

¶ *Et ſon iſſue enter, &c.* **And ſo it is to be vnderſtood, albeit the** Mulier after the deceaſe of the Baſtard doth enter before the heire of the Baſtard, for the diſcent bindeth, and not the entrie of the heire.

¶ *Le mulier eſt ſans remedie.* **Hereby it appeareth, that this diſ-** cent differeth from other diſcents, for this diſcent barreth the right of the Mulier, whereas other diſcents doe take away the entrie onely of him that right hath, and leaueth him to his Action, but here by the dying ſeiſed of the Baſtard, his Iſſue is become lawfull heire. (a) It is holden that if the Mulier be within age at the time of the dying ſeiſed, that he ſhall be barred, becauſe the Iſſue of the Baſtard is in iudgement of Law become lawfull heire, and that the Law doth preferre Legitimation before the priuiledge of Infancie.

Lib. 8. 101. 102. Sir Rich. Lechfords caſe.
(a) *5. E. 2. Diſcent 49. 31. Aſſ. 18. 22. 33. E. 3. Verdict 48. 36. Aſſ. 2. Pl. Com. Stowels caſe. 10. E. 3. 2.*

And the reaſon of this caſe is, for that luſtum non eſt aliquem poſt mortem facere baſtardum qui toto tempore vitæ ſuæ pro legitimo habebatur. And ſo it ſeemeth to be, That if a man hath iſſue a ſonne being Baſtard eigne, and a daughter, and the daughter is married, the father dieth, the ſonne entreth and dieth ſeiſed, this ſhall barre the Feme Couert. And the diſcent in this caſe of Seruices, Rents, Reuerſions expectant vpon Eſtates Taile, or for life, whereupon Rents are reſerued, &c. ſhall bind the right of the Mulier, but a diſcent of theſe ſhal not driue them that right haue to an Action.

13. E. 3. tit. Baſtardy 28.

14. E. 2. Baſtardy 26.

So if the Baſtard dieth ſeiſed, and his Iſſue endoweth the wife of the Baſtard, yet is not the entrie of the Mulier lawfull vpon the Tenant in Dower, for his right was barred by the diſcent.

Sir Ric. Lechfords caſe ob. ſup.

If the Baſtard eigne entreth into the land and hath Iſſue, and entreth into Religion, this diſcent ſhall barre the right of the Mulier.

20. H. 3. Baſtardy 29.

¶ *Adiſſue deux fits.* **If a man hath Iſſue ſuch a Baſtard as is** aforeſayd, and dieth, and the Baſtard entreth and dieth ſeiſed, and the Land diſcendeth to his Iſſue, the Collaterall Heyre of the Father is bound as well as where there be two ſonnes.

Hil. 18. E. 3. cor. Reg. Rot. 144 Ebor. 17. E. 3. 59. F tit. Baſtard. 32 Sir Rich. Lechfords caſe vb. ſup. See afterwards in the Chapter of Warranties.

And where our Author ſpeaketh of ſonnes, ſo it is if a man hath Iſſue two daughters, the eldeſt being a Baſtard, and they enter and occupie peaceably as heires, now the Law in fauour of Legitimation ſhall not adiudge the whole poſſeſſion in the Mulier, (who then had the only right, but in both, ſo as if the Baſtard hath iſſue and dieth, her iſſue ſhal inherit. (b) And in the

(b) *2. E. 3. tit. Baſtardie 18.*

21.E.3.34.b. 30.Aſſ.p.7. Sir Rich. Lechfords caſe vb.ſup. (c) Brit.ca.70.

the ſame caſe if both daughters enter and make partition, this partition ſhall bind the Mulier for euer.

(c) And an Aſſiſe of Mortdanceſter lieth not betweene the Baſtard and the Mulier in reſpect of the proximitie of bloud.

20.E.3.Vouch.129. 11.E.3. Age 3. 5.H.7.2. Sir Ric. Lechfords caſe vb.ſup.

And the Baſtard being impleaded or vouched ſhall haue his age.

¶ *Et le Baſtard enter come heire a ſon pier.* If a man hath Iſſue Baſtard eigne and Mulier puiſne, and the Baſtard in the life of the father hath Iſſue and dieth, and then the father dieth ſeiſed, and the ſon of the Baſtard entreth as heire to his grandfather, and dieth ſeiſed, this ſhall bind the Mulier.

¶ *Pur ceo que eſt antient Ley en tiel caſe vſe, &c.* As hereafter in our Comment vpon the two next Sections ſhall appeare by our antient Bookes and the antient Statutes of the Realme. And here is implied how neceſſarie it is after the example of our Author, to looke into the Antiquitie, than which, nothing is more venerable, profitable, and pleaſant.

Section 400.

¶ MEs il ad eſtre lopinion dascuns, que ceo ſerra intendue lou l' pier ad vn fits baſtard per vn feme, et puis eſpouſa meſm̃ la feme, et apres leſponſels il ad iſſue per meſme la feme vn fits, ou vn file mulier, et puis le pier mozuſt, &c. ſi tiel Baſtard enter, &c. et ad Iſſue et deuie ſeiſie, &c. donque auera liſſue de tiel Baſtard le Terre cleerement a luy, come auant eſt dit, &c. et nemy aſcun auter baſtard la mere, que ne fuit vnque eſpouſe a ſon pier, et ceo ſemble bone et reaſonable opinion. Car tiel Baſtard nee deuant eſpouſels celebres perenter ſon pier et ſa mere, per la Ley de Saint Eſgliſe eſt mulier, coment que per la Ley del Terre il eſt Baſtard, et iſſint il ad vn colour dentrer come heire a ſon pier, pur ceo que il eſt per vn ley mulier, &c. ſ̃. per la Ley de Saint Eſgliſe. Mes auterm̃t eſt de baſtard que nad aſcun maner colour dentre come heire, entant que il ne poet per nul Ley eſtre dit mulier, car tiel Baſtard eſt dit en la Ley, Quaſi nullius filius, &c.

BVt it hath beene the opinion of ſome, That this ſhall be intended where the father hath a ſonne Baſtard by a woman, and after marrieth the ſame woman, and after the eſpouſels he hath iſſue by the ſame woman a ſon or a daughter, and after the father dieth, &c. if ſuch Baſtard entreth, &c. and hath iſſue and die ſeiſed, &c. then ſhall the iſſue of ſuch baſtard haue the land cleerly to him, as it is ſaid before, &c. and not any other baſtard of the mother wch was neuer married to his father, and this ſeemeth to be a good and reaſonable opinion: for ſuch a baſtard borne before marriage celebrated between his father and his mother, by the law of holy church is *Mulier*, albeit by the law of the land he is a baſtard, & ſo he hath a colour to enter as heire to his Father, for that he is by one law *Mulier*, s. by Law of Holie Church. But otherwiſe it is of a Baſtard which hath no manner of color to enter as heire, inſomuch as he can by no law be ſayd to be *Mulier*, for ſuch a Baſtard is ſayd in the law to be *Quaſi nullius filius, &c.*

Mes

Mes ad eſte lopinion daſcuns, &c. And our Author here ſaith, That this opinion is good and reaſonable, for that ſuch a Baſtard by the Law of Holy church (*) is a Mulier.

Matrimonium ſubſequens legitimos facit quoad ſacerdotium non quoad ſucceſſionem propter conſuetudinem regni quod ſe habet in contrarium. Yet the Canon Law holdeth them Legitimate, quoad ſucceſſionem. At a Parliament holden (q) Anno 20.H.3. for that to certifie vpon the Kings writ, that the ſonne borne before marriage is a Baſtard, was Contra Communem formam Eccleſiæ, rogauerunt omnes Epiſcopi Magnates vt conſentirent, quod nati ante matrimonium eſſent legitimi ſicut illi qui nati ſunt poſt matrimonium quantum ad ſucceſſionē hæreditariam quia Eccleſia tales habet pro legitimis: Et omnes Comites & Barones vna voce reſponderunt, Quod nolunt Leges Angliæ mutare, quæ huc vſque vſitatę ſunt & approbatæ.

(*) *Vide Britton fo'.* 128 *b.* 166.203. *And the Statute of Merton.* 20.*H.*3.*cap.*19. *confirmeth this opinion.* *Hill* 18.*E.*3. *coram Rege in Theſaur. Eborum.*

*Bracton.lib.*2.*fol.*63.

(q) *Statut. de Merton* 20. *H.*3.*cap.*9. *Vide Brack.lib.*5.*fo.*416.417. 10.*Aſſ.pl.*20.

¶ *Iſſint que il ad vn colour dentre, &c.* Here it is to obſerued, That the Law more reſpecteth him that hath a Colourable title, though it be not perfect in Law, than him that hath no title at all, as hath beene ſayd (r) before.

(r) *Vide Sect.* 397. *& ſeq. gart. Sect.*

Section 401.

¶ Mes en le caſe auantdit, lou le Baſtard enter apres la mort le pier, et l' mulier luy ouſta, et puis le Baſtard diſſeiſiſt le mulier, et ad iſſue, et deuie ſeiſie, et iſſue enter, dõq̃ le mulier poit auer briefe Dentre ſur diſſ. enuers iſſue del Baſtard et recouera la terre, &c. Et iſſint poies veir le diuerſitie lou tiel Baſtard continue la poſſ. tout ſa vie ſans interruption & lou le mulier enter & interrupt le poſſeſſion de tiel baſtard, &c.

BVt in the caſe aforeſaid, where the Baſtard enter after the death of the father, and the mulier ouſt him, and after the Baſtard diſſeiſe the mulier, and hath iſſue and dieth ſeiſed, and the iſſue enter, then the mulier may haue a Writ of *Entrie ſur diſſeiſin* againſt the iſſue of the Baſtard, & ſhall recouer the Land, &c. And ſo you may ſee a diuerſitie where ſuch Baſtard continues the poſſeſſion all his life without interruption, and where the mulier entreth, and interrupts the poſſeſſion of ſuch Baſtard, &c.

¶ *Et le mulier luy ouſta.* An eſtranger in the name of the Mulier without his commandement cannot enter vpon the Baſtard, for that the Baſtard may gaine the eſtate and bar the Mulier. And therefore regularly none ſhall enter but the Mulier, or ſome other by his commandement. (And therefore Littleton ſaith, and the Mulier put him out) no more then in the caſe (a) of the Lord Awdley: for an eſtranger of his owne head cannot enter in the name of him that right had to enter within the fiue yeares to auoid the Fine. But in both theſe caſes, firſt, if the Mulier agree thereunto before the diſcent of the Baſtard, or ſecondly, he that right hath before the fiue yeares be paſt do aſſent thereunto, the clayme is good, and ſhall auoid the eſtate of the Baſtard, and of the Conuſee as it was holden in the Lord Awdleyes Caſe, Quia omnis ratihabitio retrotrahitur, & mandato equiparatur, and ſtandeth well with the words of the Statute, ſo that they purſue their title, &c. by way of Action or Entry, and ſo it is (b) 31.H.8. to be intended.

(a) *Mich.*38.*&* 39.*Eliz. in the Kings Bench vpon euidence by the whole Court. Vide* 31.*H.*8.*entr. conge. Br.*123.

4.*H.*7.*ſeq.*

But in the caſe of the Baſtard eigne, which is Littletons caſe, Gardein in Socage, or Gardeine in Chiualrie may enter, for they are no ſtrangers, as in another place is plainly ſhewed. If an Infant make a feoffment in fee, an eſtranger of his owne head cannot enter (c) to the vſe of the Infant, for the eſtate is voidable. But where the Infant or a man of full age is diſſeiſed, an entrie by a ſtranger of his owne head is good and veſteth preſently the right in the Infant. So it is if Tenant for life make a feoffment in fee, an eſtranger may enter in the name of him in the Reuerſion, and thereby the eſtate ſhall be veſted in him, Et ſic de ſimilibus.

*Vide Sect.*334.

(b) 31.*H.*8.*entr. conge. Br.*123.

(c) *Paſc.*39.*Eliz. in Cõmuni Banco per Curiam.*10.*H.*7.16 7.*E.*3.69. 26.*E.*3.62. *per Thorp.* 45.*E.*3. *releaſe* 28, 11.*Aſſ.*11.

¶ *Lou tiel Baſtard continue tiel poſſeſſion ſans interruption.* If the Mulier entreth vpon the Baſtard, and the Baſtard recouereth the Land in an Aſſiſe againſt the Mulier, now is the Interruption auoyded, and if the Baſtard dieth ſeiſed, thio ſhall barre the Mulier.

2. Aſſ. 9. If the Baſtard eigne after the deceaſe of the father entreth, and the King ſeiſeth the land for ſome contempt ſuppoſed to be committed by the Baſtard, for which no Freehold or Inheritance is loſt, but only the profits of the Land by way of ſeiſure, and the Baſtard die, and his Iſſue is vpon his Petition reſtored to the poſſeſſion, for that the ſeiſure was without cauſe, the mulier is barred for euer, for the poſſeſſion of the King when hee hath no cauſe of ſeiſure ſhall bee adiudged the poſſeſſion of him for whoſe cauſe he ſeiſed. But if after the death of the Father the mulier be found heire and within age, and the King ſeiſeth, in that caſe the poſſeſſion of the King is in right of the mulier, and veſteth the actuall poſſeſſion in the mulier, and conſequently the Baſtard eigne is forecloſed of any right for euer.

And ſo it is when the King ſeiſeth for a contempt or other offence of the Father or of any other Anceſtor, in that caſe if the Iſſue of the Baſtard eigne vpon a Petition be reſtored for that the ſeiſure was without cauſe, the mulier is not barred, for the Baſtard could neuer enter, and conſequently could gaine no eſtate in the Land, but the poſſeſſion of the King in that caſe ſhall bee adiudged in the right of the mulier. And it is to bee obſerued, that the Baſtard muſt enter in vacuam poſſeſſionem, and muſt continue during his life without interruption made by the Mulier.

¶ *Interrupt le poſſeſſion del Baſtard, &c.* If the Baſtard inuite the mulier to ſee his Houſe, and to ſee Pictures, &c. or to dine with him, or to Hawke, Hunt, or Sport with him, or ſuch like vpon the Land diſcended, & the mulier commeth vpon the Land accordingly, this is no interruption becauſe he came in by the conſent of the Baſtard, and therefore the comming vpon the Land can be no treſpaſſe, but if the mulier commeth vpon the ground of his owne head, and cutteth downe a tree or diggeth the ſoyle, or take any profit, theſe ſhall be interruptions, for rather then the Baſtard ſhall punith him in an Action of Treſpaſſe, the Act ſhall amount in Law to an Entry, becauſe he hath a right of Entrie. So it is if the mulier put any of his beaſts into the ground or command a ſtranger to put on his beaſts, theſe doe amount to an Entrie, for albeit in theſe caſes the mulier doth not vſe any expreſſe words of Entrie, yet theſe and ſuch like Acts doe without any words amount in Law to an Entrie, for Acts without words may make an Entrie, but words without an Act (viz.) Entris into the Land, &c.) cannot make an Entrie (all which interruptions are implyed in the ſaid, &c.) More ſhall be ſaid hereafter of Interruptions in the Chapter of Continuall Clayme.

Pl. Com. Parſon de Hony lane caſe 91. 35. H.6. 24. 21. H.6. 9. 1. E.4. 3. 21. E.4. 5. 5. E.4. 60

Sect. 402.

Tenures. diſcent. 42.

¶ *Si vn enfant deins age ad cauſe dentrer.* If a man ſeiſed of Lands in fee die, his wife priuement enſeint with a ſon, and a ſtranger abate and die ſeiſed, and after the ſonne is borne, hee ſhall bee bound by the Diſcent, becauſe hee at the time of the Diſcent had no right to enter, & this is to be gathered vpon theſe words of Littleton, ad cauſe dentrer, which at the time of the Diſcent he had not.

22. H.6. 28. b. 2. E.4. 25. 26. 19. E.4. diſcent. 30. ¶ *Eſt eins per Diſcent, &c.* Here is implyed any other heire collaterall or lineall.

An Infant is accounted in Law (as hath beene often ſaid, (d) vntill hee paſſeth the

(d) Vide Sect. 253. 401.

¶ Item, ſi vn enfant deins age ad tiel cauſe de entry en aſcuns terres ou tenements ſur vn auter, que eſt ſeiſie en fee, ou en fee taile de meſme les terres ou tenements. ſi tiel home que eſt tielment ſeiſie, moruſt de tiel eſtate ſeiſie, et les terres diſcendont a ſon iſſue, durant le temps que lenfant eſt deins age, tiel diſcent ne tollera lentry

ALſo if an Infant within age hath ſuch cauſe to enter into any Lands or Tenements vpon another which is ſeiſed in fee, or in fee tayle of the ſame Lands or Tenements if ſuch man who is ſo ſeiſed, dieth of ſuch eſtate ſeiſed, and the Lands diſcend to his Iſſue, during the time that the Infant is within age, ſuch Diſcent ſhall not take away the entrie of the

lentre lenfant, mes ſi il poit enter ſur le iſſue que eſt eins per diſcent, &c. pur ceo que nul laches ſerra adiudge en vn enfant deins age en tiel caſe.

Infant, but that hee may enter vpon the iſſue which is in by diſcent, for that no laches ſhall bee adiudged in an Infant within age in ſuch a caſe.

age of 21. yeares, and certaine priuiledges hee hath in reſpect of his infancie.

¶ *Nul Laches ſerra adiudge en le Infant deins age in tiel caſe.*

And Littleton well added (en tiel caſe) that is, in caſe of Diſcent, for in ſome other Caſes Laches ſhall preiudice an Infant. As Laches ſhall be adiudged in an Infant if hee preſent not to a Church within ſixe monethes, for the Law reſpecteth more the Priuiledge of the Church, that the Cure be ſerued, than the Priuiledge of Infancie. And ſo the publique Repoſe of the Realme concerning mens Freehold and Inheritance ſhall be preferred before the priuiledge of Infancy in caſe of a fine where the time begin, in the time of the Anceſtor. So non-clayme of a Villaine, of an Infant by a peare and a day, which hath fled to an ancient Demeſne, ſhall take away the ſeiſure of the Infant. And if an Infant bring not an Appeale of the death of his Anceſtor within a peare and a day, he is barred of his appeale for euer, for the Law reſpects more Libertie and Life, than the Priuiledge of Infancie. And here it is to be obſerued, that Littleton putteth his caſe, that an Infant ſhall enter vpon a Diſcent, when a ſtranger dyeth ſeiſed, but hee put it not ſo before, in the caſe of the Baſtard eigne. B. Tenant in taple infeoffeth A. in fee, A. hath iſſue within age and dyeth, B. abateth and dyeth ſeiſed, the Iſſue of A. being ſtill within age, this Diſcent ſhall bind (e) the Infant, for the Iſſue in taple is remitted: and the Law doth more reſpect an ancient right in this caſe, than the priuiledge of an Infant that had but a defeaſible eſtate. And it is ſaid (f) that if the King dye ſeiſed of Lands, and the Land diſcend to his Succeſſor, this ſhall bind an Infant, for that the priuiledge of the Infant in this caſe holds not againſt the King.

33.E.3. *quar. imp.* 46.

Pl. Com. 372.

(e) 11.E.4 1.2. *F.N.B.* 35.*m.*

(f) 35.H.6 6d.

Sect. 403.

¶ Item, ſi le baron & ſa feme come en droit la feme, ont title & droit denter en tenements que vn auter ad en fee, ou en fee taile, et tiel tenant morust ſeiſie, &c. en tiel caſe lentrie le baron eſt tolle ſur lheire que eſt eins per diſcent. Mes ſi le baron deuie, donque la feme bien poit enter ſur liſſue que eſt eins per diſcent, pur ceo que Laches le baron ne turnera la feme ne ſes heires en preiudice ne en dammage

Alſo if Husband and Wife, as in right of the wife haue title and right to enter into Lands which another hath in fee, or in fee tayle, and ſuch tenant dieth ſeiſed, &c. In ſuch caſe the entrie of the Husband is taken away vpon the heire which is in by Diſcent: but if the Husband die, then the wife may well enter vpon the Iſſue which is in by Diſcent, for that no Laches of the husband ſhal turne the wife or her heires to any preiudice, nor loſſe

¶ *Si baron & feme come en droit ſa feme ont title & droit dentrer, &c. & tiel tenant moruſt ſeiſie, &c.*

Theſe words are generall, but are particularly to bee vnderſtood, viz. when the wrong was done to the wife during the Couerture, for if a Feme ſole be ſeiſed of Lands in fee, and is diſſeiſed, and then taketh husband, In this caſe the husband and wife, as in the right of the wife, haue right to enter, and yet the dying ſeiſed of the diſſeiſor in that caſe ſhall take away the entry of the wife after the death of her husband, and the reaſon is aſwell for that ſhee herſelfe when ſhee was ſole, might haue entred and recontinued the poſſeſſion, as alſo it ſhall bee accounted her folly that ſhee would take ſuch a husband which would not enter before the Diſcent.

9.H.7.24.a. 2.E.4.25. 7.E.4 7.b. 20.H.6.28.b. 42.E.3.12.

15.E.4. *diſcent.* 30.

p.H.7.24.

But if the woman were within age at the time of the taking of huſband, then the dying ſeiſed ſhall not after the deceaſe of her huſband take away her Entrie; becauſe no folly can be accounted in her, for that ſhee was within age when ſhe tooke huſband, and after Couerture ſhe cannot enter without her huſband, all which is implyed in the ſaid (&c.)

en tiel cas, mes que la feme & ſes heirs ñ poient enter, lou tiel diſcent eſt eſchue durant le couerture.

in ſuch caſe, but that the wife & her heires may well enter where ſuch Diſcent is eſchued during the Couerture.

Vid. Sect.402.

¶ *Laches le Baron ne turnera la feme, &c. al preiudice, &c.* Laches (ſignifieth) in the Common Law, rechleſneſſe or negligence, Et negligentia ſemper habet infortunũ comitem Here is a diuerſitie to be obſerued that albeit regularly no Laches ſhall bee accounted in Infants or Feme Couerts as is aforeſaid, for not Entry or Clayme to auoyde Diſcents, yet Laches ſhall be accounted in them for not performance of a Condition annexed to the ſtate of the Land. For if a Feme be infeoffed eyther before or after marriage, reſeruing a Rent, and for default of payment a re-entrie. In that caſe the Laches of the Baron ſhall diſherit the wife for euer. And ſo it is (n) of an Infant his Laches, for not performing of a Condition annexed to a ſtate, eyther made to his Anceſtor or to himſelfe ſhall barre him of the right of the Land for euer.

20.H.6.28.b.
(n) 31.Aſſ.p.17.
42.E.3.1. Pl. Com.55.
10.H.7. 13.H.7.

If a man make a feoffment in fee to another reſeruing a Rent, and if he pay not the Rent with'n a moneth, that he ſhall double the Rent, and the Feoffee dieth, his heire within age, the Infant payeth not the Rent, he ſhall not by this Laches forfeit any thing. But otherwiſe it is of a Feme Couert, and the reaſon and cauſe of this diuerſitie is, for that the Infant is prouided for by the Statute, (o) Non current vſuræ contra aliquem infra ætatem exiſtẽ' &c. But that Statute doth not extend to a Feme Couert, neither doth that Statute extend to a Condition of a re-entrie, which an Infant ought to performe, for the forfeiture thereof cannot bee called Vſura.

35.H.6.41. Pl.Com.236.b.
Fleta lib.2.cap.50.

(o) La ſtatute de Marleberg.c.5

Sect. 404.

¶* **Mes la Court tient, lou tiel title eſt done al feme ſole, que puis prent baron, que nentra pas, eins ſuffer vn Diſcent, &c. la auter eſt, car ſerra dit la folly le feme de prender tiel baron que nentre en temps, &c.** *

BVt the Court holdeth where ſuch title is giuen to a fem ſole who after taketh husband which doth not enter, but ſuffer a Diſcent, &c. there otherwiſe it is. for it ſhall be ſaid the folly of the wife to take ſuch a husband which entered not in time, &c.

p.H.7.24.

¶ This is added, and therefore as formerly I haue done I meddle not withall, howbeit the opinion is holden for Law, as it appeareth in the Section next precedent.

Section 405.

¶ HEre Litl. explaineth a man of no ſound memory to be Non compos mentis. Many times (as here it appeareth) the Latyn word explaineth the true ſence, and calleth him not Amens, demens, furioſus, lunaticus, fatuus, ſtultus, or the like, for Non compos mentis is moſt ſure and legall.

Pl.Com.fo.368.b.per Sanders Lib.4.fo.127.182. Beuerleys caſe. Mirror cap 1.§ 9.ea. 5. § 1. Bracton fo.165.& 420 Britton fo.167.b.217.66. Fleta l.6 ca 39.Fitz.N.B. 232.b. Stauf.Prer.33.34.

¶ **Item, ſi home que eſt de non ſane memory, que eſt adire en Latin,** Qui non eſt cõpos mentis, **ad cauſe dentre en aſcuns tiels tenements, ſi tiel diſcent** vt ſupra, **ſoit ewe en ſa vie, durant le temps que il fuit de non**

ALſo if a man which is of non ſane memory, that is to ſay in Latyn, *Qui non eſt compos mentis,* hath cauſe to enter into any ſuch tenements, if ſuch diſcent, *Vt ſupra,* bee had in his life during the time that hee was not of ſound

non ſane memorie, & puis deuia, ſon heire bien poit enter ſur luy que eſt eins p diſcent. Et en ceſt caſe poyes veier vn cas, q̃ lheire poiet enter, & vncore ſon anceſter que auoit meſme le title ne puiſſoit enter. Car celuy que fuit hors de ſa memorie al temps de tiel diſcent, ſil voile enter apres tiel diſcent, ſi action ſur ceo ſoit ſue envers luy, il nad riẽs pur luy a pleder, ou de luy ayder, mes adire que il fuit de non ſane memorie al temps de tiel diſcent, &c. & a ceo ne ſerra il reſceiue adire, pur ceo que nul home ỏ pleine age ſerra reſceiue en aſcun plee per la ley a diſabler ſa perſon demeſn̄, mes lheire bien poit diſabler le perſon ſon auncеſter pur ſon aduantage demeſne en tiel cas, pur ceo q̃ nul laches poit eſtre adiudge per la ley en celuy que ad nul diſcretion en tiel caſe.

memory, & after dieth, his heire may well enter vpon him which is in by diſcent. And in this caſe you may ſee a caſe where the heire may enter, and yet his Anceſtor which had the ſame title could not enter. For hee which was out of his memory at the time of ſuch diſcent if he will enter after ſuch a diſcent, if an action vpon this be ſued againſt him, he hath nothing to pleade for himſelfe or to help him, but to ſay, that hee was not of ſane memory at the time of ſuch diſcent, &c. And he ſhall not bee receiued to ſay this, for that no man of full age ſhall be receiued in any plea by the law to diſable his owne perſon, but the heire may well diſable the perſon of his Anceſtor for his owne aduantage in ſuch caſe, for that no laches may bee adiudged by the law in him which hath no diſcretion in ſuch caſe.

of foure ſorts; 1. Ideota which from his natiuity by a perpetuall infirmity is Non compos mentis. 2. Hee that by ſickneſſe, griefe or other accident wholly loſeth his memory and vnderſtanding. 3. A Lunatique that hath ſometime his vnderſtanding and ſometime not, Aliquando gaudet lucidis interuallis, and therefore he is called Non compos mentis ſo long as he hath not vnderſtanding. Laſtly, he that by his owne vitious act for a time depriueth himſelfe of his memory and vnderſtanding, as he that is drunken. But that kinde of Non compos mentis ſhall giue no priuiledge or benefit to him or his heires. And a diſcent ſhall take away the entrie of an Ideot, albeit the want of vnderſtanding was perpetuall; for Littleton ſpeaketh generally of a man of non ſane memory. So likewiſe if a man that become Non compos mentis by accident as is aforeſaid be diſſeiſed and ſuffer a diſcent, albeit hee recouer his memory and vnderſtanding againe, yet he ſhall neuer auoide the diſcent; and ſo it is a fortiori of one that hath Lucida interualla. As for a drunkard, who is Voluntarius dæmon, hee hath (as hath beene ſaid) no priuiledge thereby, but what hurt or ill ſoeuer hee doth, his drunkenneſſe doth aggreuate it; Omne crimen ebrietas & incendit & detegit.

Ls. 4. 124. 125. Beuerleys caſe

If an Ideot make a feoffment in fee, he ſhall in pleading neuer auoide it, ſaying that he was an Ideot at the time of his feoffment, and ſo had beene from his natiuity. But vpon an office found for the King, the King ſhall auoide the feoffment for the benefit of the Ideot whoſe cuſtodie the Law giueth to the King.

39. H. 6. 42. b. Abb. Aſſ. 89. b. F. N. B. 202. 5. E. 3. 70. Britton ca. 28 fo. 66. 25. Aſſ. pl. 4. 35. Aſſ. pl. 10.

So it is of a Non compos, and ſo it is of him Qui gaudet lucidis interuallis, of an eſtate made during his Lunacie: for albeit the parties themſelues cannot be receiued to diſable themſelues, yet twelue men vpon the Office may find the truth of the matter. But if any of them alien by fine or recouerie, this ſhall not onely bind himſelfe, but his heires alſo. As amongſt other things requiſite to be knowne, theſe caſes you ſhall finde at large in my Commentaries whereunto for brauity I referre the reader. Vpon all which bookes there haue beene foure ſeuerall opinions concerning the alienation or other act of a man that is Non compos mentis, &c. For

32. E. 3. tit. Scire fac. 169. Stanf. Pr. 34. F. N. B. 202. e

Beuerley caſe lib. 4. 126. 127 128.

Vid. Br. tit. Dum fuit infra ætatem. 5.

first ſome are of opinion that he may auoyde his owne act by entrie or plea. Secondly, Others are of opinion, That he may auoyd it by Writ, and not by plea. Thirdly, Others, That hee may auoyd it either by plea or by Writ, and of this opinion is Fitzherbert in his Natura Brevium vbi ſupra. And Littleton here is of opinion, That neither by Plea nor by Writ or otherwiſe, hee himſelfe ſhall auoyd it, but his heire in reſpect his Anceſtor was Non compos mentis, ſhall auoyd it by entrie, plea, or Writ: And herewith the greateſt authorities of our Bookes agree. and ſo was it reſolued with Littleton, in Beuerleys caſe, (r) where it is ſayd, That it is a Maxime of the Common Law, That the partie ſhall not diſable himſelfe. But this holdeth onely in Ciuile Cauſes, for in Criminall Cauſes, as Felonie, &c. the act and wrong of a mad man ſhall not be imputed to him, for that in thoſe cauſes, Actus non facit reum, niſi mens ſit rea, and he is Amens (id eſt) ſine mente, without his mind or diſcretion; and Furioſus ſolo furore punitur, a mad man is onely puniſhed by his madneſſe. And ſo it is of an Infant vntill he be of the age of fourteene, which in Law is accounted the age of diſcretion.

(r) *Lib.4.fo.126.127.*

26.Aſſ.27. 21.H.7.31. Stanford 16 b. 8.E.2.Coron 412.414.351. 22.E.3. ibid. 224. Beuerleys caſe vbi ſup. F.N.B.202.D. 3.H.7.2. Vid.3.E.3.tit. Entrie Cong. Statham 12.E.48. 39. H.6 4. Abbr. Aſſ.89. 39.H.6.43.

¶ *Et enceſt caſe poyes veir vn caſe, &c.* **And though** Littleton **ſaith,** (One caſe) yet other caſes may be found to the ſame end. For if there be Grandfather, Father, and Sonne, and the Father diſſeiſe the Grandfather, and make a Feoffement in Fee, without warrantie, the grandfather dieth, albeit the right diſcend to the father, he cannot enter againſt his owne Feoffement, but if he die, the ſonne ſhall enter, and auoyd the eſtate of the Feoffee

15.E.4.tit. Diſcent.30.

So if the Grandfather be Tenant in Taile, and the father diſſeiſe him vt ſupra, mutatis mutandis.

If Lands be giuen to two and to the heires of one of them, he that hath the Fee ſimple ſhall not haue an action of Waſt vpon the Statute of Glouceſter, againſt the Ioyntenant for life, but his heire ſhall maintaine an Action of Waſt againſt him, vpon the Statute of Glouceſter, ſo the heire ſhall maintaine that Action which the Anceſtor could not.

Sect. 406.

¶ **Et ſi tiel home ou non ſane memorie fait Feoffement, &c. il meſm̃ ne poet enter ne auer briefe apell** Dum non fuit compos mentis, &c. cauſa qua ſupra, **Mes apres la mort ſon hꝛe bien poit enter, ou auer le dit Briefe** Dum non fuit compos mentis **a ſon election. Meſme la Ley eſt lou enfant deins age fait Feoffement, et deuie, ſon heire poit enter, ou auer vn Briefe de** Dum fuit infra ætatem, &c.

And if ſuch a man of Non ſane memorie make a Feoffement, &c. he himſelfe cannot enter, nor haue a Writ called *Dum non fuit compos mentis, &c. cauſa qua ſupra*: but after his death his Heire may well enter, or haue the ſayd Writ of *Dum non fuit compos mentis* at his choice. The ſame Law is where an Infant within age maketh a feoffment and dieth, his heire may enter or haue a Writ of *Dum fuit infra ætatem, &c.*

¶ *Fait feoffement, &c.* **Or any other like conueyance** in paijs, **but** Fines and other aſſurances of Record are not implied in this, (&c).

¶ *Meſme la ley dun Enfant.* **This is true, as to the bringing** of a Dum fuit infra ætatem, &c. but without queſtion the Infant in that caſe might haue entred, as it appeareth in the next Section.

¶ *Briefe* Dum non fuit compos mentis. **This Writ (as it appeareth by our Author) lieth** for the heire of him that was Non compos mentis, **and not** for himſelfe, but a Dum fuit infra ætatem lieth as well for the Anceſtor himſelfe after his full age, as for his heire.

Sect.

*Sect.*407.

¶ Item ſi ieo ſue diſſeiſie per vn enfant deins age, le quel aliena a vn auter en fee, et lalienee deuie ſeiſie, et les Tñts diſcendont a ſon heire, eſteant lenfant deins age, mon entry eſt tolle, &c.

Alſo if I be diſſeiſed by an Enfant within age, who alieneth to another in Fee, and the Alienee dieth ſeiſed, and the lands diſcend to his heire being an Infant within age, my entrie is taken away. &c.

*Sect.*408.

Mes ſi lenfant deins age ent ſur lhẽe que eſt eins p diſcent, come il bien poit pur ceo q̃ meſme le diſcent fuit durant ſon nonage, donque ieo bien puiſſe enter ſur le diſſeiſor, pur ceo que p ſon entrie il ad defeat & anient le diſcent.

BVt if the Infant within age enter vpon the heire which is in by diſcent, as he well may, for that that the ſame diſcent was during his Nonage, then I may well enter vpon the Diſſeiſor, becauſe by his entrie he hath defeated and taken away the diſcent.

¶ HEre it appeareth, That the entrie of the Infant is lawfull, and giueth aduantage to the Diſſeiſee to enter alſo, becauſe the diſcent, which was the impediment, is auoyded. And it is to be obſerued, That if the diſcent bee caſt, the Infant being within age, he may enter at any time of his full age.

Vi. the next Sect. following. 43.E.3. tit. Entr. Cong. Vet.N.B.126.b.F.N.B.198 45.E.3.21.

And ſo it is if an Infant make a Feoffement, &c. he may enter either within age, or at any time after his full age, and ſo in both caſes may his heire.

Sect. 409.

¶ En meſme le manner eſt, lou ieo ſue diſſeiſie, et le diſſeiſor fait feoffment en fee ſur condic̃, et le Feoffee mor̃ de tiel eſtate ſeiſie, ieo ne purroy my enter ſur lhẽe le feoffee: mes ſi le condition ſoit enfreint, iſſint q̃ pur cel cauſe le Feoffor enter ſur lheire, ore ieo bñ puiſſe enter, pur ceo que quãt le Feoffor ou ſes heires entront pur le condition enfreint, le diſcent eſt ouſterm̃ defeat, &c:

IN the ſame manner it is where I am diſſeiſed, and the Diſſeiſor make a feoffmẽt in fee vpon condition, and the feoffee die of ſuch eſtate ſeiſed, I may not enter vpon the heire of the Feoffee, but if the Condition be broken, ſo as for this cauſe the feoffor enter vpon the heire, now I may well enter, for that when the Feoffour or his heires enter for the condition broken, the Diſcent is vtterly defeated, &c.

¶ THe reaſon hereof is apparant, for Ceſſante cauſa ceſſat cauſatum. Tenant in Capite maketh a Feoffment in fee to the vſe of the Feoffee and his heires, vntill the Feoffor pay an hundred pounds to him or his heires, the Feoffee dieth his heire within age, now hath the King the wardſhip of the bodie, and is intituled to the gard of the land. But if the Feoffor pay the hundred pounds according to the limitation, the wardſhip is diuerted, both for the body and land, and ſo it is in caſe of a condition: for as Littleton here ſaith, the diſcent which is the cauſe of wardſhippe, is vtterly defeated. And by theſe two laſt caſes which Littleton hath here put, it appeareth, That there is no difference where the diſcent is diſaffirmed by a right Paramount, where the ſtate was neuer

V. the Sect. next precedent. Dyer 13.El.fo.298,299.

lawfull, (as in the caſe of an Infant, and where the diſcent is affirmed for a time, the eſtate being lawfull) and after defeated by matter ex poſt facto, by a title of Re-entrie.

Section 410.

¶ *Entre en Religion, &c.* Here is implied Profeſſion. This diſcent ſhall not barre the entrie of the Diſſeiſee, for that the diſcent commeth by the Deed of the Father, becauſe hee entred into Religion, wherein there is an excellent poynt worthie of obſeruation: For albeit the entrie into Religion make not the diſcent, but the profeſſion, whereof you haue read before Sect. 200. Yet here you may learne by Littleton, That the Law reſpects the originall Act, and that is his entry into Religion, which is his owne Act whereupon the profeſſion followed, whereby the diſcent hapned, for, Cuiuſque rei poſtiſſima pars principium eſt. And againe, Origo rei inſpici debet, whereof you ſhal make great vſe in reading of our Bookes. *Here Lit. attributeth the cauſe of the diſcent to his entrie into Religion, which was his owne Act, whereas a diſcent doth not take away an entrie vnleſſe it commeth by death, which, as Littleton ſaith, is the act of God, and no glorious pretext of an Act, no though it bee of Religion, ſhall worke a wrong to a ſtranger that hath right, to barre him of his entrie: But it is ſayd, That in the caſe of the Baſtard eigne and mulier puiſne, ſuch a diſcent ſhall bind the Mulier, as before hath beene ſayd, and ſuch an heire that commeth in by ſuch a diſcent ſhall haue his age.

Vi. Sect. 200.

(*) V. Pl. Com. Dame Hales caſe. 6.E.3.41. &c.

10.E.3.55.

¶ *Car ſi ieo arraigne vn Aſſiſe, &c.* Nota if a man be Tenant or Defendant in a reall or perſonall Action, and hanging the ſuit, the tenant or defendant entreth into Religion, by this the writ is not abated, becauſe it is by his owne Act. And ſo it is of a Reſignation, but otherwiſe it is of a Depoſition or deprivation, becauſe he is expelled by iudgement, and yet his offence, &c. was the cauſe thereof, ſed in præſumptione Legis iudicium redditur in inuitum.

3.H.6.41. 10.H.6.10.b. 18.E.4.19. 9.E.4.25.52. 7.E.4 15. 18.E.3.24. 25. E.3.39. 46.E.3.25. 30.E. 1 Breife.885. Bracton lib. 4.fo.189.& Lib.5.fo.414. 22.R.2.Breif 936. 15.Aſſ. pl.8.

¶ Item ſi ieo ſoy diſſeiſie, et le Diſſeiſor ad iſſue et enter en Religion, per force de quel les Tenemẽts diſcendõt a ſon iſſue, en ceſt caſe ieo bien puiſſe enter ſ iſſue, et vncore la fuit vn diſcent. Mes pur ceo que ticl diſcẽt dient al iſſue per fait le pier, ſ, pur ceo que il enter en Religion, &c. et le diſcent ne vient a luy per fait de Dieu, ſ, per mort, &c. mon entre eſt congeable. Car ſi ieo arraigne vn Aſſiſe de Nouel Diſſeiſin enuers mon Diſſeiſor, coment que il puit enter en religion, ceo ne abata my mon brẽ mes mõ brẽ (cõ non obſtant) eſtopera en ſa force. et mon recouery vers luy ſerã boñ. Et per meſme le reaſon le diſcent que aueigne a ſon Iſſue per ſon fait demeſn, ne tollera moy ô mon entrie, &c.

ALſo if I bee diſſeiſed, and the deſſeiſor hath Iſſue and entreth into Religion, by force whereof the lands diſcend to his iſſue, In this caſe I may well enter vpon the Iſſue, and yet there was a diſcent: but for that ſuch diſcent commeth to the Iſſue by the Act of the father, s. for that he entred into Religion, &c. and the Diſcent came not vnto him by the Act of God, (*ſcilicet*) by death, &c. my entrie is congeable: for if I arraigne an Aſſiſe of *Nouel diſſeiſin* againſt my diſſeiſor, albeit he after enter into Religion, this ſhall not abate my Writ, but my writ (notwithſtanding this) ſhall ſtand in his force, and my recouerie againſt him ſhall bee good. And by the ſame reaſon the diſcent which commeth to his Iſſue by his own Act, ſhal not take from me my entrie, &c.

¶ *Moy de mon entry, &c.* Here is implied, Or any of my heires.

Sect.

Sect. 411.

ITem ſi ieo leſſe a vn home certaine terres pur terme de 20. ans. & vn autes moy diſſeiſiſt, & ouſta le termor et deuie ſeiſie, et les tenements diſcēdont a ſonheire, ieo ne purroy enter, et vncore l' leſſee pur terme dans bien puit enter pur ceo que il p̄ ſon entry ne ouſta lheir q̄ eſt eins p diſcēt ď le frāktenemēt q̄ eſt a luy diſcēd? mes ſolement claime dauer les teneñts pur terme dans, le quel neſt pas expulſemēt de le franktenemét del heire que eſt eins per diſcent. Mes auterment eſt ou mon tenant a terme de vie eſt diſſeiſie, Cauſa patet, &c.

ALſo if I let vnto a man certain lands for the terme of twentie yeares, and another diſſeiſeth me, and ouſt the termor, and die ſeiſed, and the Lands diſcend to his heire: I may not enter, and yet the Leſſee for yeares may well enter, becauſe that by his entrie he doth not ouſte the heire who is in by Diſcent of the Freehold which is diſcended vnto him, but only claymeth to haue the Lands for tearme of yeares which is no expulſion from the freehold, of the heire who is in by Diſcent. But otherwiſe it is where my Tenant for terme of life is diſſeiſed, *Cauſa patet, &c.*

¶ *Vr terme de 20. ans.* It is clere that a Diſcent ſhall not take away the entry of a Leſſee for yeares as our Authour here ſaith, nor of a Tenant by Elegit, or Tenant by Statute Merchant or ſuch like, as haue but a Chattle and no Freehold, and the reaſon is for that by their entrie vpon the heire by diſcēt, they take no Freehold (which as often hath bin obſerued is ſo much reſpected in Law) from him, but otherwiſe it is of an eſtate for life, or any higher eſtate. And as a Diſcent of a Freehold and Inheritance ſhall take away the entry of him that right hath to a Freehold or Inheritance, ſo a Diſcent of a Freehold and Inheritance cannot take away the entry of him that hath but a Chattle, for that no Diſcent can be of the ſame.

A man ſeiſed of an aduowſon in fee, grants three auoydances one after another, and after the Church becommeth void, and the Grantor preſents, and his Clarke is admitted and inſtituted, and after the Church becomes void, the Grantee may preſent to the ſecond auoydance, for hee was not put out of poſſeſſion thereof, for as the Leſſor hauing the Freehold and Inheritance cannot diſſeiſe the Leſſee for yeares, hauing but a Chattle, that any Diſcent may be caſt to take away his entry as Littleton here ſayth: ſo in the ſaid caſe the Grantor hath the Frankteneméent and fee of the Aduowſon rightfully, ſo as he cannot make any vſurpation to gaine any eſtate, or to put the Grantee ſo out of poſſeſſion as he ſhould not preſent, no more then the Leſſee for yeares in this caſe to enter. Alſo in reſpect of the priuitie the vſurpation of the Grantor ſhall not put the Grantee out of poſſeſſion for the two latter auoydances. And this was reſolued (a) by all the Iudges of the Court of Common Pleas, which I my ſelfe heard and obſerued.

(a) *Hill. 18. Eliz. in Communi Banco.*

Sect. 412.

¶ ITem il eſt dit, que ſi home eſt ſeiſie de tenements en fee per occupation en temps de guerre, & ent mozuſt ſeiſie en

ALſo it is ſaid that if a man be ſeiſed of lands in fee by occupation in time of warre, and thereof dieth ſeiſed in the

¶ *Per occupation en temps de guerre.*

Firſt, It is neceſſary to be knowne what ſhall bee ſaid Time of peace. Tempus pacis, and what ſhall bee ſaid, Tempus belli, ſiue guerræ, time of warre, Tempus pacis eſt quando

Inter brevia de anno 1.E.3. parte 1. & paſch.28.E.3. inter adiudicata coram Rege.lib. 2.fol.37. in theſaur. Paſch.39.E.3.inter adiudicata coram Rege in theſaur.lib.2. fol.92.

do Cancellaria & aliæ Curiæ Regis ſunt apertæ quibus lex fiebat cuicunque prout fieri conſueuit. And ſo was it adiudged in the caſe of Roger Mortimer, and of Thomas Earle of Lancaſter. Vtrum terra ſit guerrina neene, naturaliter debet iudicari per recorda Regis, & eorum qui curias Regis per legem terræ cuſtodiunt & gubernant, ſed non alio modo.

temps de guerre, et les tenements diſcendont a ſon heire, tiel diſcent ne ouſtera aſcun home de ſon entry, et de ceo home poit bier en vn plee ſur vn breife de Aiel, An.7.E.2.

time of warre, and the tenements diſcend to his heire, ſuch diſcent ſhall not ouſt any man of his entrie, and of this a man may ſee in 2 Plea vpon a Writ of Aiel, 7.E.2.

14.E.3.tit.ſcire facias 122. but more fully in the Record at large.

And therefore when the Courts of Iuſtice bee open, and the Iudges and Miniſters of the ſame may by Law protect men from wrong and violence, and diſtribute Iuſtice to all, it is ſaid to be time of peace. So when by Inuaſion, Inſurrection, Rebellions, or ſuch like the peaceable courſe of Iuſtice is diſturbed and ſtopped, ſo as the Courts of Iuſtice be as it were ſhut vp, Et ſilent leges inter arma, then is it ſaid to be time of warre. And the triall hereof is by the Records and Iudges of the Court of Iuſtice, for by them it will appeare, whether Iuſtice had her equall courſe of proceeding at that time or no, and ſhall not be tryed by Iury.

If a man be diſſeiſed in time of peace, and the Diſcent is caſt in time of warre, this ſhall not take away the entry of the Diſſeiſee

Bracton.lib.4.fo'.240.

Item tempore pacis quod dicitur ad differentiam eorum quæ fuerunt tempore belli quod idem eſt quod tempore guerrino, quod nihil differt à tempore iuris & iniuriæ, eſt enim tempus iniuriæ, cum fuerunt oppreſſiones violentæ quibus reſiſti non poteſt, & diſſeiſinæ iniuſtæ.

So as hereby it alſo appeareth that time of peace is the time of Law and right, and time of warre is the time of violent oppreſſion, which cannot be reſiſted by the equall courſe of Law. And therefore in all reall actions the erpleas or taking of the profits are layed Tempore pacis, for if they were taken Tempore belli, they are not accounted of in Law.

Anglicum cap. de nouel diſſeiſin.

¶ *Per Occupation.* Occupation **is a word of art, and ſignifieth a** putting out of a mans Freehold in time of warre, and it is all one with a diſſeiſin in time of peace, ſauing that it is not ſo dangerous as it appeareth by Littleton, and therefore the Law gaue a writ in that caſe of Occupauit, ſo called by reaſon of that word in the writ, in ſtead of

Lib.4.fol.49.50. Ognels caſe.

diſſeiſuit in the Aſſiſe of Nouel diſſeiſin, if the diſſeiſin had bene done in time of peace, whereby it appeareth how aptly both in this and in all other places, Littleton throughout his whole Booke ſpeaketh. But albeit Occupatio whereof Littleton here ſpeaketh is vſed only in the ſaid writ and in none other, that I can find or remember, yet hath it bene vſed commonly in Conueyances and Leaſes to limit or make certaine precedent words, as ad tunc in tenura & occupatione. But occupatio is applyed to the poſſeſſion, bee it lawfull or vnlawfull; It hath alſo crept into ſome Acts of Parliament, as 4.H.7.cap.19.39.Eliz.cap.1. and others, and occupare is ſometime taken to conquer.

¶ *Et de ceo home poet vier in vn plea ſur briefe de Aiel, anno 7.E.2.* Hereby it appeares that ancient yearmes or yeares after the example of Littleton are to bee cited and vouched, for confirmation of the Law, albeit they were neuer printed, and that thoſe yeares, and thoſe ſpecially of E.1.H.3.&c. are worthy of the reading and obſeruation: a great number of which I haue ſeene and obſerued, which in mine opinion doe giue a great light not only to the vnderſtanding and reaſon of the Common Law, and which Fitzherb. either ſaw not or were by him omitted, but alſo to the true expoſition of the ancient Statutes, made in thoſe times, yet mine aduice is, that they ſhould be read in their time: for after our Student be enabled and armed to ſet on our yeare bookes or reports of the Law, let him reade firſt the latter reports for two cauſes: Firſt for that for the moſt part the latter Iudgements and Reſolutions are the ſureſt, and therefore it is beſt to ſeaſon him with them in the beginning both for the ſettling of his iudgement, and the retayning of them in memory. Secondly, for that the latter are more facile and eaſier to be vnderſtood, then the more ancient: but after the reading of them, then to reade theſe others before mentioned, and all the ancient Authors that haue written of our Law; for I would wiſh our Student to be a compleat Lawyer. But now to returne. As it is in caſe of diſcent, ſo it is in caſe of preſentation, for no vſurpation in time of war putteth the right Patron out of poſſeſſion, albeit the incumbent comes in by inſtitution and induction. And time of warre doth not only giue priuiledge to them that be in warre, but to all others within the Kingdome, and although the admiſſion and inſtitution be in time of peace, yet if the preſentment were in time of warre, it putteth not the right Patron out of poſſeſſion.

6.E.3.41.7.E.3.dect. proſ.2. 18.E.2.gnar.imp.175. F.N.B.31.

Sect.

*Sect.*413.

¶ Item que nul mozãt ſeiſie (ou les tenements vienḋzont a vn auter per ſucceſſion) tollera lentẽ daſcun perſon, &c. Come de Pzelates, Abbots, Pziozs, Deans, ou Parſon deſglize, ou ỏ auters cozps politike, &c, coment q̃ ils fueront xx, mozants ſeiſie, et xx. ſucceſſozs, ceo ne tolle iammes aſcun home de ſon entrie.

¶ Plus ſerra dit de Diſcents en le pzochein chapter.

ALſo that no dying ſeiſed (where the tenements come to another by ſucceſſion) ſhall take away the entrie of any perſon, &c. As of Prelates, Abbots, Pryors, Deanes, or of the Parſon of a Church or of other bodies politique, &c. albeit there were xx. dyings ſeiſed, and xx. ſucceſſors, this ſhall not put any man from his entrie.

More ſhall be ſaid of Diſcents in the next chapter.

¶ *PER ſucceſſion.* This is in the Common Law appiyed only to bodyes Politique oz Cozpozate, wyich haue ſucceſſion perpetuall and not to naturall men, as to a Biſhop and his ſucceſſozs, an Abbot, Deane, Archdeacon, Pzebend, Parſon, &c. and their ſucceſſozs, and not to I.S. oz any other naturall body and his ſucceſſozs, but to him and his heires. And the Succeſſoz of any of theſe is in the Poſt and the heire of the naturall man is in the Per, and Succedere is deriued of Sub & cedere. *Vid Sect.*1. *7.E.*3.25.*a.*5.*E.*3.13.*&* 31.

¶ *Corps politique, &c.* This is a body to take in ſucceſſion framed (as to that capacity) by politicie, and thereupon it is called here by Littleton a body politique, and it is alſo called a Cozpozation oz a body incozpozate, becauſe the perſons are made into a body and of capacity to take and grant, &c. And this body politique oz incozpozate may commence and be eſtabliſhed thzee manner of wayes, viz. by pzeſcription, by Letters patents, oz by acte of Parliament. Euery body politique oz Cozpozate is either Eccleſiaſticall oz laye. Eccleſiaſticall either regular, as Abbots, Pziozs, &c. oz Secular, as Biſhops, Deanes, Archdeacons, Parſons, Vicars, &c. Lay, as Maioz and Communalty, Baylifes and Burgeſſes, &c. Alſo euery body Politique oz Cozpozate, is either electiue, pzeſentatiue, collatiue oz donatiue. And againe is either ſole, oz aggregate of many; as you may reade in the third part of my Commentaries. And this body Politique oz Cozpozate, aggregate of many is by the Ciuilians called Collegium oz Vniuerſitas. *Lib.*3.*fo.*73. *in the caſe of the Deane & Chapter of Norw.b*

Chap.7. Continuall Clayme. *Sect.*414.

¶ Ontinuall clayme eſt la lou hõe ad dzoit et title dentrer en aſcums terres ou teneméts dont auter eſt ſeiſie en fee, ou en fee taile, ſi ceſty que ad title dentrer fait continual claime a les

COntinual claim is where a man hath right and title to enter into any lands or tenements whereof another is ſeiſed in fee, or in fee taile, if hee which hath title to enter makes continuall claime to the lands or tenements be-

¶ Here our Author firſt deſcribeth what a continuall clayme is. It is called Continuum clameum, becauſe at the Common Law, it muſt haue beene made within euery yeare and day, as Littleton here teacheth. And yet if he that right hath maketh claime, and the Tertenant dyeth within the yeare and the day, this claime though it bee but once *Mirror cap.*2.§.15.*&* §.18 *Bracton lib.*5.*fo.*435.436. *Britton* 107.*b.* 126.*b. Fleta lib.*6.*cap.*52 53. *Vid.Sect.*414. *Vid.Sect.*385.32.*H.*8 *f.*33.

*Vid.Sect.*424.

once * made as hath bene ſaid ſhall preſerue the entrie of him that maketh the clayme.

¶ *Ad droit & title denter.* And yet in ſome caſes a continuall claime may bee made by him that hath right and cannot enter

If Tenant for yeares, Tenant by Statute Staple, Marchant, or Elegit be ouſted, and he in the reuerſion diſſeiſed, the Leſſor or he in reuerſion may enter to the intent to make his clayme, and yet his entrie as to take any profits is not lawfull during the terme. And in the ſame manner the Leſſor or he in the reuerſion in that caſe may enter to auoyde a collaterall warrantie, or the Leſſor in that caſe may recouer in an Aſſiſe. And ſo ſome haue holden may the Leſſor doe in caſe of a Leaſe for life to this intent to auoid a Diſcent or a warrantie.

Dyer 19.Eliz. Tr. Com.374 15.H.7.3.4. Iacobins caſe. 28.H.6.28.

*Vid.Sect.*442. *45.E.3.21.*

If the Diſſeiſee make continuall clayme and the Diſſeiſor die ſeiſed within the yeare, his heire within age, and by office the King is intitled to wardſhip, albeit the entrie of the Diſſeiſee be not lawfull, yet may he make continuall clayme to auoide a diſcent, and ſo in the like.

7.H.6.40.Contin. Clayme 1. Downclers caſe. 5.E.4.4.

¶ *Vncore poet celuy que fait tiel clayme ou ſon heire enter.* This is to be vnderſtood in this manner, that if the father make claime, and the Diſſeiſor dyeth, the Father dyeth, his heire may enter, becauſe the diſcent was caſt in the fathers time, and the right of entrie which the Father gained by his claime ſhall diſcend to his heire. But if the Father make continuall clayme, and dyeth, and the Sonne make no continuall clayme, and within the yeare and day after the claime made by the Father the Diſſeiſor dieth, this ſhall take away the entrie of the Sonne, for that the diſcent was caſt in his time, and the clayme made by the Father ſhall not anaile him, that might haue claymed himſelfe. And of this opinion was Littleton himſelfe in our bookes where he holdeth that no continuall clayme can auoide a diſcent vnleſſe it be made by him that hath title to enter, and in whoſe life the dying ſeiſed was. See more of this matter hereafter in this chapter, Sect 416.

Bracton,lib.5.fo.436. Fleta,lib.5.cap.52.53. 22.H.6.37. 9.H.4.5.a. 15.E.4.22.a.

22.H.6.37.

And as here Littleton putteth his caſe of the Anceſtor and heire, ſo it holdeth in all reſpects of the Predeceſſor and Succeſſor.

terres ou tenements deuant ẽ moꝛant ſeiſie de celuy que tient les tenements, donqꝫ coment q̃ tiel tenant moꝛuſt ent ſeiſi, & les terres ou tenements diſcendꝛont a ſon heire, vncoꝛe poit celuy que auoit fait tiel claime, ou ſon heire enter ẽ les terres ou tenements iſſint diſcendus, per cauſe de continual claim̃ fait, nient contriſtiant le diſcent. Sicome en caſe q̃ home ſoit diſſeiſie, & le diſſeiſee fait continual claime a les tenemẽts en la vie le diſſeiſoꝛ, comẽt que le diſſeiſoꝛ deuie ſeiſie en fee, & la terre diſcendiſt a ſon heire, vncoꝛe poit le Diſſeiſee enter ſur la poſſeſſion le heire, nient obſtant le diſcent.

fore the dying ſeiſed of him which holdeth the tenements, then albeit that ſuch tenant dieth thereof ſeiſed, and the lands or tenements diſcend to his heire, yet may he who hath made ſuch continuall claime or his heire enter into the lands or tenements ſo diſcended by reaſon of the continual claim made, notwithſtanding the diſcent. As in caſe that a man be diſſeiſed and the diſſeiſee makes continuall claime to the tenements in the life of the diſſeiſor, although that the diſſeiſor dieth ſeiſed in fee and the land diſcend to his heire, yet may the Diſſeiſee enter vpon the poſſeſſion of the heire notwithſtanding the diſcent.

Sect. 415.

¶ Eſmeſme l' maner eſt, ſi tenant a terme de vie alien en fee, celuy en le reuerſion, ou celuy en le remainder poit enter ſur lalienee, et ſi tiel alienee deuie ſeiſi de tiel eſtate ſans continual claime fait a les tenements deuant le mozant ſeiſi del alienee, & les tenements per cauſe del morant ſeiſi del alienee, diſcendont a ſon heire, donques ne poit celuy en le reuerſion, ne celuy en le remainder enter. Mes ſi celuy en le reuerſion ou celuy en le remainder que ad cauſe dentre ſur lalienee fait continual claime a les tenements deuant le mozant ſeiſi del alienee, donques tiel hõe poit enter apres la mozt lalienee, auxybien come il puiſſoit en ſa vie.

¶ IN the ſame manner it is, if tenant for life alien in fee, hee in the reuerſion or hee in the remainder may enter vpon the alienee. And if ſuch alienee dieth ſeiſed of ſuch eſtate without continuall clayme made to the tenements before the dying ſeiſed of the alienee, and the lands by reaſon of the dying ſeiſed of the alienee diſcend to his heir, then cannot he in the reuerſion, nor hee in the remainder enter. But if he in the reuerſion or in the remainder who hath cauſe to enter vpon the alienee make continuall clayme to the land before the dying ſeiſed of the alienee, then ſuch a man may enter after the death of the alienee, as well as he might in his life time.

¶ By this it appeareth, that a continuall claime may bee made aſwell where the lands are in the hands of a Feoffee, &c, by title, as in the hands of a Diſſeiſor, Abator, or Intrudor by wrong, as before hath bæne noted.

Sect. 416.

¶ Item ſi terr̃ ſoit leſſe a vn home pur terme de ſa vie, le remainder a vn auter a terme de vie, le remainder a le tierce en fee, ſi le tenant a terme de vie aliena a vn auter en fee, & celuy en le remainder pur terme de vie fait continual claime a la terre deuant le morant ſeiſie dalyenee,

ALſo if land be let to a man for terme of his life, the remainder to another for terme of life, the remainder to the third in fee, if tenant for life alien to another in fee, and hee in the remainder for life maketh continuall claime to the land before the dying ſeiſed of the Alienee, and after the

¶ *Alien a vn auter in fee.* It is to be obſerued that a forfeiture may be made by the alienation of a particular Tenant two manner of wayes, either In Paijs, or by matter of Record.

In Paijs, of lands and tenements which lye in Liuery (whereof Littleton intendeth his caſe) where a greater eſtate paſſeth by Liuery, then the particular Tenant may lawfully make, whereby the reuerſion or remainder is deueſted, as here in the example that Littleton putteth when tenant for life alieneth in

Vid. Sect. 581. 609. 610. 611.

in fee, which muſt bee vnderſtood of a feoffement, fine, or recouerie by conſent.

17.El.Dy.339.16.El. Di.324.

If Tenant for life, and hee in the remainder for life in Littletons caſe had ioyned in a Feoffement in fee, this had beene a forfeiture of both their eſtates, becauſe he in the remainder is particeps iniuriæ. And ſo it is if hee in the remainder for life had entred, and diſſeiſed Tenant for life, and made a Feoffement in fee, this had beene a forfeiture of the right of his remainder.

33.E.3.Deuiſe 21.15.E.4.9. Vi.Sect.608.609.610.

A particular eſtate of any thing that lies in grant, cannot be forfeited by any grant in fee by Deed. As if tenant for life or yeares of an Aduowſon, Rent, Common, or of a reuerſion or remainder of land by Deed grant the ſame in fee, this is no forfeiture of their eſtates, for that nothing paſſes therby, but that which lawfully may paſſe, and of that opinion is Littleton in our Bookes.

35.H.6.62. Tr.32.El.in *Informat. de inſtruction vers Rebiaſen pur le Manor de Drayton Baſſit, foreſolued by the Court of Exchequer.*

But if Tenant for life or yeares, the reuerſion or remainder being in the King, make a Feoffement in fee, this is a forfeiture, and yet no reuerſion or remainder is diueſted out of the King, and the reaſon is in reſpect of the ſolemnitie of the feoffement by liuerie tending to the Kings diſheriſon.

et puis lalienee morust seisie, et puis apres celuy en le remainder pur terme de vie mourust, deuaunt ascun entrie fait per luy, en cē cas celuy en le remainder en Fee, poit enter sur heire le alienee, per cause de continuall claim fait per luy que auoit le remainder pur terme de sa vie, pur ceo que tiel droit que il aueroit dentre, alera et remaindera a celuy en le remainder apres luy, entant que celuy en le remainder en fee ne puissoit pas enter ꝑ lalienee en fee durant la vie celuy en le remainder ꝑ terme de sa vie. & pur ceo que il ne puissoit adonqꝫ faire continual claim (car nul poit faire continual claim mes quant il ad title dentrie, &c.)

alienee dieth ſeiſed, & after he in the remainder for life die before any entrie made by him, in this caſe he in the remainder in Fee may enter vpon the heyre of the Alienee by reaſon of the continuall claime made by him which had the remainder for life, becauſe that ſuch right as hee had of entrie, ſhall goe and remaine to him in the remainder after him, in ſo much as hee in the remainder in Fee, could not enter vpon the Alienee in fee during the life of him in the remainder for life, and for that hee could not then make continuall claime. For none can make continuall claime but when hee hath title to enter, &c.

By matter of Record, and that by three manner of waies: Firſt, By alienation. Secondly, by claiming a greater eſtate than he ought. Thirdly, By affirming the Reuerſion or Remainder to be in a ſtranger.

Firſt, By alienation, and that of two ſorts, viz. By alienation diueſting, and not diueſting the reuerſion or remainder. Diueſting, as by leuying of a fine, or ſuffering a common recouerie of lands, whereby the reuerſion or remainder is diueſted: not diueſting, as by leuying of a fine in fee of an Aduowſon, Rent, Common, or any other thing that lieth in grant: and of this opinion is Littleton in our Bookes,* and ſo note two diuerſities: Firſt, betweene a grant by fine which is of Record, and a grant by deed in paiſe, and yet in this they both agree, That the reuerſion or remainder in neither caſe is diueſted. Secondly, Betweene a matter of Record, as a Fine, &c. and a Deed recorded, as a Deed inrolled, for that worketh no forfeiture, becauſe the Deed is the originall.

*15.E.4.9. 32.E.3.Gr.62. 14.E.3.3.Anno.117.

15.E.2.Iude.237.6.E.3.49. 9.E.3.4.18.E.2. Fines 120. 15.E.4.29. 36.H.6.29. 2.H.6.9. 4 El.Dy. 9.H.5. 14. 22. Aſſ.31. 18.E.3.28. 16.Aſſ.16.

Secondly, By Claime, and that may be in two ſorts, either expreſſe or implied. Expreſſe, as if Tenant for life within Court of Record claime fee, or if Leſſee for yeares be ouſted, and bring an Aſſiſe, Vt de libero Tenemento. Implied, As if in a Writ of Right brought againſt him, he will take vpon him to ioyn the miſe vpon the meere right, which none but Tenant in fee ſimple ought to doe. So if Leſſee for yeares loſe in a Præcipe, and bring a Writ of Error for Error in Proceſſe, this is a forfeiture.

Thirdly

Thirdly, By affirming the reuerſion or remainder to be in a ſtranger, and that either actually or paſſiuely. Actually, by fiue manner of wayes. As firſt, if Tenant for life pray in aid of a ſtranger, whereby he affirmes the reuerſion to bes in him. Secondly, if hee atturne to a grant of a ſtranger, and there note alſo a diuerſitie betweene an Atturnement of Record to a ſtranger, and an Atturnement in paiis, for an Atturnement in paiis worketh no forfeiture. Thirdly, If a ſtranger bring a writ of Entrie in caſu prouiſo, and ſuppoſe the reuerſion to be in him, if the Tenant confeſſe the Action, this is a forfeiture. 4. if Tenant for life plead coumonſly to the diſcerſion of him in the reuerſion, this is a forfeiture. Fiftly, if a ſtranger bring an Action of waſt againſt Leſſee for life, & he plead Nul waſt fait, this is a forfeiture: or the like.

21.*E.*3.14.*a.* 5.*E.*4.2. 24.*H.*8.*Forf.Br.*87.*li.*1*f.*55 56.*Bucklers caſe*,27.*E.*3.77. 17.*E.*3.7.*a.* 39.*E.*3.16. 29.*E.*3.24.5.*Aſſ.*5. 5.*E.*3. *Entr.Cong.*42. 14.*E.*3.*Receit* 135. 3.*E.*3.32. 24.*E.*3.68. 1.*H.*7.

Paſſiuely, As if Tenant for life accept a fine of a ſtranger, ſur conuſans de droit come ceo, &c. for hereby he affirmes of Record the reuerſion to be in a ſtranger.

3.*Mar.Dy.* 148.

Littleton here ſpeaketh of the forfeiture of an eſtate, and it is to be knowne, that the right of a particular eſtate may be forfeited, and he that hath but a right of a remainder or reuerſion, ſhall take benefit of the forfeiture. As if Tenant for life be diſſeiſed, and he leute a fine to the Diſſeiſor, he in the reuerſion or remainder ſhall preſently enter vpon the Diſſeiſor for the forfeiture. And ſo it is if the Leſſee after the Diſſeiſin had leuied a fine to a ſtranger, though to ſome reſpects, Partes finis nihil habuerunt, yet is it a forfeiture of his right.

*Li.*2*fo.*55.*Bucklers caſe.*

Littleton here ſpeaketh of an alienation in fee abſolutely, but ſo it is, if the Leſſee make a Leaſe for any other mans life, or a gift in taile. If A. be Tenant for life, and make a Leaſe to B. for his life, and B. dieth, and the Leſſee re-entreth, yet the forfeiture remaineth.

13.*E.*4.4.

If Tenant for life make a leaſe for life, or a gift in Taile, or a Feoffement in Fee, vpon condition, and entreth for the condition broken, yet the forfeiture remaineth. Littleton ſpeaketh of an eſtate for life, ſo it is of Tenant in Taile apres poſſibilitie, Tenant by the Curteſie, tenant in Dower, or if he hath an eſtate to him and his heires, during the life of I. S. &c. and of tenant for yeares, Tenant by Statute Merchant, Statute Staple, or Elegit.

39.*Aſſ.*15. 43.*E.*3.*Entrie Cong.*30. 2.*H.*5.7. 39.*E.*3.16. 45.*E.*3.25.

Littleton ſaith, That the alienation in fee is made to another, which muſt bee intended a ſtranger, for if it be made to him in reuerſion or remainder, it amounts to a ſurrender of his Eſtate, as at large hath beene ſpoken in the Chapter of Tenant for life.

By Littleton it appeareth, That Tenant for life may enter for the forfeiture of the firſt Tenant for life, and that if the Tenant for life in remainder make continuall claime, and the Alienee die ſeiſed, then may he enter, and if he die before he doe enter, he in the remainder in fee ſhall enter becauſe he in the remainder could not make any claime, therefore the right of entry which Tenant for life gained by his entrie, ſhall goe to him in the remainder, in reſpect of the priuitie of eſtate: and ſo it is of him in the reuerſion in fee in like caſe, for he is alſo priuie in eſtate.

If two Ioyntenants be diſſeiſed, and the one of them make continuall claime and dieth, the ſuruiuor ſhall take benefit of his continuall claime, in reſpect of the priuitie of their eſtate.

But if Tenant for life make continuall claime, this ſhall not giue any benefit to him in the remainder, vnleſſe the Diſſeiſor died in the life of Tenant for life, for the cauſe aboue ſaid, Sectione 414.

If Tenant in Taile, the remainder in fee with garrantie, haue iudgement to recouer in value, and dieth before execution without iſſue, he in the remainder ſhall ſue execution, for he hath right thereunto, and is priuie in eſtate.

In the ſame manner if a Seigniorie be granted by fine to one for life the remainder in fee, the Grantee for life dieth, he in the remainder ſhall haue a Per quæ ſeruitia, for he hath right to the remainder, and is priuie in eſtate. Here alſo appeareth, That none can make continuall claime but he that hath right to enter.

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¶ Mes eſt a beier a toy (mon fits) coment et en ql manner tiel continual claime ſerra fait, et ceo bien appzender trois choſes ſont a intender. La 1. choſe eſt, ſi home ad cauſe

BVt it is to be ſeene of thee (my ſonne) how and in what manner ſuch continuall claime ſhall be made: and to learne this wel, three things are to bee vnderſtood. The firſt thing is, If a man hath

¶ S*i home ad cauſe dentrer en aſcuns terres ou tenements, &c.*

It is not ſufficient to tell one generally what he ſhold do, but to direct him how & in what manner he ſhall doe it, as Litt. doth in this place. And here the generall rules of our Author are to be vnderſtood, that the entrie of a man to recontinue his Inheritance or Free-

hold,

This hath beene adiudged Mich 14.& 15 Eliz. Fol.1458. in the Earle of Arundells case.

hold muſt enſue his Action for recouerie of the ſame. As if three men diſſeiſe me ſeuerally of three ſeuerall Acres of land, being all in one countie, and I enter in one acre in the name of all the three Acres, this is good for no more but for that Acre which I enter into, becauſe each diſſeiſor is ſeuerall Tenant of the Freehold, and as I muſt haue ſeuerall Actions againſt them for the recouerie of the land, ſo myne entrie muſt bee ſeuerall.

And ſo it is if one man diſſeiſe me of three acres of ground, and letteth the ſame ſeuerally to three perſons for life, &c. there the entrie vpon one Leſſee in the name of the whole, is good for no more than that Acre that he hath in his poſſeſſion. But if the diſſeiſor had letten ſeuerally the ſayd three acres to three perſons for yeares, there the entrie vpon one of the Leſſees in the name of all the three acres, ſhall recontinue and reueſt all the three acres in the diſſeiſee, for that the diſſeiſee might

dentre en aſcuns terres ou Tenements que ſont en diuers Villes deins vn ñ Countie, ſil enter en vn parcel de les terres ou Tenements que ſont en vn Ville, en noſme de touts ſes terres ou Tenements as queux il ad droit dentr̃ deins touts les Villes de meſme le Countie, per tiel entrie il auera auxy bone poſſeſſion, et ſeiſin ô touts terres ou tenements dont il ad title dentrie, ſicome il auoit enter en fait en chaſcun parcel, a ceo ſemble grand reaſon.

cauſe to enter into any Lands or Tenements in diuers Townes in one ſame Countrie, if he enter into one parcell of the lands or tenements which are in one Towne, in the name of all the Lands or Tenements into the which he hath right to enter, within all the Townes of the ſame Countie: By ſuch entrie hee ſhall haue as good a poſſeſſion and ſeiſin of all the lands and Tenements wherof he hath title of entrie, as if he had entred indeed into euery parcell; and this ſeemeth great reaſon.

have had one Aſſiſe againſt the Diſſeiſor, becauſe he remained Tenant of the Freehold, and therefore one entrie ſhall ſerue for the whole.

7.Aſſ.18.12.E.4 10. 36.H. 6.27. 32.Aſſ.pl.1.

If one diſſeiſe me of one acre at one time, and after diſſeiſe me of another acre in the ſame Countie at another time, in this caſe myne entrie into one of them in the name of both is good; for that one Aſſiſe might be brought againſt him for both Diſſeiſins.

11.H.7.25.Dyer 16.El.337.

But if I infeoffe one of one acre of ground vpon condition, and at another time I infeoffe the ſame man of another acre in the ſame Countie vpon Condition alſo, and both the conditions are broken, an entrie into one acre in the name of both is not ſufficient, for that I haue no right to the land, nor action to recouer the ſame, but a bare title, and therefore ſeuerall entries muſt be made into the ſame, in reſpect of the ſeueral conditions. But an entrie in one part of the land in the name of all the land ſubiect to one condition is good, although the parcels be ſeuerall and in ſeuerall townes. And ſo note a diuerſitie betweene ſeuerall rights of entrie, and ſeuerall titles of entrie by force of a condition.

¶ *Deins meſme la Countie.* For if the lands lie in ſeuerall Counties, there muſt be ſeuerall Actions, and conſequently ſeuerall entries, as hath beene ſaid.

5.H.7.7.4.E.4.19. 12.E.4.11.a.

¶ *En noſme de tout, &c.* If one diſſeiſe me of two ſeuerall Acres in one Countie, and I enter into one of them generally, without ſaying, In name of both, this ſhall reueſt onely that acre wherein entrie is made, as hath beene ſayd, and that is proued by our Bookes which ſay, That if I bring an Aſſiſe of two acres, if I enter into one hanging the writ, albeit it ſhall reueſt that onely Acre, yet the writ ſhall abate.

¶ *Dont il ad title dentrie.* Here in a large ſence title of entrie is taken for a right of Entrie.

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¶ Car ſi home voile enfeoffer vn auter ſauns fait de certaine terres ou tenements, que il ad deins pluſours villes en vn Countie, & il voile liuerer ſeiſin al feoffee de parcel de tenements deins vn ville en noſme de touts les terres ou tenements que il ad en meſme le ville, & en les auters villes, &c. touts ls dits teneñts, &c. paſſont per force de le dit liuery de ſeiſin a celuy a q̃ tiel feoffement en tiel maner eſt fait, & vncore celuy a que tiel liuery de ſeiſin fuit fait, nauoit droit en touts les terres ou tenements ẽ touts les villes, mes per cauſe d̃ liuery de ſeiſin fait de parcel de les terres ou tenements en vn ville: A multo fortiori il ſemble bone reaſon, que quant home ad title denter en les terres ou tenements en diuers villes deins vn iñ County denãt aſcun entry per luy fait, que per lentry fait p̃ luy en parcel de les terres en vn ville en le noſme de touts les terres & tenements as queux il ad title denter deins meſme le countie, ceo veſt vn ſeiſin de touts en luy & per tiel entry il ad poſſeſſion & ſeiſin en fait, ſicome il auoit enter en cheſcun parcel, &c.

¶ For if a man will enfeoffe another without deed of certaine lands or tenements which he hath in many townes in one Countie, and he will deliuer ſeiſin to the feoffee of parcell of the tenements within one Towne in the name of all the lands or tenements which he hath in the ſame towne, and in other townes, &c. all the ſaid tenements, &c. paſſe by force of the ſaid liuery of ſeiſin to him to whō ſuch feoffment in ſuch manner is made, and yet hee to whom ſuch liuery of ſeiſin was made hath no right in all the lands or tenements in all the townes but by reaſon of the liuery of ſeiſin made of parcell of the lands or tenements in one Towne: *A multo fortiori*, it ſeemeth good reaſon that when a man hath title to enter into the Lands or Tenements in diuers Townes in one ſame Countie, before entry by him made, that by the entry made by him into parcell of the lands in one towne, in the name of all the lands and tenements to which he hath title to enter within the ſame Countie, this ſhall veſt a ſeiſin of all in him, and by ſuch entrie hee hath poſſeſſion and ſeiſin in deed, as if hee had entred into euery parcell.

¶ This is euident, but here is a diuerſitie betweene a feoffment and an entry, for a man may make a feoffment of lands in another Countie, and make liuery of ſeiſin within the view, albeit he might peaceably enter and make actuall liuery, and ſo may he ſhew the Recognitors in an Aſſiſe, the tenures of lands in another Countie, but a man cannot make an entry into lands within the view where he may enter without any feare (for it is (*) one thing to inueſt and another to deueſt) as hereafter ſhall be ſaid in the Section next following. 38.E.3.11.38.Aſſ.23. (*) *Vide Sect. next following.*

¶ *A multo fortiori.* Dr à minore ad maius, is an argument frequent in our Author, and in our Bookes, the force of argument in this place ſtanding thus: if it be ſo in a feoffment paſſing a new right, much more it is for the reſtitution of an ancient right as the worthier and more reſpected in Law, which holdeth affirmatiuely as our Author here teacheth vs. *Vide Sect.* 438.

The three (&c.) in this Section need no explication.

Section 419.

Vide the Sect. preceding.

THere is to bee obſerued, that euery doubt or feare is not ſufficient, for it muſt concerne the ſafetie of the perſon of a man, and not his houſes or goods, for if hee feare the burning of his houſes, or the taking away or ſpoyling of his goods this is not ſufficient, becauſe hee may recouer the ſame or dammages to the value without any corporall hurt.

7.E.4.21.39.H.6.5.

Againe if the feare do concern the perſon, yet it muſt not be a vaine feare, but ſuch as may befall a conſtant man, as if the aduerſe partie lye in wait in the way with weapons, or by words menace, to beate, mayhem or kill him, that would enter, and ſo in pleading muſt hee ſhew ſome iuſt cauſe of feare, for feare of it ſelfe is internall and ſecret. But in a ſpeciall verdict, if the Iurors doe find, that the Diſſeiſee did not enter for feare of corporall hurt, this is ſufficient and ſhall bee intended that they had euidence to proue the ſame. Talis enim debet eſſe metus qui cadere poteſt in virum conſtantem, & qui in ſe continet mortis periculum, & corporis cruciatum. Et nemo tenetur ſe infortunijs & periculis exponere.

39.E.3.28.
11.R.2.tit.dures 2.
12.H.4.19.20.

Bract.lib.2.f.l.16.b. Britton fol.19.66. Flet. lib.3. cap.7.& lib.2 cap.54.49.E 3 14.14.H.4.13. 39 Aſſ.11. 11.H.6.51.38.H.6.27. 39.H.6.36.5.20.H.6.28. 4.E.4.17.12.E.4.7.28.H.6. 8.41.E.3.9.11.H 4.6. 8.Aſſ.25. Vide Sect.434. W.2 cap.49. 13.H.4.dures 20.

And it ſeemeth that feare of impriſonment is alſo ſufficient, for ſuch a feare ſufficeth to auoid a Bond or a Deed, for the Law hath a ſpeciall regard to the ſafetie and libertie of a man. And impriſonment is a corporall dammage, a reſtraint of libertie, and a kind of captiuitie. But ſee in the ſecond part of the Inſtitutes, W.2 cap.49 a notable diuerſitie betweene a claime or an entrie into land, and the auoydance of an Act or Deed for feare of battery.

¶ ***Le ſecond choſe eſt a entender, q̃ ſi hõe ad title denter en aſcung terres ou tenements, ſil ne oſaſt enter en mꝰ les terres ou tenemẽts, ne en aſcun parcel de ĩ, p̃ doubt d̃ battery, ou per doubt de mayhem ou pur doubt de mort, ſil alaſt & approch auxy pres les tenements, come il oſaſt pur tiel doubt, et claime per parol les tenements eſtre les ſoens, maintenant per tiel claime il ad vn poſſeſſion, et ſeiſin ẽ les tenemẽts, auxybñ come ſil vſt enter en fait, coment que il nauoit vnque poſſeſſion ou ſeiſin d̃ meſme les terres ou tenẽts deuant le dit claime.***

THe ſecond thing to be vnderſtood is that if a man hath title to enter into any lands or tenements, if he dares not enter into the ſame lands or tenements, nor into any parcell thereof for doubt of beating, or for doubt of maiming, or for doubt of death, if he goeth and approach as neere to the tenements, as hee dare for ſuch doubt and by word claime the Lands to bee his, preſently by ſuch claime hee hath a poſſeſſion and ſeiſin in the lands, aſwell as if hee had entred in deed, although hee neuer had poſſeſſion or ſeiſin of the ſame lands or tenements before the ſaid claime.

¶ *Per tiel claime il ad vn poſſeſſion & ſeiſin, &c.* **Here is to bee obſerued**, that there bee two manner of Entries, viz. an Entrie in Deed, and an Entry in Law. An entry in deed is ſufficiently knowne, an entrie in Law is when ſuch a claime is made as is here expreſſed, which entry in Law is as ſtrong and as forcible in Law as an entry in deed, and that aſwell where the Lands are in the hands of one by title as by wrong. And therefore vpon ſuch an entry in Law an Aſſiſe doth lie aſwell as vpon an entry in deed, and ſuch an entry in Law ſhall auoid a warrantie, &c.

Vide Sect.378.

11.H.6.51.

Vide Sect.441. Pl.Com.92. in Aſſ.deſreſh-force. The Parſon of Honylanes Caſe.

But here is a diuerſitie to be obſerued betweene an entry in Law, and an entry in Deed, for that a continuall clayme of the Diſſeiſee being an entry in Law ſhall veſt the poſſeſſion and ſeiſin in him for his aduantage, but not for his diſaduantage. And therefore if the Diſſeiſee bring an aſſiſe, and hanging the aſſiſe, he make continuall claime, this ſhall not abate the aſſiſe, but he ſhall recouer dammages from the beginning, but otherwiſe it is of an entry in deed. See more of this matter after in this Chapter, Sect.422.

Section

Section 420.

¶ Et que la ley eſt tiel, il eſt bien proue per vn plee dun aſſiſe en le Liuer daſſ, An. 38. E. 3. P. 32. le tenor de quel enſuiſt en tiel forme. En le County de Dorſet deuant les Juſtices troue fuit per verdict daſſiſe, que le plaintife que auoit droit per diſcent de heritage dauer les tenements mis en plaint, al temps del morant ſon anceſter, fuit demurrãt en le ville ou les tenements fueront, & per parolx claime les tenements enter ſes vicines, mes pur doubt de mort il noſa approcher les tenements, mes port laſſiſe, & ſur ceſt matter troue, agard fuit que il recouera, &c.

AND that the Law is ſo, it is well prooued by a plea of an Aſſiſe in the Booke of Aſſiſes, *An.* 38. *E.* 3. *P.* 32. the tenor whereof followeth in this manner. In the Countie of Dorſet before the Iuſtices, it was found by verdict of Aſſiſe, that the Plaintife which had right by diſcent of Inheritance to haue the tenements put in pleint, at the deceaſe of his Anceſtor was abiding in the Towne where the tenements were, and by paroll claimed the tenements amongſt his Neighbours, but for feare of death hee durſt not approach the tenements but bringeth his Aſſiſe, and vpon this matter found, it was awarded that he ſhould recouer, &c.

¶ HEre it appeareth that our Booke Cases are the beſt proofes what the Law is, Argumentum ab authoritate eſt fortiſſimum in Lege. And for proofe of the Law in this particular caſe, Littleton here citeth a caſe in 38. E. 3. but it is miſprinted, for the originall according to the truth is. In the Booke of Aſſiſes 38 E. 3. p. 23. and not placito 32. for there be not ſo many pleas in that yeare. And after the example of Littleton, Booke Cases are principally to be cited for deciding of caſes in queſtion, and not any priuate opinion, Teſte meipſo. More ſhall be ſaid of the matter implyed in this Section in the next following. 38. *Aſſ. p.* 23.

Sect. 421.

¶ LA tierce choſe eſt a entender, deins quel temps & per quel temps le claime que eſt dit cõtinuall claime, ſeruera & aidera celuy que fiſt le claime & ſes heires. Et quant a ceo eſt aſcauoir, que celuy que ad title dẽter, quant il voiet faire ſon claime, ſi il oſaſt approacher la

THE 3. thing is to know within what time & by what time the claim which is ſaid continuall claime ſhall ſerue and aid him that maketh the claime, and his heires. And as to this, it is to be vnderſtood, that hee which hath title to enter, when he will make his claime, if hee dare approach the Land then

¶ *Couient a luy daler & approcher auxi pres, &c.* By this it ſhould ſeeme that by the authoritie of our Author, if the Diſſeiſee commeth as neere to the Land as he dare, &c. and maketh his claime, this ſhould be ſufficient, albeit hee be not within the view.

And the great authoritie of the Booke (*) in 9. H. 4. (being by the whole Court) is not againſt this, for that caſe is put where there is no ſuch feare, as here our Authour mentioneth in him that makes the continuall claime, (*) 9. *H.* 4. 5.

and then hee that makes the continuall claime ought to be within the view of the land, and therefore the authority of this booke, as it is commonly conceiued, is not against the opinion of our Author in the point aforesaid. But then it is further obiected, that the said booke is against another opinion of our Author in this Section, viz. that where there is no feare, &c. hee that maketh a continuall clayme * ought to goe to the land or to parcell thereof to make his claime, and therefore in that case he cannot make a claime within the view of the land.

(*) 11.*H.*6.51. *agreeth with our Author in this point.*

terre, donq; il couient aler a la terre ou a parcel de ceo, & faire son claime, et sil nosast approcher la tre pur doubt ou pauor d baterie, ou mayhē, ou mort, donques couient a luy daler & approcher auxprez come il osast vers la terre, ou parcel de ceo, a faire son claim̃.

he ought to goe to the land, or to parcell of it, and make his claime, and if hee dare not approch the land for doubt or feare of beating or mayming, or death, then ought hee to goe and approch as neere as hee dare towards the land or parcell of it to make his claime.

To this it is answered, that where a continuall claime shall deuest any estate in any other person in any lands or tenements, there, as it hath beene said, he that maketh the claime ought to enter into the land or some part thereof according to the opinion of our Author: but where the claime is not to Deuest any estate, but to bring him that maketh it into actuall possession, there a claime within the view sufficeth, as vpon a discent the heire hauing the freehold in law may claime land within the view to bring himselfe into actuall possession, and in that sence is the opinion of Hull and the Court to be intended. Et sic in similibus. But yet the entrie into some parcell in the name of the residue is the surest way.

Vid.Sect.177.

Sect. 422.

Deins lan, & le iour. It is to be obserued that the Law in many cases hath limitted a yeare and a day to be a legall and conuenient time for many purposes, As at the Common Law vpon a fine or finall iudgement giuen in a writ of right the partie grieued had a yeare and a day to make his clayme. So the wife or heire hath a yeare and a day to bring an appeale of death. If a Villeine remained in ancient Demesne a yeare and a day he is priuiledged. If a man bee wounded or poysoned, &c. and dieth thereof within the yeare and the day, it is felony. By the ancient Law if the Feoffee of a Disseisor had continued a yeare and a day, the entrie of the Disseisee for his negligence had beene taken away. After iudgement giuen in a recall action, the Plaintife within the yeare and the day may haue a Habere facias seisinam, and in an action of debt, &c. a Capias, Fieri facias, or a Leuari facias. A protection shall bee allowed but for a yeare and a day and no longer, and in many other cases.

Vid.Sect.385.426. 9.H.4.5. 14.H.4.36. 7.E.3.37. Pl.Com.356. 357.367. Mirr.cap.2.§.18. Britton, fol.45.b. & 126.

Et si son aduersarie q̄ occupia le terre, mourust seisie en fee, ou en fee taile deins lan et le iour apres tiel claim, per que les tenemēts discendont a son fits come heire a luy, vncore poit celuy que fist le claime entrer sur le possession le heire, &c.

And if his aduersary who occupieth the land dieth seised in fee, or in fee taile within the yeare and a day after such claime, whereby the lands discend to his sonne as heire to him, yet may hee which make the claime enter vpon the possession of the heire, &c.

But this time of a yeare and a day in case of continuall claime is since our Author wrote altered by the said Statute of 32.H.8.ca.33. as before it appeareth.

Vid.Sect.385.

Sect.

Sect. 423.

¶ Mes en ceſt cas apres lan & le iour que tiel claime fuit fait, ſi le pere donques moruſt ſeiſi ademain procheine aps lan & le iour, ou vn auter iour apres, &c. donques ne poit celuy que fiſt le claime entrer: & pur ceo ſi celuy que fiſt le claime voit eſtre ſure a touts temps que ſon entre ne ſerra toll per tiel diſcent &c. il couient a luy que deins lan & le iour apres le primer claime fait, de faire vn auter claime en le forme auantdit, & deins lan & le iour apres le ſecond claime fait, de faire le tierce claime en meſm̃ le maner, & deins lan et le iour de le tierce claime, de faire vn auter claime, & iſſint ouſter, ceſtaſcauoir, de faire vn claime deins cheſcun an et iour prochein aps cheſcun claime fait durant la vie ſon aduerſarie, et donques, a quecunq; temps q̃ ſon aduerſarie moruſt ſeiſi, ſon entrie ne ſerra tolle per nul tiel diſcent. Et tiel claim̃ en tiel maner fait, eſt pluis communement prife et noſme continual claime de luy que fiſt le claime.

BVt in this caſe after the yeare and the day that ſuch clayme was made, if the father then died ſeiſed the morrow next after the yeare and the day, or any other day after, &c. then cannot hee which made the claime enter: And therefore if hee which made the claime will be ſure at all times that his entrie ſhall not be taken away by ſuch diſcent, &c. it behoueth him, that within the yeare and the day after the firſt claime made, to make another claime in forme aforeſaid, and within the yeare and the day after the ſecond claime made, to make the third claime in the ſame manner, and within the yeare and the day after the third claime to make another claime, and ſo ouer, that is to ſay, to make a claime within euery yeare and day next after euery claime made during the life of his aduerſarie, and then at what time ſoeuer his aduerſarie dieth ſeiſed, his entrie ſhall not be taken away by any diſcent. And ſuch claime in ſuch maner made is moſt commonly taken and named continuall claime of him which maketh the claime, &c.

¶ It is to be obſerued, that the yeare and the day ſhall be ſo accounted, as the day whereon the Claime was made ſhall be accounted one: as for example, If the Claime were made 2. Die Martij, that day ſhall be accounted for one, for Littleton ſaith in the Section next before (after the clayme made) and then the yeare muſt end the firſt day of March, and the day after is the ſecond day of March. *Vid. Sect.* 385.

See for the Computation of the yeare, De anno biſextili, and of the day naturall and artificiall, and other parts of the yeare, (a) Bracton, (b) Britton, and (c) Fleta excellent matter.

(a) *Bract. fo.* 264. 344. 359.
(b) *Britton, fo.* 209.
(c) *Fleta, lib.* 6. *ca.* 11. *Statute de anno Biſextili.* 21. *H.* 3. *Dier* 17. *Eliz.* 345.

Sect. 424.

¶ Mes vncore en le cas auantdit, lou ſon aduerſarie

BVt yet in the caſe aforeſaid, where his Aduerſarie dieth

ſarie mozuſt deins lan & la iour pzocheine apzes le claime, ceo eſt en ley vn continuall claime entant que laduerſarie deins lan & le iour pzocheine apzes meſme la claime mozuſt. Car il ne beſoigne a celuy que fiſt ſon claime de faire aſcun auter claime, mes a quel temps que il voet deins meſme lan et iour, &c.

within the yeare and the day next after the claime, this is in Law a continuall claime, inſomuch as his aduerſarie within the yere and the day next after the ſame claime, dieth. For hee which made his claime, needeth not to make any other claime, but at what time hee will within the ſame yeare and day, &c.

Vi. Sect. 414. This is euident.

Section 425.

¶ Item ſi laduerſary ſoit diſſeiſie deins lan et le iour apzes tiel claime, & le diſſeiſoz ent mozuſt ſeiſie deins lan et le iour, &c. tiel mozant ſeiſie ne grieuera my celuy que fiſt le claime mes que il poit enter, &c. Car quecunque ſoit que mozuſt ſeiſie deins lan et le iour pchein apzes tiel claim fait, ceo ne grieuera my celuy que fiſt le claime, mes que il poit enter, &c. coment que fueront pluſozs mozant ſeiſie, et pluſozs diſcents deins m̃ lan et le iour, &c.

ALſo if the Aduerſarie be diſſeiſed within the yeare and the day after ſuch claim, and the Diſſeiſor thereof dieth ſeiſed within the yeare and the day, &c. ſuch dying ſeiſed ſhall not grieue him which made the claime, but that he may enter, &c. for whoſoeuer he bee that dieth ſeiſed within the yeare and the day after ſuch claime made, this ſhall not hurt him that made the claime, but that he may enter, &c. albeit there were many dyings ſeiſed, and many diſcents within the ſame yeare and day, &c.

¶ HEre it appeareth, That the continuall claime doth not onely extend to the firſt Diſſeiſor in whoſe poſſeſſion it was made, but to any other Diſſeiſor that dieth ſeiſed within the yeare and day after the continuall claime made. And whereas our Author ſpeaketh of a ſecond diſſeiſor, &c. herein is likewiſe implied not onely Abators and Intruders, but the Feoffees or Donees of the Diſſeiſors, Abators, or Intruders, and any other Feoffee or donee immediate or mediate dying ſeiſed within the yeare and day, of ſuch continuall claime made.

Section 426.

¶ Item ſi home ſoit diſſeiſie, et le Diſſeiſoz mozuſt ſeiſie deins lan et l'iour pzochein apzes le diſſeiſin fait, per que les Tenements diſcendont a ſon heire

ALſo if a man be diſſeiſed, and the diſſeiſor dieth ſeiſed within the yeare and day next after the Diſſeiſin made, whereby the Tenements diſcend to his heire, in this

heire, en ceſt caſe lentrie le Diſſeiſee eſt toll, car lan et le iour que aidʒoit le Diſſeiſee en tiel caſe, ne ſerra pʒis de temps de titl dentre a luy accrue, mes tãtſolement de temps del claim per luy fait en le manner auauntdit, et pur cel cauſe il ſerroit bone p̃ tiel diſſeiſee, pur faire ſon claime en auxy bʒeue temps que il puiſſoit, apʒes le diſſeiſin, ꝛc.

caſe the entrie of the diſſeiſee is taken away, for the yeare and day which ſhould ayd the Diſſeiſee in ſuch caſe, ſhall not bee taken from the time of title of entrie accrued vnto him, but onely from the time of the claim made by him in manner aforeſaid. And for this cauſe it ſhall be good for ſuch diſſeiſee to make his claime in as ſhort time as he can after the Diſſeiſin, &c.

¶ This in caſe of a Diſſeiſor is now holpen by the Statute made ſince Littleton wrote as hath bœn ſaid; for if the Diſſeiſor die ſeiſed within fiue yeares after the Diſſeiſin, though there bee no continuall claime made, it ſhall not take away the entry of the Diſſeiſee, but after the fiue yeares, there muſt bee ſuch continuall claime as was at the common Law: But that Statute extendeth not to any Feoffee or Donee of the Diſſeiſor immediate or mediate, but they remaine ſtill at the Common Law, as hath bœn ſaid. 32.H.8.ca.33. *Vi.Sect.*385.422.

Sect. 427.

¶ Item ſi tiel Diſſeiſor occupia la terre per xl. ans, ou per pluſors ans ſans aſcũ claim fait per le diſſeiſee, ꝛc. Et le Diſſeiſee per petit ſpace deuaunt le mort del Diſſeiſor fait vn claim en le forme auantdit, ſi iſſint forʒtunaſt que deins lan et le iour apʒes tiel claime le diſſeiſor moruſt, ꝛc. lentrie le diſſeiſee eſt congeable, ꝛc. et pur ceo il ſerroit bone pur tiel home que ne fiſt claime que ad bone title dentrie, quant il oyet que ſon aduerſarie giſt languiſhment, de faire ſon claime, ꝛc.

ALſo if ſuch Diſſeiſor occupieth the lands fortie yeares, or more yeares, without any claime made by the Diſſeiſee, &c. and the Diſſeiſee a little before the death of the Diſſeiſor makes a claime in the forme aforeſaid, if ſo it fortuneth, that within the yeare and the day after ſuch claime, the Diſſeiſor die, &c. the entrie of the Diſſeiſee is congeable, &c. And therefore it ſhall bee good for ſuch a man which hath not made claime, and which hath good title of entrie, when he heareth that his aduerſary lieth languiſhing, to make his claime, &c.

¶ This is euident enough, and in reſpect of that which hath bœn ſayd, needeth not to be explained.

*Sect.*428.

¶ Item ſicome eſt dit en les caſes miſes, lou home

ALſo as it is ſaid in the caſes put where a man hath title

¶ Here title is taken in his large ſence to include a right.

¶ *Aſcun auter title, &c.*

&c. Here is implied Abators or Intruders, and not onely their Disseisors, but the Feoffees or Donees of disseisors, abators, or Intruders, or any other so long as the entrie is congeable.

ad title dentre pur cause dun disseisin, &c. Mesme la Ley est lou home ad droit dentre per cause de ascun auter title, &c.

of entrie by cause of a Disseisin, &c. the same Law is where a man hath right to enter by cause of another title, &c.

Sect. 429.

¶ Item ô les dits Presidẽts poies scauer (mon fits) deux choses. Un est, lou home ad title dentre sur vn Tenant en le taile, sil fist vn tiel claim a la tre, donques est lestate Taile defeat, car cel claime est come entre fait per luy, et est de mesme leffect en Ley, sicome il fuissoit sur mesmꝭ tenements, et vst entr̃ en mesmꝭ les Tenements come deuant est dit. Et donques quaunt le Tenant en le taile immediate puis tiel claime continua son occupation en les tenements, ceo est vn disseisin fait de mesmes les tenements, a celuy que fist tiel claime, & sic per consequens, le tenant adonques ad fee simple.

ALso of the sayd foresaying thou mayst know (my sonne) two things. One is where a man hath title to enter vpon a Tenant in Taile, if he maketh such a claime to the land, then is the estate tayle defeated, for this claime is as an entrie made by him, and is of the same effect in Law, as if he had bin vpon the same tenements, and had entred into the same, as before is sayd. And then when the tenant in Tayle immediately after such claime continue his occupation in the lands, this is a Disseisin made of the same Tenements to him which made such claime, and so by consequent the Tenant then hath a Fee simple.

¶ *Presidents.* This should be Precedents, and so is the originall, and this agreeth with the right sence of Littleton.

And here it appeareth, That a continuall claime, which is an entrie in Law, is as strong as an entrie in deed.

Vi. Sect. 650. *and* 659. *&c.*

¶ *Title de entrie.* Here Title de entrie is taken in the large sence for right of entrie.

Section 430.

¶ Le second chose est, que autxy souent que il que ad droit dentre fait tiel claime & ceo nient contrestant son aduersary continua son occupation, autxy souent laduersary fait tort & disseisin a celuy que fist le claim. Et pur

THe second thing is, That as often as hee which hath right of entrie maketh such claime, and this notwithstanding his aduersary continue his occupation, so often the Aduersarie doth wrong and Disseisin to him which made the claime.

pur cel cauſe auxy ſouent poit celuy que fiſt iñ le claime pur cheſcun tiel tozt & diſſeiſin fait a luy, auer vn bꝛiefe de trñg. Quare clauſum fregit, &c. **et recouera ſes damages, &c.**

And for this cauſe ſo often may he which makes the ſame claime for euery ſuch wrong & diſſeiſin done vnto him, haue a Writ of treſpaſſe. *Quare clauſum fregit, &c.* and recouer his dammages, &c.

¶ Hereby alſo it appeareth, that an entry in Law is equiualent to an entry in deed.

¶ *Auera breue de treſpaſſe,* quare clauſum fregit *& recouera ſes damages.* **The Diſſeiſee ſhall haue an Action of treſpaſſe a**gainſt the Diſſeiſor, and recouer his dammages for the firſt entrie without any regreſſe, but after regreſſe he may haue an Action of treſpaſſe with a Continuando and recouer aſwell for all the meane occupation as for the firſt entry. And here note that Littleton doth here include coſts within dammages, &c.

Sect. 431.

¶ OV il poit auer vn breiſe ſur le ſtatute le Roy R. **ſecond, fait lan de ſon raigne** 5. **ſuppſant p ſon breiſe, que ſon aduerſarie auoit ent en l's terres ou tenements celuy que fiſt le claime, ou ſon entry ne fuit pas done per la ley, &c. & per tiel action il recouera ſes dammages, &c. Et ſi le caſe fuit tiel, que laduerſarie occupiaſt les tenements oue force et armes, ou oue multitude de gents a tẽps de tiel claime, &c. immediate apres meſme le claime, poit celuy que fiſt le claime, pur cheſcun tiel fait auer vn bꝛiefe de forcible entrie, et recouera ſes treble dammages, &c.**

OR hee may haue a Writ vpon the ſtatute of *R.*2. made in the fifth yeare of his Raigne, ſuppoſing by his Writ that his Aduerſarie had entred into the lands or tenements of him that made the Clayme, where his entry was was not giuen by the Law, &c. and by this action he ſhall recouer his dammages, &c. & if the caſe were ſuch that the aduerſarie occupied the tenements with force and armes or with a multitude of people at the time of ſuch claime, &c. immediately after the ſame claime may hee which made the claim for euery ſuch act haue a Writ of forcible entrie & ſhall recouer his treble dammages, &c.

¶ This is the ſtatute of 5.R.2.cap.7. 37.*H.*6.35. 34.*H.*6.30. 13.*H.*7.15. 10.*H.*6.14. 2.*E.*4.18. 21.*E.*4.5.74. 13.*E.*2.3.27.*Aſſ.*64. 38.*Aſſ.*9.44.*E.*3.20. 10.*H.*7.27.*Keilwey* 1.*b.* 5.*R.*2.c.7.

¶ *Per tiel action il recouera ſes dammages.*

This is to bee vnderſtood that hee ſhall recouer dammages for the firſt tortious entry, but not for the meane profits in this action though he made a regreſſe. And here note that alſo he ſhall recouer his coſts of ſuite expenſæ litis, which Littleton doth include within theſe words (dammages) &c. 2.*E.*4.24.*b.* 9.*E.*4.4.*b.* 16.*H.*7.6.*a.*

¶ *Dammages,* damna **in the Common** Law hath a ſpeciall ſignification for the recompence that is giuen by the Jury to the Plaintife or Defendant for the wrong the Defendant hath done vnto him.

¶ *Multitude.* One or more may commit a force, three or more may commit an vnlawfull aſſembly, a riot or a rout. A multitude here ſpoken of (as ſome haue ſaid) muſt be ten or more. Multitudinem decem faciunt. And ſo (ſay they) it is ſaid, de grege hominum. But I could neuer read it reſtrained by the Common Law to any certaine number, but left to the diſcretion of the Judges.

¶ *Vn briefe de forcible entrie & recouera ſes treble dammages.* This

8.*H.*6.*cap.*9. 3.*E.*4.19.24. *F.N.B.*248.11.*E.*4.11.6. 6.*H.*7.12.6.22.*H.*6.37. 19.*H.*6.*Register.*97. 22.*H.*6.57.*F.N.B* 249.*a*

Writ is grounded vpon the ſtatute of 8.H.6. and lieth either where one entreth with force, or where he entreth peaceably and detayneth it with force or where he entreth by force, and deteineth it by force And in this action without any regreſſe the Plaintife ſhall recouer treble dammages, as well for the meane occupation as for the firſt entry by force of the ſtatute. And albeit he ſhall recouer treble dammages, yet ſhall he recouer coſts which ſhall be trebled alſo.

One may commit a forcible entry as hath beene ſaid, in reſpect of the armour or weapons which he hath that are not vſually borne, or if he doe vſe violence, and threats to the terrour of another. And if three or foure goe to make a forcible entry, albeit one alone vſe the violence, all are guilty of force. If the Maſter commeth with a greater number of ſeruants then vſually attend on him it is a forcible entry,

10.*H.*7.12.

33.*H.*6.20.

It is to be vnderſtood that there is a force implyed in Law, as euery Treſpaſſe and Reſcous and Diſſeiſin implyeth a force, and is *vi & armis*, and there is an actuall force, as with weapons, number of perſons, &c. and when an entry is made with ſuch actuall force, an action doth lie vpon the ſaid ſtatute. See before more of force and armes. Sect. 240.

Section 432.

¶ Item il eſt a veier, ſi le ſeruant dun home que ad title denter, poit per le commandement ſon Maſter faire continuall claime pur ſon Maſter ou non.

ALſo it is to bee ſeene, if the Seruant of a man who hath title to enter, may by the commandement of his Maſter make Continuall Claime for his Maſter or not.

This needeth no explication.

Section 433.

¶ Et il ſemble que en aſcuns caſes il poit ceo faire, car ſil per ſon commandement vient a aſcun parcel d̄ la terre & la fait claime, &c. en le noſme ſon Maſter, ceſt claime eſt aſſets bone pur ſon Maſter, pur ceo que il fait tout ceo que ſon Maſter couient faire ou deuoit faire en tiel cas, &c. Auxy ſi le Maſter dit a ſon ſeruant, que il ne oſaſt vener a la terre, ne aſcun parcel de la terre, pur faire ſon claime, &c. et que il ne oſaſt approcher pluis prochein a la terre forſque a tiel lieu appell Dale, et commanda ſon ſeruant daler a meſme le lieu de Dale, et la faire vn claime pur luy, &c. ſi le ſeruant iſſint fait, &c. ceo ſemble auxy bone claime pur ſon Maſter, ſicome ſon

AND it ſeemeth that in ſome caſes he may doe this. For if he by his commandement commeth to any parcell of the Land, and there maketh claime, &c. in the name of his Maſter, this claime is good enough for his Maſter, for that he doth all that which his Maſter ſhould or ought to doe in ſuch caſe, &c. Alſo if the Maſter ſaith to his ſeruant that hee dares not come to the land, nor to any parcell of it to make his claime, &c. and that hee dare approch no neerer to the land then to ſuch a place called Dale, and command his ſeruant to goe to the ſame place of Dale, and there make a claime for him, &c. if the ſeruant doth this, &c. this alſo ſeemeth a good claime for his Maſter, as if his Maſter were

ſon Maſter la fuit ẽ p̃oper perſon, pur ceo que le ſeruant fiſt tout ceo que ſon Maiſter oſaſt et deuoit faire per la ley en tiel caſe, &c.

there in his proper perſon, for that the ſeruant did all that which his Maſter durſt, and ought to doe by the law in ſuch a caſe, &c.

¶ HEre it appeareth that where the ſeruant doth all that which he is commanded, and which his Maſter ought to doe, there it is as ſufficient as if his Maſter did it himſelfe for the rule is, Qui per alium facit per ſeipſum facere videtur.

¶ *Per commandement.* If an infant or any man of full age haue any right of Entrie into any lands, any ſtranger in the name and to the vſe of the Infant or man of full age may enter into the lands, and this regularly ſhall veſt the lands in them without any commandement precedent or agreement ſubſequent. (*) But if a Diſſeiſor leaſe a fine, with Proclamation according to the ſtatute an eſtranger without a Commandement precedent or an agreement ſubſequent within the fiue yeares cannot enter in the name of the Diſſeiſee to auoide the Fine. And that reſolution was grounded vpon the conſtruction of the Statute of 4.H.7.cap.24. But an aſſent ſubſequent within the fiue yeares ſhould bee ſufficient; Omnis enim ratihabitio retrotrahitur, & mandato æquiparatur, as hath beene ſaid.

7.E.3.69.a.b.
45.E.3.Releaſe 28.
45.E.3.tit.Barre 589.
20.E.3.62.per.Thorp.
11.Aſſ.p.11. 39.Aſſ.p.18.
10.H.7.12.a.
31.H.8.tit.entr.Cong.
& 8.E.Fanxiſier recouery 29.
(*) Lib.9 fo.106.a. the Lo.Awdleyes caſe.

¶ *Auxi ſi le maſter dit a ſon ſeruant que il ne oſaſt, &c.* Here it appeareth that where the ſeruant purſueth the commandement of his Maſter, and doth all that which his Maſter durſt and ought to doe by the Law, this is ſufficient. And although the Maſter feareth more than the ſeruant, or admit that the ſeruant hath no feare at all, yet if hee goeth as farre as his Maſter durſt and as he commanded, it is ſufficient. And this is implied in this Section.

Sect. 434.

¶ AVry ſi home ſoit cy languiſhant, ou cy decreppyte, que il ne poit per nul maner bener a le terre, ne a aſcun parcel d̃ peel, ou ſi vn recluſe ſoit, q̃ ne poit per cauſe de ſon order aler hors de ſa meaſon. Si tiel maner de perſon commaunda ſon ſeruant daler et faire claime pur luy, a tiel ſeruant ne oſaſt aler a le fre, ne a aſcun parcel de ceo pur doubt de batery, mayhem, ou mort, &c. et pur cel cauſe tiel ſeruãt viẽt auxy pres a la terre come il oſaſt pur tiel

ALſo if a man be ſo languiſhing, or ſo decrepite that he cannot by any meanes come to the land nor to any parcell of it, or if there bee a recluſe which may not by reaſon of his order goe out of his houſe, if ſuch manner of perſon commaunde his ſeruant to goe and make claime for him, and ſuch ſeruant dare not goe to the land nor to any parcell of it for doubt of beating, mayhem, or death, &c. and for this cauſe the ſeruant commeth as neere to the land as he dareth for ſuch doubt

¶ REgularly it is true that where a man doth leſſe then the Commandement or Authority committed vnto him there (the Commandement or Authority being not purſued) the act is voide. And where a man doth that which hee is authorized to doe and more, there it is good for that which is warranted, and voide for the reſt, yet both theſe rules haue diuers exceptions and limitation.

For the firſt Littleton here putteth a caſe where the ſeruant doth leſſe then he is commanded, and yet it ſufficeth for that Impotentia excuſat legem, for ſeeing the maſter cannot, and the ſeruant dare not enter into the land, it ſufficeth that he come as neere to the land as he dare.

If a man makes a Letter of Attorney to deliuer ſeiſin to I.S vpon Condition, and the Attorney deliuereth it abſolute, this is voide: and ſo ſome hold if the Warrant be abſolute, and he deliuereth ſeiſin vpon Condition, the

11.H.4.3.
12.Aſſ.14. 26.Aſſ.9.

Linery is voide.

See before Sect. 419.

¶ *Pur battery, mayhem ou mort.* See the ſecond part of the Inſtitutes W.2.cap.49. a diuerſity betweene the making of an Entrie or Claime, and the anoydance of an Act or Deede.

¶ *Autermẽt le maſter ſerroit en treſgrand miſchiefe.* Argumentum ab inconuenienti eſt validum in lege, quia lex non permittit aliquod inconueniens. And as hath beene often obſerued before, Nihil quod eſt inconueniens eſt licitum.

¶ *Recluſe.* Recluſus, Heremita, ſeu Anachorita, ſo called by the order of his religion he is ſo mured or ſhut vp, Quod ſolus ſemper ſit, & in clauſura ſua ſedet; and can neuer come out of his place. Seorſim enim & extra conuerſationem ciuilem hoc profeſſionis genus ſemper habitat: Note here, albeit the Recluſe or Anachorite be ſhut vp himſelfe, ſo as he by his order is not to come out in perſon, yet to auoide a Diſcent, he muſt command one to make claime, and ſuch a Recluſe ſhall alwayes appeare by Attorney in ſuch caſes where others muſt appeare in proper perſon, Impotentia enim excuſat legem.

46.E.3.*Petition* 18.
33.H.6.8.
43.E.3.8.b.30.a.

doubt, et fait l' claim, &c. pur ſon maſter il ſemble que tiel claim pur ſon Maſter eſt aſſets fort, & bon en ley. Car auterment ſon maſter ſerroit en treſgrand miſchiefe, car il bien poit eſtre que tiel perſon q̃ eſt languiſhant, decrepite, ou recluſe, ne poit trouer aſcun ſeruant que oſaſt aler a la terr̃, ne aſcun parcel de cel pur faire le claime pur luy, &c.

and maketh the claim, &c. for his maſter, it ſeemeth that ſuch claime for his maſter is ſtrong enough and good in law. For otherwiſe his maſter ſhould bee in a very great miſchiefe, for it may well be that ſuch perſon which is ſicke, decrepit, or recluſe cannot finde any ſeruant which dare go to the land or to any parcell of it to make the claime for him, &c.

*Sect.*435.

¶ Mes ſi le maſter ô tiel ſeruant ſoit de bone ſane, et poit, et oſaſt bien aler a les tenements, ou a parcel de ceo de faire ſon claime, &c. ſi tiel Maſter cõmanda ſon ſeruant daler a aſcun parcel de la terre a faire claime pur luy, et quant l' ſeruant eſt an alant de faire le commandement de ſon Maſter, il oye per le voy tiels choſes que il ne oſaſt venir a aſcun parcel de la terre pur faire le claime pur ſon Maſter, et pur cel cauſe il vient auxy pres la fre come il oſaſt pur doubt de mort, et la fait claime pur ſon Maſter, et en le noſme de ſon maſter, &c. il ſemble que le doubt en le ley en tiel caſe ſerroit, ſi tiel claime auailera ſon Maſter, ou nemy, pur

BVt if the Maſter of ſuch ſeruant bee in good health, and can and dare well goe to the lands or to parcell of it to make his claime, &c. if ſuch Maſter command his ſeruant to goe to any parcell of the land to make claime for him, and when the ſeruant is in going to doe the commandement of his Maſter, he heareth by the way ſuch things as he dare not come to any parcell of the land to make the claime for his Maſter, and therefore hee commeth as neere to the land as he dare for doubt of death, and there maketh claime for his maſter, and in the name of his Maſter, &c. It ſeemeth that the doubt in law in ſuch caſe ſhall be whether ſuch claime ſhall auaile his Maſter

pur ceo que le ſeruant ne fiſt tout ceo que ſon Maſter al temps de ſon commandement oſaſt faire, &c. Quære.

or not, for that the ſeruant did not all that which his Maſter at the time of his commandement durſt haue done, &c. *Quære.*

¶ This continuall claime is voide, for that the ſeruant doth leſſe then that which is expreſly commanded, and there is no impotencie or feare in the Maſter.

Sect. 436.

¶ Item aſcūs ont dit que lou home eſt en priſon, et eſt diſſeiſie, et le diſſeiſor morust ſeiſie durant le temps q̄ le diſſeiſee eſt en priſon, per que les tenements diſcē-dont al heire del diſ-ſeiſour, ils ont dit, que ceo ne noiera my le diſſeiſee que eſt en priſon, mes que il bī poit enter, nient ob-ſtant tiel diſcent, pur ceo que il ne puiſſoit faīt continual claim, quant il fuit en priſon.

ALſo ſome haue ſaid that where a man is in priſon and is diſſeiſed, and the diſſeiſor dieth ſeiſed during the time that the diſſeiſee is in priſon, whereby the te-nements diſcend to the heire of the diſſei-ſor, they haue ſaid that this ſhall not hurt the diſſeiſee which is in priſon, but that he wel may enter, notwith-ſtanding ſuch a diſcēt, becauſe hee could not make continuall claim when he was in priſon.

¶ *Quant home eſt en priſon & eſt diſ-ſeiſi.* For if he bee diſ-ſeiſed when hee is at large, and the diſcent is caſt during the time of his impriſonment, this diſcent ſhall binde him. Excuſatur autem quis quod clameum ſuum non appoſue-rit, ſi tempore litigij in priſo-na detentus fuerit ita quod ve-nire non poſſit, nec mittere, quia nulli vertitur in dubium, & vbi eadem ratio & idem jus erit, ideo videtur quòd ex-cuſari debet, quis ſi per vim maiorem, vel per fraudem, extra priſonam detentus fue-rit, ita quod venire non poſſit nec mittere, dum tamen hoc per certa iudicia probari po-terit.

9.H.7.24.Pl.Com.360.

Bracton.lib.5.fol.436. Britton,fol.116.b. Fleta,lib.6.cap.52.53. & lib 6.ca.7. & 14.

¶ *Pur ceo que il ne poet faire continual claime quant il fuit en priſon.* Here it is to be obſerued by the authority of Littleton that he is not enforced in this caſe by Law to doe it by his ſeruant or any other by his warrant or commandement, for things done by deputie are ſeldome well done, but euery man will ſee his owne buſineſſe moſt effectually ſpeeded and performed, and that it may be once ſpoken for all, the reaſon that a man impriſoned ſhall not be bound, in this and the like caſes is, for that by the entendment of Law he is kept (as it is preſumed in Law) without intelligence of things abroade, and alſo that he hath not libertie to goe at large to make entrie or claime, or ſeeke counſell. And ſo note a diuerſity betweene a Recluſe who might haue intelligence, and a man in priſon.

Pl.Com 360. in Stowells caſe.

Sect. 437.

¶ MEs lopinion de touts les Iuſtices. P.11 H.7. fuit, que ſi le diſſeiſin ſoit auant len-priſonment, coment que l'mor̄t ſeiſie ſoit, il eſteant en le priſon, ſon entrie eſt tolle.

BVt the opinion of all the Iuſti-ces, P.11.H.7. was that if the diſſeiſin bee before the impriſon-ment, although the dying ſeiſed be, he being in the priſon, his entry is taken away.

¶ This is of a new addition, and miſtaken, for there is no ſuch opinion, P.11, H.7. but it is, 9.H.7.fo.24.b.

Mirror cap.3. Briton fo.21. Fleta lib.1. cap.28. & lib.2. ca.59. Bracton li.2. 2.E.4.1. 4.E.4.10. 21.E.4. 73. 11 H 7.5. 21.H.6.50. 9.H.4.3. 21.H.6.Vtlary 36. 7.H.6.27. 21.E.4.88.22. E.4.37. 18.E.3.Villenage 47 21.E.4.37. 33.H.6.45.16. 44.E.3.Villein 41. 4.H.4.19. 11.H.4.34. 3. Eliz. Dyer 192. 2.Eliz.176 5.Eliz. ibid.223. 19.H.6.2. 8.H.6.37. 37.H.6.19.

¶ *Il reuerſera tiel vtlagarie.* Nota, the originall is, Reuerſera tiel vtlagaſ per Brieſe de Error, and ſo it would be amended: for Outlawries may be reuerſed two manner of wayes, viz. by Plea, or by writ of Error. By Plea, when the Defendant comm.eth in vpon the Capias vtlagatum, &c. hee may by plea reuerſe the ſame for matters apparant, as in reſpect of a Superſedeas, Omiſſion of Proceſſe, Variance, or other matter apparant in the Record, and yet in theſe caſes ſome hold, That in another Terme the Defendant is driuen to his writ of Error.

¶ Et auxy ſi tiel que eſt en priſon ſoit vtlage in Action de debt, ou treſpaſſe ou en appeal de Robberie, &c. il reuerſera tiel vtlagarie enuers luy prounce, &c.

And alſo if hee which is in priſon be outlawed in an Action of Debt or Treſpaſſe, or in an Appeale of Robberie, &c. he ſhall reuerſe this outlawrie pronounced againſt him, &c.

8.H.4.7. 21.H.7.13. 10.H. 6.58. 20.H.6.20. 21.H.6. 55. 22 H.6.18.16 39.H.6. 1. 33.H.6.51.45 38.H.6. 33. 21.E.4.94. 21.H.7.33 5.H.7.1. 12.H.6.8. 11.H. 6.67.19.1.E.4.2.27.H.8.2.

But for any matters in fact, as death, impriſonment, ſeruice of the king, &c. he is driuen to his Writ of Error, vnleſſe it be in caſe of Felonie, and there in fauorem vitæ he may plead it.

But albeit impriſonment be a good cauſe to reuerſe an Outlawrie, yet it muſt be by proceſſe of Law in inuitum, and not by conſent or couin, for ſuch impriſonment ſhall not auoyd the Outlawrie, becauſe vpon the matter it is his owne act.

38. Aſſ.pl.17. Vid.Sect.439.

Section 438.

5.E.3.50.b. 7.H 6.38.

¶ THIS is euident enough.

Fleta lib.6.cap.67.& 24 Vid.W.2.cap.48 and the expoſition thereof, 2.part Inſtit. 4.E.2.Diſcon 51.

¶ *Per Briefe derror.* For hee ſhall haue no writ of Diſceit, becauſe the ſummons was according to the Law of the land, by Summoners and Netors, and the land taken into the Kings hand by the Pernor.

Bracton Lib.5.Tract.3. Fleta li.6 ca.7.14. 3.H.6.46 38.E.3.5. 31.H.6 Barre.66 12.H.4.13. 50.E.3.9. 3.H.6.48. 2 H. 4.8. 5.H.7.3. F.N.B.17. Bracton lib.4.fol.367 369. Glan lib.1.cap 8.28.H.6.11. 4.H.5.Challenge.153. Dr.Sauer.Def.45.

¶ *Per default.* Default is a French word, and defalta is legally taken for Non-apparance in Court. There bee diuers cauſes allowed by Law for ſauing a mans default, as firſt by Impriſonment, whereof Littleton here ſpeaketh. 2. Per inundationem aquarum. 3. Per tempeſtatem. 4. Per pontem fractum. 5. Per nauigium ſubſtractum per fraudem petentis, non enim debet quis ſe periculis & infortunijs gratis exponere, vel ſubiacere. 6. Per minorem ætatem. 7. Per defenſionem ſummonitionis per Legem. 8. Per mortem Attornati ſi tenens in tempore non nouit. 9. Si petens eſſoniatus ſit. 10. Si placitum mittatur ſine die. 11. Per Breue de Warrantia Diei. But ſickneſſe (as one holds) is no cauſe of ſauing a default, becauſe it may be ſo artificially counterfeited, that it cannot be knowne.

¶ Auxy ſi vn recouerie ſoit p default vers tiel q̃ eſt en priſon, il auoidera le iudgement p brieſe de Error, pur ceo que il fuit en priſon al temps de le default fait, &c. Et pur ceo q̃ tiels matters de Record ne nuyer̃ celuy que eſt en priſon, mes que ils ſerront reuerſes, &c. a multo fortiori, il ſemble que vn matter en fait, ſ̃, tiel diſcent ewe quant il fuit en priſon ne luy noyera, &c. ſpecialm̃t pur ceo que il ne puiſſoit aler hors de priſon pur faire continuall claime, &c.

Alſo if a recouerie bee by default againſt ſuch a one as is in priſon, he ſhal auoid the iudgement by a Writ of Error, becauſe he was in priſon at the time of the default made, &c. And for that ſuch matters of Record ſhal not hurt him which is in priſon, but that they ſhall bee reuerſed, &c. *a multo fortiori*, it ſeemeth that a matter in fact, ſ. ſuch diſcent had when hee was in priſon, ſhall not hurt him, &c. eſpecially ſeeing he could not goe out of priſon, to make continuall claime, &c.

Record.

¶ *Record.* Recordum **is a memoriall or remembrance in Rolles** of Parchment, of the proceedings and Acts of a Court of Iuſtice which hath power to hold plea according to the courſe of the Common Law, of reall or mixt Actions, or of Actions quare vi & armis, or of perſonall Actions, whereof the debt or dammage amounts to fortie ſhillings, or above, which we call Courts of Record, and are created by Parliament, Letters Patents, or Preſcription.

Glanuill lib. 8. cap. 8. Bracton lib. 3. fol. 154. Britton in proemio & cap. 27.

It is aptly deriued of Recordari, which is to keepe in memorie or record, as it is ſaid, Quod dicere nihil aliud eſt quam recordari, and in the ſame ſence the Poet vſeth it, Si rite audita recordor. But legally Records are reſtrained to the Rolles of ſuch onely as are Courts of Record, and not the Rolles of inferiour, nor of any other Courts which proceed not ſecundum legem & conſuetudinem Angliæ. And the Rolles being the Records or memorialls of the Iudges of the Courts of Record, import in them ſuch incontrollable credit and veritie, as they admit no auerment, plea, or proofe to the contrarie. And if ſuch a Record be alledged, and it be pleaded, That there is no ſuch Record, it ſhall be tried onely by it ſelfe: and the reaſon hereof is apparant, for otherwiſe (as our old Authors ſay, and that truly) there ſhould neuer be any end of controuerſies, which ſhould be inconuenient. Of Courts of Record you may read in my Reports: but yet during the Terme wherein any iudiciall act is done, the Record remaineth in the breſt of the Iudges of the Court, and in their remembrance, and therefore the Rolle is alterable during that Term, as the Iudges ſhal direct, but when that Term is paſt, then the Record is in the Rolle, and admitteth no alteration, auerment, or proofe to the contrarie.

Pl. Com. 79. b. Mich. 7. & 8. Eliz. Dier 242. 17. E. 3. 49 37. H. 6. 21. b. 11. H. 4. 26 b 21. H. 6. 34. Error. Br 73. 7. H. 7. 4. 19. Aſſ. 7. Eſb. 4. fol. 52. in Rowlins Caſe. Glanuill lib. 8. cap. 8. Bracton Lib. 3 fol. 156. Britton cap. 27. Lib. 6. fol. 11. Ientlemans Caſe. & 30. 45. Lib. 7. fol 30. Lib. 8 fol. 60. b. & 67. a. 7. H. 6. 28. 19. H. 6. 9.

If a Grant by Letters Patents vnder the great Seale be pleaded and ſhewed forth, the aduers partie cannot plead Nul tiel Record, for that it appeares to the Court that there is ſuch a record: but in asmuch as it is in nature of a cõueiance, the partie may denie the operation therof, therefore he may plead Non conceſſit, and proue in euidence that the King had nothing in the thing granted, or the like, and ſo it was adiudged. But to returne to Littleton: What then? Shall a man that is in priſon be priuiledged from Suits or Outlawries? Nothing leſſe, for if the Tenant or Defendant bee in priſon, hee ſhall vpon motion by order of the Court, bee brought to the Barre, and either anſwer according to Law, or elſe the ſame being recorded, the Law ſhall proceed againſt him, and he ſhall take no aduantage of his impriſonment.

18. Eliz. Dier 353. 3. Mar. Dier 129. Pl. Com. 232. Seignior Berkleys caſe. 16. H. 7. 11. b. 22. H. 8. Record. Br. 65. 39. H 6. 4. 3. Eliz. Dier 187. Lib. 6. fol. 5. Edens Caſe. Mich. 31. & 32. Eliz. Rot. 365. In Banke le Roy, inter Eden & Franklyn et Browne. 7. H 6. 38. 8. H. 6. 16.

¶ A multo fortiori. **Here is an argument,** A minori ad maius, and the force of our Authors argument is this, If a man in priſon ſhall not be bound by a recouerie by default for want of anſwer in Court of Record in a reall Action, which is matter of Record, (the height and ſtrength whereof hath beene ſomewhat touched) à multo fortiori, a diſcent in the Countrie, which is matter of deed, ſhall not for want of claim bind him that is in priſon. And as the argument à minori ad maius, doth euer hold (as our Author hath alreadie told vs) affirmatiuely, ſo the argument à maiori ad minus doth euer hold negatiuely, as our Author here teacheth vs: and the reaſon hereof is this, Quod in minori valet, valebit in maiori, & quod in maiori non valet, nec valebit in minori.

Vide Section 418.

¶ *Pur ceo que il ne poet aler hors de priſon, &c.* **By this it appeareth,** That a man in priſon by proceſſe of Law ought to be kept in ſalua & arcta cuſtodia, and by the Law ought not to goe out, though it be with a Keeper, and with the leaue and ſufferance of the Gaoler: but yet impriſonment muſt be, cuſtodia, & non pœna, for, Carcer ad homines cuſtodiendos, non ad puniendos dari debet.

Section 439.

¶ **EN meſme le manner il ſemble, lou home eſt hors du Royalme, en ſeruice le Roy, pur beſoigne del Royalme, ſi tiel hõe ſoit diſſeiſie quant il eſt en ſeruice le Roy, et le diſſeiſor mõt ſeiſie, le diſſeiſee**

IN the ſame manner it ſeemeth where a man is out of the Realme in the Kings ſeruice, for the buſineſſe of the Realme, if ſuch a one be diſſeiſed when hee is in ſeruice of the King, and the diſſeiſor dieth

¶ *Hors du Roialme.* (id eſt) extra Regnum, as much to ſay, as out of the power of the King of England, as of his Crowne of England: for if a man be vpon the Sea of England, he is within the Kingdome or Realm of England, and within the ligeance of the King of England, as of his Crowne of England. And yet altum mare is out of the iuriſdiction of the common law,

6. R. 2. Protect. 46. Vide Sect. 198 440. 441.

Law, and within the iuriſdiction of the Lord Admirall, whoſe iuriſdiction is verie antient, and long before the raign of Edward the third, as ſome haue haue ſuppoſed, as may appeare by the Lawes of Oleron, (ſo called for that they were made by King Richard the firſt when he was there) that there had beene then an Admirall time out of mind, and by many other antient records in the raignes of Henry the third, Edward the firſt, and Edward the ſecond, is moſt manifeſt.

Rot Pat. { 8.H.3. 9.H.3. 15.H.3.
Temp. E.1. Auowrie 193. Rot. Vaſcon. 32.E.1.m.8. Pat. 23.E.1. 1.pars Pat. 10 E.2.8 E.2. Coron. 399. Stamf. Pl. Corr. 51.

Sée hereafter in another caſe which Littleton put in his Chapter of Remitter, there he ſaith, Ouſter le mere, beyond the ſea. This great Officer in the Saxon Language is called, Aen mere al, (i.) ouer all the ſea, Præfectus maris, ſiue claſſis, archithalaſſus: and in antient time the office of the Admiralte was called, Cuſtodia marinæ Angliæ, or Maritinæ Angliæ.

Vide Section 677.

Et ſi tiel diſceit ne grieueroit le Diſſeiſee, mes pur ceo que il ne puiſſoit faire continual claime, il ſemble a eux, que quaunt il vient en Engleterre, il poit enter ſur lheir le Diſſeiſor, &c. Car tiel home reuerſera vn vtlagary prounc enuers luy durant le temps que il fuit en le ſeruice le Roy, &c. Ergo à multo fortiori, **auera aid et indemnitie per la Ley en lauter caſe, &c.**

And if ſuch diſceit ſhall not hurt the Diſſeiſee, but for that hee could not make continuall claim, it ſeemes to thē that whē he commeth into England hee may enter vpon the heire of the Diſſeiſor, &c. for ſuch a man ſhall reuerſe an outlawry pronounced againſt him during the time that he was in the Kings ſeruice, &c. Therefore *à multo fortiori* he ſhal haue aid & indemnitie by the law in the other caſe, &c.

8.H.3. Cont. claime 13. 4.E.3.46.

And note Littleton ſaith not, Beyond the ſea, or extra quatuor maria, for a man reuera may be infra quatuor maria, and yet out of the Realme of England. But Infra quatuor maria, or extra, is taken by conſtruction to be within the Realme of England, or the Dominions of the ſame.

But here a queſtion may be demanded, what if a man be out of the Realme, and a Recouerie is had againſt him in a Præcipe by default, whether ſhall he auoyd it in a writ of Error, as well as he ſhould doe the Outlawrie, or if he had beene impriſoned at the time of ſuch recouery by default? And it ſeemeth that he ſhall not auoid the recouerie, for by that meanes a man might be infinitely delayed of his Freehold and Inheritance, whereof the Law hath ſo great a regard. And few or none goe ouer, but it is either of their owne freewill, or by ſuit, for what cauſe ſoeuer, and he is not in that caſe without his ordinarie remedie, either by his writ of higher nature, or by a Quod ei deforceat. But Outlawrie in a perſonall Action ſhall be auoyded in that caſe, quia de minimis non curat Lex, and otherwiſe he ſhould be without remedie. Sée Section 437. and note the diuerſitie betweene that caſe of the impriſonment, and this of being beyond ſea. And Littleton putteth the caſe of impriſonment, and omitteth the being beyond ſea here: neither haue I ſeene any Booke to warrant, That he that is beyond ſea ſhall in this caſe auoyd the recouerie by default.

Bract. li.5.fo.436.

¶ *En ſeruice le Roy.* Bracton **ſheweth, That the exception of being beyond ſea is,** quia fuit in ſeruitio Domini Regis vltra mare, viz. apud talem locum, **and that caſe is cleere: but you ſhal heare the opinion of** Bracton **in the next Section, where he is not in the ſeruice of the King.**

Sect. 440.

Bract. li.5.fo. 436.b. & 163. Brit. fo.21.216.217. Flet. li.6 ca.52.53. 13.H.4. Triall 6. 9.H.4.3. 21.H.6. Error 27. 33.H.6.1. 21.H.6.34. 26.H.8.ca.13. 5.& 6.E.6. ca.11.

¶ And herewith the ancient law of England is agreeable with Littleton, and the Law at this day. So as it is Vetus & conſtans opinio. Excuſatur etiam quis qđ clameum

¶ Item auters ont dit, que ſi aſcun ſoit hors du Royalm coment que il ne ſoit en ſeruice le Roy, ſi tiel

Also others haue ſaid, that if a man bee out of the Realme, though hee bee not in the Kings

tiel home eſteant hors de le Royalme, eſt diſſeiſie en terres ou tenements deins le Royalme, & le diſſeiſour deuy ſeiſie, &c. le diſſeiſee eſteant hors du Royalme, il ſemble a eux q̄ quant le diſſeiſee vient dins le Royalme, que il poit enter ſur lheire le diſſeiſor, & ceo ſemble a eux per deux cauſes. Un eſt, que celuy que eſt hors du Royalme ne poit auer conuſans dl deſſeiſin fait a luy per entendement de ley, nient pluis que choſe fait hors du Royalm̄ poit eſtre try deins le Royalme per le ſerement de 12. & de compeller tiel home per la ley de faire continuall claime, le quel per lentendement de le ley ne puit auer aſcun notice, ou conuſance de tiel diſſeiſin, ceo ſerra inconuenient, & noſme㎡ quant tiel diſſeiſin eſt fait a luy quant il eſt hors du Royalme, & auxy le mozant ſeiſie fuit quāt il fuit hors du royalm: Car ē tiel caſe il ne poit per nul poſſibility ſolonque common preſumption faire continuall claime. Mes auter-

Seruice, if ſuch a man being out of the Realme be diſſeiſed of Lands or Tenements within the Realme, and the Diſſeiſor die ſeiſed, &c. the Diſſeiſee being out of the Realme, it ſeemeth vnto them, that when the Diſſeiſee commeth into the Realme, that he may well enter vpon the heire of the Diſſeiſor, &c. and this ſeemeth vnto them for two cauſes: One is, that hee that is out of the Realme, cannot haue knowledge of the Diſſeiſin made vnto him by vnderſtanding of the Law, no more than that a thing done out of the Realme may bee tried within this Realme by the oath of 12. men, and to compell ſuch a man to make continuall claime, which by the vnderſtanding of the Law can haue no knowledge or Coniſance of ſuch Diſſeiſin made or done, this ſhall be inconuenient, namely, when ſuch a diſſeiſin is done vnto him, whē hewas out of the Realme, & alſo the dying ſeiſed was done when hee was out of the realme, for in ſuch caſe hee may not by

non appoſuerit, vt ſi toto tempore litigij fuit vltra mare quacunque occaſione. And this is alſo agreeable with our yeare Bookes.

¶ *Nient pluis que choſe fait hors del royalm poet eſte trie deins le royalm per le ſerement de* 12. And in this rule of Law there is warily and truly put by Littleton, theſe words (by the oath of 12. men) meaning by a Jury. For by certificate a thing done beyond Sea may bee tried, as Littleton himſelfe, Sect. 102. hath ſet downe. And all matters done out of the Realme of England concerning warre, combate, or deeds of armes ſhall bee tried and termined before the Conſtable and Marſhall of England, before whom the triall is by witneſſes, or by combate, and their proceeding is according to the Ciuill Law, and not by the oath of 12. men, as Littleton here ſpeaketh. 41.E.3.2.& 3. *Vide* 6.E.102. 1.H.4.*cap.*14.13.H.4.*fol.*4. 48.E.3.2.& 3.

This rule here rehearſed by Littleton is worthy of explication. If an alien (for example borne in France) bring a reall Action, and the tenant plead that the Demandant is an alien borne vnder the obedience of the French King, and out of the leigeance of the King of England: ſhall this caſe want triall becauſe the matter alleaged is out of the Realme: then by the fiction of this plea no demandant ſhall recouer, therefore in this caſe, the Demandant ſhall reply, that hee was borne at ſuch a place in England within the Kings liegeance, and hereupon a Iury of 12. ſhall bee charged, and if they haue ſufficient euidence that hee was borne in France, or in any other place out of the Realme, then ſhall they find, that hee was borne out of the Kings alleageance, and if they haue ſufficient euidēce that he was borne in England, or Ireland, or Iernſey or Ierſey, or elſe where within the Kings obedience, they ſhall find that hee was 20.Eſ.*auerment.*34.27. *Aſſ.*24.32.H.6.25.15.E.4. 15.7.H.6.15.1.R.3.4. 6.H.7.6.7.H.7.8.F.N.B. 196.29.*Aſſ.*11.13.E.1. *mand.*47.12.H.3.*ibid.*55. *Lib.*7.*fol.*26.27.*Calvins caſe.* *Lib.*6.*fol.*47.*Dowdales caſe.*

was borne within the Kings leigeance. And this hath euer beene the pleading and manner of triall in that case. And so it is in the case that Littleton here putteth, if a man in anoydance of a fine or a discent, alleadge that he was out of this Realme in Spaine, at the time of leuying of the fine and at the time of the disseisin and discent, the aduerse party may alleadge that hee was at such a place in England, &c. whereupon issue shall bee taken, and then in euidence hee may proue that he was out of the Realme, &c. which vpon sufficient euidence the Iurie ought to find. And in both these cases and the like in a speciall verdict the Iury may find that hee was borne beyond Sea, or was beyond Sea at that time, &c.

mẽt serroit si tiel disseisee fuit deins le Royalme al temps ô le disseisin, ou al temps del mozant del disseisour.

possibilitie after the common presumption make continuall claime: But otherwise it should be if the Disseisee were within the Realme at the time of the Disseisin, or at the time of the dying seised of the Disseisor.

The statute of 25.E.3. De proditionibus doth declare, that it is Treason by the Common Law to adhere to the enemies of the King within the Realme, or without, if hee be thereof conueniablement attaint of ouert fact, and that he shall forfeit all his Lands, &c. A man must not imagine that seeing by the Common Law declared by authoritie of Parliament that adhering to the Kings Enemies without the Realme is high Treason, and that the Delinquent may be attainted thereof, &c. that this should want triall, for then the iudgement of the Common Law and declaration of the Parliament should be illusorie, which no well aduised man will thinke in a matter of so great consequence. But certaine it is that for necessitie sake the adherencie without the Realme must be alleaged in some place within England. And if vpon euidence they shall find any adherencie out of the Realme, they shall find the Delinquent guiltie. But most commonly they indited him (if he had lands) in some countie where his lands did lye, that were to be forfeited, and this as appeareth in our bookes was the Common vse. And so it is declared by the Statute (*) of 33.H.8. and that it shall bee tried by 12. men of the Countie where the Kings Bench shall sit, and bee determined before the Iustices of that Bench, or else before such Commissioners, and in such shire of the Realme, as shall be assigned by the Kings Maiesties Commission, and this Statute for this point remaynes in force at this day, and so it was resolued (a) by all the Iudges in my time, viz. in 33.Eliz. in the case of Orurcke. And Anno (b) 34.Eliz. in Sir Iohn Perots case done in Ireland, for that is out of the Realme of England, and the case (c) in Mich.19. & 20.Eliz. was vtterly denied, & Sir Christopher Wray himselfe (who is supposed to giue his opinion in that case) protested that he neuer gaue any such opinion, but did hold the contrary. When part of the Act, especially the originall is done in England, and part out of the Realme, that part that is to be performed out of the Realme, if issue be taken thereupon shall be tryed here by 12. men, and those 12. men shall come out of the place where the writ is brought. For example (which euer doth illustrate) it was couenanted by Indenture, by Charter partie, that a Ship should sayle from Blackney Hauen in Norfolke, to Muttrel in Spaine, and there remayne by certaine dayes.

5.R.2.triall.54.

(*) 33.H.8.cap.2. Stawford.pl.cor 90.

(a) 33.Eliz.case Orwicke.
(b) 34.Eliz.case de Sir Iohn Perot.
(c) Mich.19. & 20.Eliz. Dier 350.

In an Action of Couenant brought vpon this Charter partie, the Indenture was alleaged to be made at Thetford in the Countie of Norfolke, and vpon pleading the issue was ioyned whither the said Ship remayned at Muttrell in Spaine by the said certaine dayes. And it was adiudged that this issue should be tried at Thetford where the action was brought, because there the contract tooke his originall by making of the Charter partie, and so hath it beene often adiudged in such like case.

48.E.3.3.11.H.7.16. 1.R.3.4.

Pasch.28.Eliz. in action de couenant inter Euangelist Constantine Pl. & Hughgyn defendant in the Kings Bench. Lib.6.fol.47. Dowdales case. Vide 32.H.6.25. 48.E.3.3.11.H.7.16. 2.E.2.obligation 15.

In an Obligation made beyond the Seas may bee sued here in England in what place the Plaintife will. What then if it beare date at Burdeaux in France? Where shall it be sued? And answere is made, that it may be alleaged to be made In quodam loco vocat' Burdeaux in France, in Islington in the Countie of Middlesex, and there it shall be tried, for whether there be such a place in Islington or no, is not trauersable in that case. These points are necessary to bee knowne in respect of the varietie of opinions in our Bookes. And of these thus much shall suffice, and now is Littleton worthy to be heard.

¶ *Per entendement de le ley.* Vide, for intendement of Law, Sect. 99.100.110.293 377.393.406.367.462.463.&c.439.

Entendement de le ley.

¶ *Ceo serr' inconuenient.* Here also as hath beene often said appeareth, that argumentum ab inconuenienti is strong in Law.

Vide Sect.269.

¶ *Auterment est si le disseisee fuit deins le royalme al temps del disseisin, &c.* So as if a man be disseised before he goeth ouer Sea, or commeth into the Realme againe before the Discent, the Discent shall take away his entrie.

Sect

Section 441.

QVaunter matter ils allegeont pur prouer que deuant lestatute fait en le temps de Roy E.3. An. 34. cap. 16. **de son raigne, per quel estatute noncloime est ouste, &c. le ley fuit tiel, que si vn fine soit leuy de certaine terres ou tenements, si aſcun que fuit estrange al fine auoit droit dauer & recouer meſmes les terres ou tenements, sil ne venust & fist son claime a ceo deins lan & le iour procheine apres le fine leuie, il serra barre a touts iours,** Quia dicebat', finis finem litib' imponebat. **Et que la ley fuit tiel, il est proue per lestatute de Weſtminſter** 2. De donis conditionalibus, **lou il est parle que si fine soit leuie de les tenements en taile, &c.** Quod finis ipſo iure fit nullus, nec habeant hæred', aut illi ad quos ſpect' reuerſio (licet fuerint plenæ ætat', in Anglia, & extra priſonam) neceſſitat' apponere clameum ſuum, &c. **Iſtint ceo**

AN other matter they alleadge for a proofe, that before the Statute of King *Edward* the Third, made the 34. yeare of his Raigne, by which ſtatute Non-claim is ouſted, &c. the Law was ſuch, that if a fine were leuied of certaine Lands or Tenements, if any that was a ſtranger to the fine had right to haue and to recouer the ſame Lands or Tenements, if he came not, and made his claime thereof within a yeare and a day next after the fine leuied, he ſhall be barred for euer, *Quia dicebatur quod finis finem litibus imponebat.* And that Law was ſuch, it is proued by the Statute of Weſt. the 2. *De donis conditionalibus*, where it is ſpoken if the fine bee leuied of Tenements giuen in the taile, &c. *Quod finis ipſo iure ſit nullus, nec habeant hæredes, aut illi ad quos ſpectat reuerſio (licet plenæ ætatis fuerint, in Anglia, & extra priſonam) neceſſitat' apponere clãeũ ſuum.* So it is proued,

CHere it appeareth, what the Common Law was before the ſaid Statute, for Non-claime vpon a fine leuied. But now ſince Littleton wrote by the Statute of 4.H.7. fiue yeares after Proclamations made vpon the fine are giuen to him that right hath to make his Claime, or purſue his Action, where the Common Law gaue him but a yeare and a day. But this Statute of 4.H.7. extend only to fines and not to Non-claime vpon a Iudgement in a Writ of right, and therefore the ſaid Statute of 34.E.3 here cited by Littleton which ouſteth Non-claime only to fines leuied, extendeth not to a iudgement in a Writ of right at this day, and therefore the Common Law in that caſe remayneth to this day, viz. **that claime muſt bee made within a yeare and a day after iudgement. Alſo if a fine be leuied without Proclamations, or without ſo many as the Law requireth, then the Statute of Nonclaime doth extend to ſuch a fine.**

34.E.3.16.

4.H.7.cap.24. *See alſo the Statute, as the Statute of* 32.H.8.cap.36. *well expounded in my Reports. Lib.3.fol.44.45. &c. caſe del fines per totum. Lib.1.fol.96. 97. in Shelleys caſe. lib.2.fol. 93. Bingham's caſe. lib.8.fol. 100. Lochfords caſe. lib.9.fol. 139.140.141. Beaumonds caſe. lib.10.fol.49.b. Lampets caſe & 99.a. lib.9.fol 105. 106. Margaret Podgers caſe. lib.5.fol.124. Saffyns caſe. lib. 10.96.97. Seymors caſe lib.8. fol.72. Greſleys caſe lib.11.fol. 69.71.78. Pl.Com. in Smith & Stapl. caſe, & in Stowe's caſe & Howels caſe & Glanuil lib.13.cap.11. Bract.435. Fleta lib.6.cap.53. Brit.216.*

¶ *Dicebatur finis, quia finem litibus imponebat.* **Here you may obſerue the Etymologie of a fine. And herewith agreeth (a) Antiquitie, Finis ideo dicitur finalis concordia quia imponit finem litibus. And after the example (b) of Littleton it is good to ſearch out the Etymologie or right derivation of words for ignoratis terminis ignoratur & ars, as hath bin often obſerued in other places. And the Ciuilians call this iudiciall concord,** Tranſactionem iudicialem de re immobili.

(a) *Glanuil. lib.8.cap.3. Bract. lib.5.fol.435. Fleta lib.6.cap.52.53.*

(b) *Etymologies, &c. Vide Sect.74.174.194.447. 520.592.*

¶ *Licet*

¶ *Licet fuerit plenæ ætatis, in Anglia, & extra prisonam.* In this Act of 13 E.1. De donis conditionalibus is one omitted who is added in the Statute De modo leuandi fines, viz. & sanæ memoriæ (c) Vnt a Feme-Couert had no priuiledge of non-claime at the Common Law as some haue said, because she had a husband that might make claime for her. But yet Bracton saith, Item excusatur vxor quæ sub potestate viri supposita quod clameum non apposuerit licet mittere possit. And citeth a iudgement in the point, Trin. 4.H.3. in Cusins case But Fleta saith, Excusatur si fuerit vxor alicuius, si fuerit per virum impedita, quod non potuit apponere clameum. Also they in reuersion or remainder expectant vpon any estate of Freehold were barred by the Common Law, and yet they could make no claime, because as hath beene said, it belonged to the particular Tenant, and not to them, because their entrie was not lawfull, which was one of the principall causes of making of the said Statute of 34.E.3. which ousted Non-claime. But these cases of Couerture and of them in reuersion and remainder are now without question holpen, and iust prouision made for the sauing of their rights and titles by the said Statute of 4.H.7. as by the said act appeareth.

Stat. de anno 18.E.1.

(c) Pl.Com.Stowell's case, 359

Bracton. lib. 5. fo. 436. Britton, fo. 216. b. Fleta, lib. 6. ca. 53.

that if a stranger that hath right vnto the tenements, if hee were out of the Realme at the time of the fine leuied, &c. shall haue no dammage, though that hee made not his claim &c. though that such fine was matter of record: by greater reason it seemeth vnto them that a disseisin & discent that is matter in deed shall not so grieue him that was disseised when he was out of the Realme at the time of that disseisin, and also at the time that the Disseisor died seised, &c. but that he may well enter notwithstanding such discent.

+ Explained by 32. Harry 8. ch. 36.

Sect. 442.

¶ *Arraigne vn assise.* To arraigne the Assise is to cause the Tenant to bee called to make the pleint, and to set the cause in such order as the Tenant may be inforced to answer thereunto, and is deriued of the French word Arraigner, which signifieth to order or set in right place. An Arraignement is sometime called an Attitution of the Verbe Astituo compounded of Ad and Statuo, that is to place, or set in order one by another. In the same sence that Littleton here vseth it, it is vsed when an appeale is

¶ Item, Quære si home soit disseisi, et il arraigne vn Assise enuers le disseisor, et les recognitors de l'assise chaūta pur le plaintife, et les Justices dassise voyle estre aduises ô lour iudgment, tanq; al prochein assise, &c. Et en le dementiers le disseisor mozust seisie, &c. si le dit suit del

ALso inquire if a man be disseised, and he arraigne an assise against the disseisor, and the recognitors of the assise chante for the plaintise, and the Iustices of assise will bee aduised of their iudgements vntill the next assise, &c. and in the meane season the disseisor dieth seised, &c. yet the

del aſſiſe ſerra pris en ley pur le dit diſſeiſee vn continual claime, entant que nul default fuit en luy, &c.

ſaid ſuite of the aſſiſe ſhall bee taken in Law for the diſſeiſee a continuall claime, inſomuch that no default was in him, &c.

arraigned, both which are arraigned in French, but entred in Latyn. And it is to bee obſerued that Littleton ſaith here Arraigne vn aſsiſe, and ſaith not that the Tenant is arraigned, and ſo of the appeale, for theſe are the ſuites of the ſubiect, and no man is ſaid to be arraigned, but meerely at the ſuite of the King, vpon an Enditement found againſt him, or other record wherewith he is charged. And there the arraignment of the priſoner is to take order, that he appeare, and for the certainty of the perſon to hold vp his hand and to plead a ſufficient plea to the enditement or other record, whereupon they which follow for the King may orderly proceede.

2. & 3. *E.*6. *ca.*24. *towards the end. Stanf. pl. cor.* 105. *C.*3. *H.*7. *ca.*1.

¶ *Iuſtices daſsiſe.* **Iuſtices of Aſſiſe are aſſigned and conſtituted** by the King of the Iudges and Sages of the Law, and are called Iuſtices of Aſſiſe, for that the writs of Aſſiſe of Nouel diſſeiſin, (which in former times were accounted Feſtina remedia and very frequent and common) were returnable before them to be taken in their proper Counties twice euery yeare at the leaſt, whereupon they had authority to giue iudgement and award ſeiſin and execution: and therefore both for the number of them in times paſt, and for the greater authority they had then as Iuſtices of Niſi prius (which was to trie iſſues only, except in Quare Impedit. and Aſſiſes De darreine preſentment, in which cales the Iuſtices of Niſi prius might giue iudgement) they were denominated Iuſtices of Aſſiſe: And diuers Acts of Parliament haue giuen to them great authority both in Criminall cauſes and Common pleas. Theſe Iuſtices of Aſſiſe, haue alſo Commiſſions of Oier and Terminer, of Goale deliuery, and of the peace, of aſſociation, and Si non omnes throughout their whole circuits, ſo as they are armed with ample, prouident, but yet ordinary iuriſdiction, for all their Commiſſions are bounded with this expreſſe limitation, Facturi quod ad juſtitiam pertinet ſecundum legem & conſuetudinem Angliæ. And in former time according to the originall inſtitution and their Commiſſion both the Iuſtices ioyned both in Common pleas, and pleas of the Crowne,

Vid. Sect. 514. 233. 234. *Magna Carta*, 30. *W.*2. *ca.*3. 30. 39. *Stat. de Eber. ca.*3. 4. *Artic. Sup. Cart. ca.*10. 4. *E.*3. *ca.*11. 7. *R.*2. *ca.* 27. *E.*1. *De finibus. ca.*4. 28. *E.*1. *de appellatis.* 4. *E.*3. *ca.*2. 2. *H.*5. *ca.*8. 3. *H.*5 *ca.*7. 13. *H.*4. *ca.*7. *North.*2. *E.*3. *ca.*3. 2. *E.*3. *ca.*5. 14. *H.*6. *ca.*1. 31. *H.*6. *ca.*10. 3. *H.*7. *ca.*1. 33. *H.*8. *ca.*9. 34. & 35. *H.*8. *ca.*14. 2. & 3. *E.*6. *ca* 24. 1. *E.*6. *ca.*7. 2. *Mar. Dier.* 99. 3. & 4. *Eliz. Dier.*205.

¶ *Si le dit ſuite del aſsiſe ſerra priſe en ley, &c. vn continuall claime.* And it is holden at this day that it ſhall amount to a Claime, for that there was no default in him as Littleton ſaith. (d) Some haue obiected that if the bringing of an Aſſiſe ſhould amount to Continuall claime, and euery Continuall claime made by the Diſſeiſee veſt the poſſeſſion and freehold in him, therefore if bringing the Aſſiſe, &c. ſhould amount to a Continuall claime that then the writ ſhould abate But hereunto it hath beene anſwered in this Chapter, that a Continuall claime is an entrie by conſtruction of Law for the aduantage of the Diſſeiſee, but not for his diſaduantage.

(d) *See before in this chapter Sect.*419. *Vid. Sect.*426.

In a writ of entrie Sur Diſſeiſin againſt one, ſuppoſing that he had not entred but by S. who diſſeiſed him, the Tenant ſaid that S. died ſeiſed; and the land diſcended to him, and prayed his age, the Plaintife counterpleaded his age, for that he arraigned an Aſſiſe againſt S. who died hanging the Aſſiſe, and he was ouſted of his age, for that the bringing of the Aſſiſe amounted to a Claime.

34. *E.*3. 25. 9. *E.*2. *age.*141. 15. *E.*3. *Counterplea de gar.*5.

If Tenant in Dower alien in fee with warrantie, and the heire in the reuerſion bring a writ of entrie In caſu prouiſo, &c. and hanging the plea, the Tenant dyeth, the heire ſhall not be rebutted or barred by this warrantie, for that the Præcipe did amount to a Continuall claime. And herewith agreeth (*) Antiquity; Et ſi clameum non oppoſuerit, ſufficit tamen ſi ille vel anteceſſor ſuus faciat qđ tantundē valeat, vt ſi placitū mouerit teneñ vel fecerit rem litigioſā, quia ſicut plus eſt facto appellare, quam verbo, ita plus eſt clameum apponere facto, quam verbo: Et ad hoc facit de termino Sanctæ Trinitatis, Anno regni regis, H. 3. 15. in com. Hunt: de quadam Guldeburga, cui obiectum fuit, quod clameum non appoſuit, & ipſa reſpondit, quod fecit, quod tantundem valet, quia tempore finis facti implacitauit tenentem per aliud breue, &c.

3. *E.*3. *tit. garrantie* 82.

(*) *Fleta. lib.*6. *ca.*52. *Bract. lib.*5 *fo.*436.

If the goods of a Villeine (before any ſeiſure made by the Lord) be diſtrained, the Lord may haue a Repleuyn, and notwithſtanding before the bringing of the writ he had no property, yet the very bringing of the writ doth amount to a clayme of the goods, and veſteth the propertie in the Lord.

33. *E.*3. *Replevin.*43. 42. *E.*3. 18. *b.* 9. *H.*6. 25.

¶ *Entant que nul default fuit en luy, &c.* **Hereby it is implied, that** our Author enclined to this opinion, that it ſhould amount to a Clayme, for that no default was in him, Et nemo debet rem ſuam ſine facto aut defectu ſuo amittere, as the rule is.

Sect. 443.

¶ HEre firſt it is to bee obſerued, that albeit the Freehold and inheritance is in this caſe in no perſon but in abeiance or in conſideratiõ of law, yet an entrie and claime by one that hath no right ſhall gaine the inheritance by wrong. For here Littleton ſaith, and of ſuch eſtate died ſeiſed, &c. And ſo it is in caſe of a Biſhop, Parſon, Vicar, Prebend, or any other ſole Corporation. And in the ſtatute of Merlebridge it is called an intruſion.

Marlb. ca. 28.

Secondly, that ſeeing by the death of the Abbot (which is the act of God) no perſon is able to make Continuall claime, therefore a diſcent during that time ſhall not preiudice the ſucceſſor, for as hath beene ſaid, Impotentia excuſat legem. If an vſurpation be had to a Church in time of vacation, this ſhall not preiudice the ſucceſſor to put him out of poſſeſſion, but that at the next auoydance hee ſhall preſent.

7. E. 3. 34. m. 17. 2. ca. 5.

¶ *Nient pluis que ils ſont able de ſuer Action, &c.* Here that which hath in this Chapter beene ſayd is confirmed, viz. That the entrie or continuall claime muſt purſue the action.

¶ *Car le Couent neſt forſque vn mort perſon, &c.* This is Ratio vna, but not vnica: for though the reſt of the Corporation bee no more perſons, as the Chapter in caſe of Dean and Chapter, or the commonalty in caſe of Maior and Commonalty; yet cannot they when there is no Dean or maior, make claim, becauſe they haue neither abilitie nor capacitie to take or to ſue any Action, as our Author here ſaith.

¶ *Car en temps de*

¶ Item Quære ſi vn Abbe de vn Monaſtery mozuſt, et durant le temps de vacation, vn hõe tozcioulemẽt enter en certaine parcel de terre del monaſtery, claymant la terre a luy et a ſes heires, et de tiel eſtate mozuſt ſeiſie, et la terre diſcendiſt a ſon heir̃, et puis apres vn eſt elect et fait Abbe de meſme la Monaſterie, ſi meſm̃ Labbe poit enter ſur le heire ou neny. Et il ſemble a aſcuns que Labbe bien poit enter en ceo cas, pur ceo q̃ le Couent en temps de vacac̃ ne fuit aſcun perſon able de faire continuall claime, car neint pluis que ils ſont perſon abl̃ d ſuer Action, nient pluis ils ſont able de faire continnall Clayme, car le Couent neſt forſque vn mozt cozps ſauns Teſte car en temps de Vacation vn graunt fait a eux, ou per eux eſt voyd, & en ceſt caſe Labbe ne poit auer Briefe Dentre ſur Diſſeiſin enuers le

ALſo inquire if an Abbot of a Monaſterie die, and during the time of vacation, a man wrongfully entreth in certaine parcels of land of the Monaſterie, claiming the land vnto him and his heires, and of that eſtate dyeth ſeiſed, and the land deſcendeth vnto his heires, and after that an Abbot is choſen, and made Abbot of the Monaſtery, a queſtion is, if the Abbot may enter vpon the heire or not. And it ſeemeth to ſome, That the Abbot may well enter in this caſe, for this, that the Couent in time of vacation was no perſon able to make continuall claime, for no more thã they be perſonable to ſue an Action, no more bee they able to make continuall claime, for the Couent is but a dead bodie without Head, for in time of vacation a Grant made vnto them is voyd, and in this caſe an Abbot may not haue a Writ of *Entrie* vpon *Diſſeiſin*, againſt the Heire, for

le heire, pur ceo que il ne fuit vnques diſſeiſie, et ſi Labbe ne puiſſoit enter en ceo caſe, donques il ſerra mis a ſon Briefe de Droit, &c. le quel ſerra trope dure pur le meaſon, per que cẽble a eux, que Labbe bien poit enter, &c.

this, That hee was neuer diſſeiſed. And if the Abbot may not enter in this caſe, then hee ſhall bee put vnto his Writ of Right, &c. which ſhall bee hard for the Houſe. By which it ſeemeth to them, that the Abbot may well enter, &c.

Quæras de dubijs legẽ bene diſcere ſi vis: Quære dat ſapere, quæ ſunt legitima vere.

Quæras de dubijs, Legem bene diſcere ſi vis: Quærere dat ſapere quæ ſunt legitima vere.

vacation vn Graunt fait a eux on per eux, eſt void &c. And the reaſon is, becauſe the bodie politique, which is capable, is not compleat, but wanteth the Head. But this is to bee vnderſtood of an immediate Grant, for if during the vacation of the Abbathie of Dale, a Leaſe for life, or a gift in Taile be made, the remainder to the Abbot of Dale and his ſucceſſors, this remainder is good, if there bee an Abbot made during the particular eſtate.

2. H. 7. 13. 40. Aſſ. 26. 34. E. 3. Garrantie 69.

If there be Maior and comonaltie of D. and the Maior dieth, a Grannt made to the Maior & Cõmonalty of D. is void for the cauſe aforſaid, but in that caſe if a Leaſe for life be made, the remainder to the Maior and Commonaltie of D. the remainder is good, if there bee a Maior elected during the particular eſtate.

¶ *Poet enter, &c.* Here by this (&c.) is implied, Or make his continuall claime in ſuch ſort as hath beene before expreſſed.

¶ Quæras de dubijs, Legem bene diſcere ſi vis:
Quærere dat ſapere quæ ſunt legitima vere.

Here Littleton expreſſeth an excellent meanes to attaine to the reaſon of the Law, by enquiring of, and conference had with learned men, of doubtfull caſes:

Inter cuncta leges, & percunctabere Doctos.

Horace.

For as Collatio peperit artes, ſo Collatio perficit artes: And this muſt bee continuall, for as knowledge increaſeth, ſo doubts therewith increaſe alſo; Creſcente ſcientia, creſcunt ſimul & dubitationes.

And here Littleton citeth verie aptly two Verſes, for it is truly ſaid, That Authoritates Philoſophorum, medicorum & Poetarum ſunt in cauſis allegandæ & tenendæ: And our Author doth cite a verſe for memorie, but it is worthie of memorie.

Chap. 8. Of Releaſes. *Sect.*444.

¶ Releaſes lõt en diuers manners, ceſtaſcauoir, Releaſes de tout le droit q̃ home ad en terres ou Tenements, et Releaſes de Actions perſonals et reals, et

Releaſes are in diuers manners, *viz.* Releaſes of all the right which a man hath in Lands or Tenements, and Releaſes of Actions

¶ Here our author beginneth with a diuiſion of Releaſes.

Vi. Mir. ca. 2. §. 17 V. Brit. 101. Bract. li. 5. Tract. de Except. & Lib. 4. fo. 318. b. Fleta lib cap. 14.

Theſe words muſt be referred thus: Releaſes are of two ſorts, viz. A releaſe of all the right which a man hath either in lands and tenements, or in Goods and Chattels: or there is a Releaſe of Actions Reall, of or in lands or tenements: or Perſonall, of or in Goods,

Goods or Chattels: or mixt, partly in the Realty, and partly in the Perſonalte.

¶ *Releaſe.* Relaxatio: Of the Etymologie of this word you haue heard before. Fleta (a) calleth it, Carta de quieta clamantia.

¶ Nouerint vniuerſi per præſentes, &c. **Here** Littleton ſheweth Preſidents of Releaſes of right: and Preſidents doe both teach and illuſtrate, and therefore our Student is to bee well ſtored with Preſidents of all kinds.

¶ Remiſiſſe, relaxaſſe, & quietum clamaſſe. **Here** Littleton ſheweth, That there be 3. proper words of Releas, and bee much of one effect: beſides, there is Renũciare, acquietare, & there be many other words of releas, as if the leſſor grants to the leſſee for life, That he ſhall be diſcharged of the Rent, this is a good Releaſe, Vide Sect.532.

And it is to bee vnderſtood, That there bee Releaſes in Deed, or Expreſſe: Releaſes, whereof Littleton heere hath ſhewed an example. Theſe Expreſſe Releaſes muſt of neceſſitie be by Deed. There be alſo Releaſes in Law, and they are ſometime by Deed, and ſometime without Deed. As if the Lord diſſeiſe the Tenant, and maketh a Feoffement in fee by Deed or without Deed, this is a releaſe of the Seigniorie. And ſo it is if the Diſſeiſee diſſeiſe the heire of the Diſſeiſor, and make a Feoffement in Fee by Deed or without Deed, this is a releaſe in Law, of the right. And the ſame Law it is of a right in Action.

If the Obligee make the Obligor his Executor, this is a releaſe in Law of the Action, but the dutie remaines, for the which the Executor may retaine ſo much goods of the Teſtator.

If the Feme Obligee take the Obligor to husband, this is a releaſe in Law. The like law is if there be two Femes Obligees, and the one take the Debtor to husband.

If an Infant of the age of ſeuenteene yeares releaſe a debt, this is voyd. But if an enfant make the Debtor his Executor, this is a good releaſe in Law of the debt.

But if a Feme Executrix take the Debtor to husband, this is no releaſe in Law, for that ſhould be a wrong to the Dead, and in Law worke a Deuaſtauit, which an Act in Law ſhall neuer worke. And ſo it was adiudged in the Kings Bench, Mich.30.& 31.Eliz. in which caſe I was of Counceil.

But it is to be obſerued, That there is a diuerſitie betweene a Releaſe in Deed, and a releaſe in Law: for if the heire of the Diſſeiſor make a leaſe for life, and the Diſſeiſee releaſe his right to the Leſſee for his life, his right is gone for euer. But if the Diſſeiſee doth diſſeiſe the heyre of the Diſſeiſor, and make a Leaſe for life, by this releaſe, in Law the right is releaſed but during the life of the Leſſee: for a releaſe in Law ſhall be expounded more fauourable, according to the intent and meaning of the parties, than a releaſe in Deed, which is the act of the partie, and ſhall

auters choſes. Releaſes de tout l'droit que homes ont en Terres ou Tenements, &c. ſont communement fait en tiel forme ou de tiel effect. *Sect.444.*

¶ Nouerint vniuerſi per præſentes me A. de B. remiſiſſe, relaxaſſe, & omnino de me & hæredib⁹ meis quietum clamaſſe: *vel ſic*, Pro me & hæredibus meis quietum clamaſſe C. de D. totum ius, titulum, & clameum quæ habui, habeo, vel quouiſmodo in futur̃ habere potero, de, & in vno meſſuagio cum pertinentijs in F. &c. **Et eſt aſcauoire, que ceux Verbs**, Remiſiſſe, & quietum clamaſſe **ſont de vn tiel effect, ſicome tiels Verbs**, Relaxaſſe.

ctions perſonalls and realls, & other things. Releaſes of al the right which men haue in lands & tenements &c. are commonly made in this forme, or of this effect:

Know all men by theſe Preſents, That I A. of B. haue remiſed, releaſed, and altogether from me and my Heires quiet claimed: or thus, *For mee and my Heires quiet claimed to C. of D. all the right, title, and claim which I haue, or by any meanes may haue, of and in one meſſuage, with the appurtenances in F. &c.* And it is to bee vnderſtood, that theſe words, *Remiſiſſe, & quietum clamaſſe*, are of the ſame effect as theſe words, *Relaxaſſe.*

(a) *Flet.vb.ſup.*

Bract.li.4.fo.308.Fle.vb.ſup. 9.H.6.35.24.E.3.27. 13.H.4.Entr.congeab.57.

27 H.8.29.of an vſe.34.H.6. 44.of an attaint.3.E.3.38. 21.E.4.81.Pl.Com.Delamereſoſs.

8.E.4.3.21.E.4.2.

11.H.7.4.20.H.7.29. 8.E.4.3.

50.E.3.24. 32.E.3.Tit.Seiſeſin.102.

ſhall be taken moſt ſtrongly againſt himſelfe, and ſo in the caſe aforeſayd, where the Debtor is made Executor.

¶ Totum ius, titulum, & clameum. **But note, that** Ius **or right** in generall ſignification includeth not only a right for the which a Writ of right doth lie, but alſo any title or claime either by force of a Condition, Mortmaine or the like, for the which no action is giuen by Law, but only an entrie.

Section 446.

¶ Item ceux parolx q̃ ſont communement mis en tielx faits de releases, &c. (quæ quouiſmodo in futurum habere potero) ſont ſicome voides en le ley, car nul droit paſſa per vn releas, forſque le droit que le releſſor ad al temps de le releas fait, Car ſi ſoit pier & fits, & le pier ſoit diſſeiſie, et le fits (viuant ſon pier) releſſa per ſon fait a le diſſeiſor, tout le droit que il ad, ou auer puiſſoit, en meſmes les tenemẽts ſans clauſe de garrantie, &c. et puis le pier morust, &c. le fits poit loyalment enter ſur la poſſeſſion le diſſeiſor, pur ceo que il nauoit droit en la terre en la vie ſon pier, mes le droit diſcendiſt a luy per diſcent apres le releas fait, p̃ le mort ſon pere, &c.

ALſo theſe words which are commonly put in ſuch Releaſes, ſ. (*quæ quouiſmodo in futurum habere potero*) are as voide in Law, for no right paſſeth by a Releaſe, but the right which the Releaſor hath at the time of the Releaſe made. For if there Father and Sonne, and the Father bee diſſeiſed, and the Sonne (liuing his Father) releaſeth by his deed to the diſſeiſor all the right which he hath or may haue in the ſame tenements without clauſe of warrantie, &c. and after the Father dieth, &c. the Sonne may lawfully enter vpon the poſſeſſion of the Diſſeiſor, for that hee had no right in the land in his fathers life, but the right diſcended to him after the Releaſe made by the death of his Father, &c.

¶ NOte, a man may haue a preſent right, though it cannot take effect in poſſeſſion, but in futuro.

As hee that hath a right to a reuerſion or remaynder, and ſuch a right hee that hath it, may preſently releaſe: But here in the caſe which Littleton puts where the Sonne releaſe in the life of his father, this releaſe is void (a) becauſe hee hath no right at all at the time of the releaſe made, but all the right was at that time in the Father, but after the deceaſe of the Father, the Sonne ſhall enter into the Land againſt his owne Releaſe.

(a) *Britton fol.*101. 17.*E.*3.67. 42.*E.*3.21. 10.*H.*6.4. 25.*Aſſ.*7. 27.*E.*3.*extension* 130.

The Baron make a Leaſe for life and dieth, the Releaſe made by the wife of her Dower to him in reuerſion is good, albeit ſhee hath no cauſe of Action againſt him in præſenti.

16.*E.*3.*barre* 245. *Moor caſe* 5.*part. fol.*70.71.

¶ *Sans clauſe de garrantie.* **For if there** be a warrantie annexed to the releaſe, then the Sonne ſhall be barred. For albeit the releaſe cannot barre the right for the cauſe aforeſaid, yet the warrantie may rebutt, and barre him, and his heires of a future right which was not in him at that time: and the reaſon (which in all caſes is to be ſought out) wherefore a warrantie being a Couenant reall ſhould barre a future right, is for auoyding of circuitie of action (which is not fauoured in Law; as he that made the warrantie ſhould recouer the Land againſt the Tertenant, and heby force of the warrantie to haue as much in value againſt the ſame perſon: yet is there a diuerſitie betweene a warrantie and a Feoffment, (b) for if there be Grandfather, Father, and Sonne, and the Father diſſeiſeth the Grandfather, and make a feoffment in

20.*H.*6.29.

(b) 39.*H.*6.43. 21.*E.*4.81. 15.*E.*4.*tit. entr. cong.*21. 9.*H.*7.2.*b.* 2.*E.*3.38.

10.E.2.*confirmation* 24. 8.E.2.*gar.*62. 11.H.4.33. 43.E.3.17. 42.E.3.24. *per Finchden.* 17.E.3.67. *Lib.*1.*fol.*112.113. *in Albanies caſe.*

in fee, the Grandfather dieth, the Father againſt his owne feoffment ſhall not enter, but if he die, his ſonne ſhall enter. and ſo note a diuerſitie betweene a Releaſe a Feoffment, and a warrantie. a Releaſe in that caſe is voide; a Feoffment is good againſt the feoffor, but not againſt his heire, a warrantie is good both againſt himſelfe and his heires.

And here are three diuerſities worthy of obſeruation, viz. Firſt, betweene a Power or an Authoritie, and a Right. Secondly, betweene Powers and Authorities themſelues. Thirdly, betweene a Right and a Poſſibilitie.

As to the firſt, if a Man by his laſt will deuiſeth that his Executors ſhall ſell his Land, and dieth, if the Executors releaſe all their right and title in the Land to the heire, this is void, for that they haue neither right nor title to the Land, but only a bare Authoritie, which is not within Littletons caſe of a Releaſe of a right. And ſo it is if ceſty que vſe had deuiſed that his feoffees ſhould haue ſold the Land. Albeit they had made a feoffment ouer yet might they ſell the vſe, for their Authoritie in that caſe is not giuen away by the Liuerie.

15.H.7.11.

As to the ſecond there is a diuerſitie betweene ſuch Powers or Authorities as are only to the vſe of a ſtranger, and nothing for the benefit of him that made the releaſe (as in the caſe before) and a Power or Authoritie which reſpecteth the benefit of the Releaſor, as in theſe vſuall powers of reuocation, when the feoffor, &c. hath a power to alter, change, determine, or reuoke the vſes (being intended for his benefit) he may releaſe, & where the eſtates before were defeaſible, he may by his releaſe make them abſolute, and ſeciude himſelfe from any alteration or reuocation, as it hath beene reſolued, which diuerſitie you may reade in (m) Albanies caſe.

(m) *Lib.*i. *Albanies caſe, vbi ſupra.* *Lib.*5.*Hoes caſe* 70.71. 10.H.6.4.

As to the third, before Judgement the Plaintife in an Action of debt releaſeth to the baile in the Kings Bench all demaunds, and after Judgement is giuen, this ſhall not barre the Plaintife to haue Execution againſt the baile, becauſe at the time of the releaſe hee had but a meere poſſibilitie, and neither Ius in re, nor Ius ad rem, but the dutie is to commence after vpon a contingent, and therefore could not be releaſed preſently. So if the Conuſee of a Statute, &c. releaſe to the Conuſor all his right in the Land, yet afterwards hee may ſue Execution, for he hath no right in the land till Execution, but only a poſſibilitie, and ſo haue I knowne it adiudged.

25.*Aſſ.*p.7. 27.E.3. *execution* 230. *paſch.*38.*Eliz. Rot.* 321. *inter Borough & Gray.*

Sect. 447.

49.E.3.28.

¶ DE *tout le droit.* This muſt be intended of a bare right, and not of a releaſe of a right, whereby any eſtate paſſeth, as to a Leſſee for yeares, &c. as ſhall bee ſaid hereafter Alſo it muſt bee intended of a Releaſe of a right of freehold at the leaſt, and not to a right for any tearme for yeares or chattle reall, as if Leſſee for yeares bee ouſted, and hee in the reuerſion diſſeiſed, and the Diſſeiſor maketh a Leaſe for yeares, the firſt Leſſee may releaſe vnto him. All which is implyed in the firſt &c. Alſo in ſome caſe a releaſe of a right made to one that hath neither freehold in Deed, nor freehold in Law is good and auailable in Law, (c) as the Demaundant may releaſe to the vouchee, and yet the vouchee hath nothing in the land, but the reaſon of that is for that when the vouchee entreth into the warrantie, he becommeth Tenant to the Demandant, and may render the Land to him, in reſpect of the priuitie, but an eſtranger cannot releaſe to the vouchee becauſe In rei veritate, he is not tenant of the Land.

(c) 7.E.4.13. 20.H.6.29. 3.H.7.41. 28.E.3.12. 8.H.4.5. 5.E.3.36. 5.E.3.46. *Vide Sect.*430.492.

¶ Item en releaſes de tout le droit que home ad en certein terres, &c. il couient a celuy a que le releas eſt fait en aſcun cas, que il ad le franteneſt en les terres en fait, ou en ley, al temps de releas fait, &c. car en cheſcun cas lou celuy a que le releas eſt fait ad franktenement en fait, ou franktenement en ley, al temps del releas, &c. donque le releas eſt bone.

ALſo in Releaſes of all the right which a man hath in certaine lands, &c. it behooueth him to whom the Releaſe is made in any caſe that hee hath the freehold in the Lands, in Deed, or in Law at the time of the Releaſe made, &c. for in euery caſe where he towhom the Releaſe is made hath the freehold in Deed or in Law at the time of the Releaſe, &c. there the Releaſe is good.

(d) And

(d) And ſo it is if the Tenant alien hanging the Præcipe, the releaſe of the Demandant to the Tenant to the Præcipe is good, and yet he hath nothing in the land. (d) 10.E.4.14. 12.Aſſ.p.41.

In time of vacation an Annuity, that the perſon ought to pay may be releaſed to the Patron in reſpect of the priuity, but a Releaſe to the Ordinary only ſeemeth not good, becauſe the Annuity is temporall. 8.E.3.21. 46.E.3.6.b. 8.H.6.23. 21.H.7.41.

If a Diſſeiſor make a Leaſe for life, the Diſſeiſee may releaſe to him, for to ſuch a Releaſe of a bare right there needs no priuity as ſhall be ſaid hereafter. But if the Diſſeiſor make a Leaſe for yeares, the Diſſeiſee cannot releaſe to him, becauſe he hath no eſtate of Freehold. And yet in ſome caſe a right of Freehold ſhall drowne in a chattell, as if a Feme hath a right of Dower ſhe may releaſe to the Gardein in Chiualrie, and her right of Freehold ſhall drowne in the chattle, becauſe the writ of Dower doth lye againſt him, and the heire ſhall take aduantage of it. And it is to be obſerued, that by the ancient maxime of the Common Law a Right of entrie, or a Choſe in action cannot be granted or tranſferred to a ſtranger, and thereby is auoyded great oppreſſion, inſurie and iniuſtice. Nul charter, nul vende, ne nul done vault perpetualment ſi le donor neſt ſeiſie al temps de contracts de 2.droits.s.del droit de poſſeſsion, & del droit del proprietie. And therefore well ſaith Littleton, that hee to whom a Releaſe of a right is made muſt haue a freehold. *Mirror.ca.2.§.17.*

For the better vnderſtanding of tranſferring of naked rights to lands or tenements either by Releaſe, Feoffment, or otherwiſe, it is to be knowne, that there is Ius proprietatis, a right of ownerſhip, Ius poſſeſsionis a right of ſeiſin or poſſeſſion, and Ius proprietatis & poſſeſsionis, a right both of propertie and poſſeſſion: and this is anciently called Ius duplicatum, or Droit droit. For example, if a man be diſſeiſed of an acre of land, the Diſſeiſee hath Ius proprietatis, the Diſſeiſor hath Ius poſſeſsionis, and if the Diſſeiſee releaſe to the Diſſeiſor, hee hath Ius proprietatis & poſſeſsionis. And regularly it holdeth true, that when a naked right to land is releaſed to one that hath Ius poſſeſsionis, and another by a means title recouer the land from him, the right of poſſeſſion ſhall draw the naked right with it, and ſhall not leaue a right in him to whom the Releaſe is made. For example, if the heire of the Diſſeiſor being in by deſcent A. doth diſſeiſe him, the Diſſeiſee releaſe to A. now hath A. the meere right to the land. But if the heire of the Diſſeiſor enter into the land, and regaine the poſſeſſion, that ſhall draw with it the meere right to the land, and ſhall not regaine the poſſeſſion only, and leaue the meere right in A. but by the recontinuance of the poſſeſſion, the meere right is therewith veſted in the heire of the Diſſeiſor. *Mirror vbi ſupra. Bracton, lib.2 fo.32. Britton fo.89.121. Bracton, lib.5.fo.372.*

But if the Donee in tayle diſcontinue in fee, now is the reuerſion of the Donor turned to a naked right, if the Donor releaſe to the Diſcontinuee and die, and the iſſue in taile doth recouer the land againſt the Diſcontinuee, he ſhall leaue the reuerſion in the Diſcontinuee, for the iſſue in taile can recouer but the eſtate taile only, and by conſequence muſt leaue the reuerſion in the Diſcontinuee, for the Donor cannot haue it againſt his releaſe: but if the Diſſeiſee enter vpon the heire of the Diſſeiſor, and infeoffe A. in fee, and the heire of the Diſſeiſor recouer the whole eſtate that ſhall draw with it the meere right and leaue nothing in the Feoffee. Nota the diuerſitie. Another diuerſitie is obſeruable when the naked right is precedent before the acquiſition of the defeaſible eſtate, for there the recontinuance of the defeaſible eſtate ſhall not draw with it the preceding right. (e) As if the Diſſeiſee diſſeiſe the heire of the Diſſeiſor, albeit the heire recouer the land againſt the Diſſeiſee, yet ſhall hee leaue the preceding right in the Diſſeiſee. So if a woman that hath right of Dower diſſeiſe the heire, and he recouer the land againſt her, yet ſhall he leaue the right of Dower in her. (e) 5.Aſſ.1.10.Aſſ.16. 50.E.3.7.4 E.3.Eſtopp.133. 30.Aſſ.5.11.E.3.Entrie,56. 12.Aſſ.41. 27.E.3.84.488.

Another diuerſity is to be noted, when the meere right is ſubſequent, and tranſferred by act in Law, there albeit the poſſeſſion be recontinued, yet that ſhall not draw the naked right with it, but ſhall leaue it in him; as if the heire of the diſſeiſor bee diſſeiſed, and the Diſſeiſor infeoffe the heire apparant of the diſſeiſee being of full age, and then the Diſſeiſee dyeth, and the naked right diſcend to him, and the heire of the Diſſeiſor recouer the land againſt him, yet doth he leaue the naked right in the heire of the Diſſeiſee. So if the Diſcontinuee of Tenant in taile infeoffe the iſſue in taile of full age, and Tenant in tayle die, and then the Diſcontinuee recouer the land againſt him, yet he leaueth the naked right in the iſſue. (e) But if the heire of the Diſſeiſor be diſſeiſed, and the Diſſeiſee releaſe to the Diſſeiſor vpon condition, if the Condition be broken, it ſhall reueſt the naked right. And ſo if the Diſſeiſee had entred vpon the heire of the Diſſeiſor, and made a feoffment in fee, vpon condition, if he entred for the Condition broken, and the heire of the Diſſeiſor entred vpon him, the naked right ſhould be left in the Diſſeiſee. But if the heire of the Diſſeiſor had entred before the Condition broken, then the right of the Diſſeiſee had beene gone for euer. But now let vs heare what Littleton ſaith. 23.H.8.tit. Reſtore al action Br.5. 50.E.3.7.Vid.Sect.475.475. 478.487. (e)38.E.3.16. 9.H.7.24.

Sect.448.

¶ HEre Littleton diſcribeth what a freehold in Law is, for hee had ſpoken before in many places of freeholds in Deed. This Bracton calleth (a) Ciuilem & naturalem poſſeſſionem ſeu ſeiſinam. The naturall ſeiſin is the freehold in deede, and the Ciuill the freehold in Law.

(a) *Bract. lib.4.fo.206.236. Britton, fo.83.b. Flet. lib.3. co.15. Vid.Sect.680.*

If a man leuie a fine to a man Sur conuſance de droit come ceo que il ad de ſon done, or a Fine Sur conuſance de droit tantum, theſe be feoffments of Record, and the Conuſee hath a freehold in Law in him before hee enteretly.

42.E.3.20. 10.H.6.14. 17.E.3.78. 2.E.3.33.

Vpon an exchange the parties haue neither freehold in Deed nor in Law before they enter, ſo vpon a partition the freehold is not remoued vntil an entrie.

11.H.4.61. 21.H.7.12.

(g) If Tenant for life by the agreement of him in the reuerſion ſurrender vnto him; he in the reuerſion hath a freehold in law in him before he enter. (h) Vpon a liuery within the view no freehold is veſted before an entrie.

(g) 32.E.3. *barre* 262. 41.*Aſſ.* 13.H.4. *ſurrender*, 10.

(h) 38.E.3.12.

¶ FRanktenement en ley eſt, ſi come vn home diſſeiſit vn auter, et moruſt ſeiſie, per q̄ les tenements diſcendōt a ſon fits, coment q̄ ſon fits ne entra pas les tenements, vncor̄ il ad vn frankt̄nt en ley, quel per force de diſcent eſt iect ſur luy, et pur ceo vn releas fait a luy, iſſint eſteant ſeiſi de frāktenement en ley, eſt aſſets bon, et ſil pr̄et feme iſſint eſteant ſeiſie en ley, coment que il ne vnque enter pas en fait. & moruſt, ſon feme ſerra endow.

FReehold in Law is, as if a man diſſeiſe another and dieth ſeiſed, whereby the tenements diſcend to his ſonne albeit that his ſonne doth not enter into the tenements, yet hee hath a freehold in law, which by force of the diſcent is caſt vpon him, and therefore a releaſe made to him ſo being ſeiſed of a freehold in Law is good enough, and if he taketh wife being ſo ſeiſed in law although he neuer enter in deed and dieth, his wife ſhal be endowed.

If a man doth bargaine and ſell land by Deed indented and inrolled, the freehold in Law doth paſſe preſently. And ſo when vſes are raiſed by Couenant vpon good conſideration.

17.E.3.77. 18.E.4.25.

If a Tenant in a Præcipe being ſeiſed of lands in fee, confeſſe himſelfe to be a Villeine to an eſtranger, and to hold the land in Villenage of him, the eſtranger by this acknowledgement is actually ſeiſed of the freehold and inheritance without any entrie. But let vs returne to Littleton.

Sect. 449.

¶ ITem en aſcuns caſes de releaſes de tout le droit, coment que celuy a que le releaſe eſt fait nad riens en le frankteneme̅t en fait, ne en ley, vncore le releaſe eſt aſſets bone. Sicom̄ le diſſeiſor leſſa la terre que il ad per diſſeiſin a vn auter pur terme de ſa vie, ſauant le reuerſion a luy, ſi le diſſeiſee ou ſon heire releſſa al diſſeiſor tout le droit, &c. cel

ALſo in ſome caſes of releaſes of all the right, albeit that he to whom the releaſe is made hath nothing in the freehold in Deede nor in Law, yet the releaſe is good enough. As if the diſſeiſor letteth the land which hee hath by diſſeiſin to another for terme of his life ſauing the reuerſion to him, if the diſſeiſee or his heire releaſe to the diſſeiſor all the right, &c. this

cel releaſe eſt bone, pur ceo que celuy a que le releas eſt fait auoit ẽ luy vn reuerſion al temps del releaſe fait.

releaſe is good, becauſe hee to whom the releaſe is made had in law a reuerſion at the time of the releaſe made.

¶ HEre Littleton addeth a limitation to the next precedent Section, viz. that a releaſe of all the right may be good to him in reuerſion, albeit he hath nothing in the Freehold, becauſe he hath an eſtate in him. *7.E.4.13. 14.H.4.32.b. 41.E.3.17. 49.E.3.28. Caſe vis.*

¶ *Tout le droit, &c.* Of Title, Intereſt, Demand, or the like, and ſo it is if he in the reuerſion hath an eſtate for life or in taile in reuerſion as in the like caſe it appeareth in the next Section.

Sect. 450.

¶ EN meſme le maner eſt, lou leas eſt fait a vn home pur terme de vie, le remainder a vn auter pur terme de auter vie, le remainder a le tierce en le taile, le remainder a le quart en fee, ſi vn eſtranger que droit ad a la terre, releſſa tout ſon droit a aſcun ď eux en l'remainder, tiel releas eſt bone, pur ceo que cheſcun de eux ad vn remainder en fait veſtue en luy.

IN the ſame manner it is where a Leaſe is made to a man for term of life, the remainder to another for terme of another mans life, the remainder to the third in taile, the remainder to the fourth in fee, if a ſtranger which hath right to the land releaſeth all his right to any of them in the remainder, ſuch releaſe is good, becauſe euery of them hath a remainder in Deed veſted in him.

¶ HEre is another limitation that a Releas is good to him in the remainder, albeit hee hath nothing in the freehold in poſſeſſion, becauſe he hath an eſtate in him, as hath beene ſaid. In both theſe limitations it is to be obſerued, that the ſtate which maketh a man Tenant to the Præcipe is ſaid to be the freehold as here the ſtate of Tenant for life, and not the reuerſion in fee. *7.E.4.13. 41.E.3.17. 7.E.3.54.54. 18.E.2. Tit. Entries 74. 3.E.2.tit. Entries 7. F.N.B. 207. E.*

Sect. 451.

¶ MEs ſi le tenant a terme de vie ſoit diſſeiſie, & puis celuy q̃ ad droit (eſteant le poſſeſſion en le diſſeiſor) releſſe a vn de eux a que le remainder fuit fait tout ſon droit, cel releas eſt void pur ceo que il nauoit vn remainder en fait al temps de releas fait, forſque tantſolement vn droit del remainder.

BVt if the tenant for terme of life be diſſeiſed, & afterwards he that hath right (the poſſeſſion being in the diſſeiſor) releaſeth to one of them to whom the remainder was made all his right, this releaſe is voide, becauſe hee had not a remainder in Deed at the time of the releaſe made, but only a right of a remainder.

¶ *Forſque tantſolement vn droit del remainder.* For a releaſe of a right to one that hath but a bare right regularly is voyde, for as Littleton hath before ſaid, he to whom a releaſe is made of a bare right in lands and tenements muſt haue either a freehold in Deed or in Law in poſſeſſion, or a ſtate in remainder or reuerſion in fee or fee taile or for life. *Vid. Sect. 454.*

Section 452.

¶ By this it appeareth, That as a releaſe made of a right to him in reuerſion or remainder, ſhall ayd and benefit him that hath the particular eſtate for yeares, life, or eſtate Tayle, ſo a releaſe of a right made to a particular Tenant for life, or in Taile, ſhall ayd and benefit him or them in the remainder.

¶ E Tnota, Que cheſcun releas fait a celuy, que ad vn reuerſion ou vn remainder en Fait, ſeruera et aidera celuy que ad le Franktenement, auxybien come a celuy a que le releaſe fuit fait, ſi le Tenant auoit le releaſe en ſon poign̄ de pleader.

And note that euerie Releaſe made to him which hath a Reuerſion or a Remainder in Deed, ſhall ſerue and ayde him who hath the Freehold, as well as him to whom the Releaſe was made, if the Tenant hath the releaſe in his hand to plead.

If two Tenants in Common of land graunt a Rent charge of 40.s. out of the ſame, to one in fee, and the Grantee releaſe to one of them, this ſhall extinguiſh but twentie ſhillings, for that the Graunt in iudgement of Law was ſeuerall. So it is if two men be ſeiſed of ſeuerall Acres, and grant a rent vt ſupra. But there is a diuerſitie betweene ſeuerall eſtates in ſeuerall lands, and ſeuerall eſtates in one land, for if one be Tenant for life of lands, the reuerſion in fee ouer to another, if they two ioine in a grant of a rent out of the Lands, if the grantee releaſeth either to him in the reuerſion, or to Tenaunt for life, the whole rent is extinguiſhed, for it is but one rent, and iſſueth out of both eſtates, and ſo note the diuerſitie.

Sect. 453.

¶ E Ten meſme le manner eſt lou vn Releaſe ẽ fait al Tenaunt pur terme de vie, ou al Tenant en le Taile, ceo vſera a eux en le reuerſion, ou a eux en le Remainder, auxybien come al Tenaunt de Franktenement, et aueront auxy grand aduauntage de cel, ſils ceo poyent monſtre.

In the ſame it is, where a Releaſe is made to the Tenant for life, or to the Tenant in Tayle, this ſhall enure to them in the reuerſion, or to them in the remainder, as well as to the Tenant of the Freehold, and they ſhall haue as great aduantage of this, if they can ſhew it.

*H.*6.8. ¶ *Si le Tenaunt ad le fait en ſon poigne a pleader.* And ſo it is in both caſes; for albeit hee in the reuerſion or remainder is a ſtranger to the Deed when the releaſe is made to the Tenant, and the Tenant for life or in Taile is a ſtranger to the Deed, when the Releaſe is made to him in reuerſion or remainder, yet ſeeing they are priuies in eſtate, none of them in pleading ſhall take benefit thereof, without ſhewing the ſame in Court, which is worthie to be obſerued.

¶ *Sils ceo poient monſtre.* The one cannot plead the releaſe made to the other, without ſhewing of it, for that they are priuie in eſtate, as hath beene ſayd. The reſidue of theſe two Sections needs no explication.

Sect.

Section 454.

¶ Item ſi ſoit Seignior et tenant, et le Tenaunt ſoit diſſeiſie, et l'ſeignior releſſa al Diſſeiſee tout le droit que il auoit en l'ſeigniorie, ou en le terre, cel releaſe eſt bone, et le Seigniorie eſt extinct, et ceo eſt pur cauſe del priuity, que eſt perenter le Seigniour, et le Diſſeiſee, car ſi les auers l'diſſeiſee ſoient priſ, et de eux le Diſſeiſee ſuiſt vn Repleuin enuers le Seignior, il compellera le Seignior dauowrer ſ luy, car ſil auower ſur le Diſſeiſor, donques ſur l'matter monſtre lauowry abatera car le Diſſeiſee eſt Tenant a luy en droit et en la Ley.

ALſo if there bee Lord and Tenant, and the Tenant be diſſeiſed, and the Lord releaſeth to the Diſſeiſee all the right which he hath in the Seigniorie or in the Land, this Releaſe is good, and the Seigniorie is extinct: And this is by reaſon of the priuitie which is betweene the Lord and the Diſſeiſee: for if the Beaſts of the Diſſeiſee be taken, and of them the Diſſeiſee ſueth a Repleuin againſt the lord, hee ſhall compell the Lord to auow vpon him, for if hee auow vpon the diſſeiſor, thē vpō the matter ſhewen the Auowrie ſhall abate, for the Diſſeiſee is Tenant to him in right and in Law.

¶ HEreupon may bee collected and obſerued two diuerſities. Firſt, Betweene a Seigniorie or Rent ſeruice, and a Charg: for a Seigniorie or Rent ſeruice may be releaſed and extinguiſhed to him that hath but a bare right in the Land. And the reaſon hereof is in reſpect of the priuitie betweene the Lord and the Tenaunt in right, for he is not only as tenant to the Auowrie, but if hee die his heire within age, he ſhall be in ward; and if of full age, hee ſhall pay reliefe, and if hee die without heire, the Land ſhall eſcheat. But there is no ſuch priuitie in caſe of a Rent-charge, for there the charge only lieth vpon the Land

The ſecond diuerſitie is betweene a Seigniorie and a bare right to land: for a Releaſe of a bare right to Land to one that hath but a bare right, is voyd, as hath been ſayd. But herein the caſe of our Author, a releaſe of a ſeigniorie to him that hath but a right, is good to extinguiſh the Seigniorie. *Vi. Sect.* 451.

Nota, a Seigniorie, Rent, or Right, either in præſenti, or in futuro, may be releaſed ſine manner of wayes, and the firſt three without any priuitie. Firſt, To the Tenant of the Freehold in Deed or in Law. *Li.* 10. *fo.* 48. *Lampets caſe.*

Secondly, To him in remainder. Thirdly, To him in the reuerſion. The other two in reſpect of Priuitie, as firſt, here the Lord releaſeth his Seigniorie to the Tenant being diſſeiſed, hauing but a right, and no eſtate at all. Secondly, in reſpect of the priuitie, without any eſtate or right, as by the Demandant to the Vouchee, or Donor to the Donee, after the Donee hath diſcontinued in fee, as appeareth hereafter in this Chapter. *Sect.* 455.

¶ *Per cauſe de priuitie, &c.* **See for this word** (Priuitie) Sect. 461.

¶ *Il compellera le Seignior dauowrer ſur luy, &c.* **This is regularly** true, but if the Lord hath accepted ſeruices of the Diſſeiſor, then the Diſſeiſee cannot enforce the Lord to auow vpon him, though his beaſts be taken, &c. 20. *H.*6. 9 *b.* 41. *E.* 3. 26. 48 *E.* 3. 9. 2. *E.* 4. 6. *a.*

If a man hath title to haue a Writ of Eſcheat, if he accept homage or fealtie of the Tenaunt, he is barred of his Writ of Eſcheat: but if he accept rent of the Tenant, that is no bar to him, for it may be received by the hands of a Bayliffe. (d) But ſome doe hold, that if there be Lord and Tenant, and the Tenant be diſſeiſed, and the Diſſeiſee die without heire, the Lord accepts rent by the hands of the Diſſeiſor, this is no barre to him. Contrarie it is if he auow for the Rent in Court of Record, or if he take a corporall ſeruice, as Homage or Fealtie, for the diſſeiſor is in by wrong: but if the Lord accept the rent by the hands of the heire of the Diſſeiſor, or of his Feoffee, becauſe they be in by title, this ſhall barre him of his Eſcheat, which is to bee 31. *E.* 1. *Diſcent* 17. 26. *E.* 3. 72. 4. *H.*6. 21. *F. N. B.* 144. *a.* (d) 7. *E.* 6. *tit. Eſcheat Br.* 18

be vnderſtood of a diſcent or feoffement, after the title of Eſcheat accrued: (c) for if the Diſſeiſor make a Feoffement in Fee, or die ſeiſed, and after the Diſſeiſee die without heire, then there is no Eſcheat at all, becauſe the Lord hath a Tenant in by Title. And when Littleton wrote, the Diſſeiſee in the caſe here put, ſhould haue compelled the Lord to haue auowed vpon him, as Littleton holdeth. But now this is altered by a latter Stat. of (f) 21. H. 8. for whereas by Fines, Recoueries, Grants, and ſecret Feoffements, &c. made by Tenaunts to perſons vnknowne, the Lords were put from knowledge of their Tenants, vpon whom by order of law they ſhould make their Auowries, &c. It is by that Statute enacted, That if the Lord ſhall diſtreyne vpon the Lands or Tenements holden, &c. that he may auow, &c. vpon the ſame Lands, &c. as in Lands, &c. within his Fee or Seigniorie, &c. without naming of any perſon certaine, and without making auowrie vpon a perſon certaine. Vpon which Statute theſe foure poynts are to be obſerued: Firſt, That the Lord hath ſtill election either to auow according to the Common Law, by force of the Statute, by reaſon of this word (May.) Secondly, Albeit the penuleſw of the Act be generall, yet all neceſſarie incidents are to be ſupplied, and the ſcope and end of the Act to be taken: and therefore though he need not to make his auowrie vpon any perſon certaine, yet he muſt alledge Seiſin by the Lands of ſome Tenant in certaine, within fortie yeares. Thirdly, That if the Auowrie be made according to the Statute, euerie Plaintife in the Repleuin or ſecond deliuerance, be he Termor or other, may haue euery anſwer to the Auowrie that is ſufficient; and alſo haue ayd, and euerie other aduantage in Law, (diſclaimer onely except) for diſclaime he cannot, becauſe in that caſe the auowrie is made vpon no certaine perſon. Fourthly, where the words of the Statute be, If the Lord diſtreyne vpon the Lands and Tenements holden, yet if the Lord come to diſtreyne, and the Tenant enchaſe his Beaſts which were within the view, out of the Land holden, and there the Lord diſtreyne, albeit the diſtreſſe be taken out of his Fee and Seigniorie in that caſe, yet is it within the ſaid Statute, for in iudgement of Law the diſtreſſe is lawfull, and as taken within his Fee and Seigniorie, and this Statute being made to ſuppreſſe Fraud, is to be taken by Equitie.

(c) 7. H. 4. 17. 3. R. 2. Entr. con. 38. 2. H. 4. 8. 6. H. 7. 9. Vi. Sect. 556.

(f) 21. H. 8. ca. 19.

Li. 9. fo. 136. Aſcoughs caſe.

27. H. 8. fo. 4. 32. H. 8. ca. 2. Lib. 9. fo. 36. Bucknals caſe.

34. H. 8. Auowrie Br. 113. 27. H. 8. 4. & 20. Bucknals caſe vbi ſupra.

Li. 9. fo. 32. in caſe Dauowrie. 44. E. 3. 20. 11. H. 7. 4. 21. H. 7. 40. 34. H. 6. 18. 16. E. 4. 10. 6. R. 2. Roſcous 32.

Sect. 455.

¶ Item ſi terre ſoit done a vn home en Taile, reſeruant al Donor et a ſes heires vn certaine rent, ſi l' Donee ſoit diſſeiſie, et puis le Donor releſſa al Donee et a ſes Heires, tout le droit que il auoit en la Terre, et puis le Donee enter en la terre ſur le Diſſeiſor, en ceſt caſe le rent eſt ale, pur ceo que le Diſſeiſee al temps de releas fait, fuit tenant en droit, et en la Ley al Donor, et auowe a fine force couient de eſtre Fait ſur luy per le Donor pur le rent aderere, &c. Mes vncore rien de droit d terres, ſ, de le droit, de le reuerſion paſſera per tiel Releaſe, pur ceo que le Donee a que le Releaſe eſt fait, adonque nauoit riens en la Terre forſque tantſolement vn droit, et iſſint le droit del Terre ne puiſſoit adonques paſſer al Donee per tiel Releaſe.

ALſo if Land be giuen to a man in Taile, reſeruing to the Donor and to his heires a certain rent, if the Donee be diſſeiſed, and after the Donor releaſe to the donee and his heires all the right which hee hath in the Land, and after the Donee enter into the Land vpon the Diſſeiſor, in this caſe the Rent is gone, for that the Diſſeiſee at the time of the Releaſe made, was Tenant in Right, and in Law to the Donor, and the Auowrie of Fine force ought to bee made vpon him by the Donor for the rent behind, &c. but yet nothing of the right of the lands, (ſcz.) of the reuerſion, ſhall paſſe by ſuch releaſe, for that the Donee to whom the Releaſe is made, then had nothing in the Land but onely a right, and ſo the right of the Land could not then paſſe to the Donee by ſuch Releaſe.

¶ Si

¶ *Si le donee ſoit diſſeiſie, &c.* This is euident by that which hath beene ſaid. But admit that the Donee maketh a feoffment in fee, and the Donor releaſe vnto him and his heires, all the right in the land, this ſhall extinguiſh the rent, becauſe the Lord muſt auow vpon him, and yet the tenant in taile after the feoffment hath no right in the land. But the reaſon is in reſpect of the priuitie, and that the (m) Donor is by neceſſitie compellable to auow vpon him only, for if hee ſhould auow vpon the diſcontinuee, then it ſhould appeare of his owne ſhewing, that the reuerſion wherennto the rent is incident ſhould bee out of him, and conſequently the auowrie ſhould abate, and ſo was it (n) reſolued Trin. 18. Eliz. in the Court of Common Pleas in Sir Thomas Wiats caſe, which I heard and obſerued. And Littleton ſaith here that in caſe of the Diſſeiſin of fine force, the auowrie muſt be made vpon the Donee.

Vide Sect.454. 1.H.5.tit. grant 43 14.H.4.38.lib.3. fol.29.lib 6.58. Lampets caſe vbi ſupra.

(m) 10.E.3.26.48.E.3.8.b. 31.E.3.*gard.*116.5.& 4-3. 7.E.4 27. 15.E.4.13

(n) *Trin.* 18. Eliz. *Sir Thomas Wiats caſe in Communi Banco.*

¶ *Vncore riens de droit, &c. de reuerſion, &c.* Here the diuerſitie aſſigned betweene the Rent Seruice, and a bare Right to the land appeareth.

Section 456.

¶ EN meſme le manner eſt, ſi leas ſoit a vn pur terme de vie, reſeruant al leſſor et a ſes heires certaine rent, ſi le leſſee ſoit diſſeiſie, et puis leſſor releſſa al leſſee et a ſes heires, tout le droit que il ad en la terre, et apres le leſſee enter, coment que en ceſt cas le rent eſt extinct, vncore rien del droit de la reuerſion paſſera, Cauſa qua ſupra.

IN the ſame manner it is, if a leaſe be made to one for terme of life, reſeruing to the leſſor and to his heires a certaine rent, if the leſſee be diſſeiſed, and after the Leſſor releaſe to the Leſſee and to his heires all the right which he hath in the land, and after the leſſee entreth, albeit in this caſe the rent is extinct, yet nothing of the right of the reuerſion ſhall paſſe, *Cauſa qua ſupra.*

¶ HEreby the diuerſity is made apparant betweene a Releaſe of a Rent Seruice out of Land, and a Releaſe of right to Land in this Section.

Sect. 457.

¶ MES ſi ſoit veray ſeignior et veray tenant, et le tenāt fait vn feoffm̄t en fee, le quel feoffee ne vnque deuient tenant al Seignior, ſi le Seignior releſſa al feoffor tout ſon droit &c. ceſt releas eſt en tout void, pur ceo q̄ le feoffor ad nul droit en la terre et il neſt Tenant en droit al

BVt if there be very Lord & very tenāt, and the tenant maketh a feoffment in fee, the which feoffee doth neuer become tenant to the Lord, if the Lord releaſe to the feoffor all his right, &c. this releaſe is altogether void, becauſe the feoffor hath no right in the Land, and hee is not Tenant in right to the

¶ *Veray Seignior & veray tenant.*

This is to be vnderſtood of a Lord in fee ſimple, and of a Tenant of like eſtate.

Vide Aſcoughes caſe lib 9. fol. 135.136. 20.H 6.9 2.H.4. 24. 12.E.4.2. 26.H.6.anowrie 17. 9.Eliz.Dier 257. 5.H.7.11.7.E.4.24. 20 E.3.anowrie 131.

There bee foure manner of anowries for Rents and Seruices, &c, viz. 1. Super verum tenentem, as in the caſe here put. 2. Super verum tenentem in forma prædicta, as where a Leaſe for life, or a gift in taile bee made, the remainder in fee, 3. vpon one as vpon his tenant by the manor omitting (verie) and this is when the Lord hath a particular eſtate in the Seignorie, and ſo ſhall the Donor vpon

vpon the Donee or Leſſor vpon the Leſſee. 4. Sur le matter en la terre, as within his fee and Seigniorie. As where the tenant by Knights Seruice maketh a Leaſe for life reſeruing a Rent, and die his heire within age, the Gardeine ſhall auow vpon the Leſſee, &c. Super materiam prædictam in terris & tenementis prædictis vt infra feodum & Dominium ſuum.

47.E.3.fol.vltimo. 38.H.6.33.

Seignior, mes tant ſolement tenant quāt al auowry faire, et il ne vnques compellera le Seignior dauower ſur luy, car le Seignior auowera ſur le feoffee ſil voile.

Lord, but only tenant as to make the auowre, and hee ſhall neuer compell the Lord to auow vpon him, for the Lord ſhall auow vpon the feoffee if he will.

21.H.8.cap.19.

Now by the Statute the very Lord may auow, as in Lands within his fee and Seigniorie, without auowing vpon any perſon in certaine.

Here appeareth the diuerſitie betweene a Tenant in Taile, and a Tenant in Fee Simple, for albeit Tenant in Taile make a feoffment in fee, yet the right of the Entaile remaine, and ſhall diſcend to the Iſſue in taile. But when the Tenant in fee ſimple make a feoffment in fee, no right at all remaine of his eſtate, but the whole is tranſferred to the Feoffee.

Alſo the Lord is not compellable in that caſe to auow vpon the Feoffor, but if hee will as Littleton here ſaith, he may auow on the feoffee, but ſo it is not as hath beene ſaid in caſe of tenant in taile.

Note a diuerſity betweene Actions and Acts which concerne the right, and Actions and Acts which concerne the poſſeſſion only. For a Writ of Cuſtomes and Seruices lyeth not againſt the feoffor, nor a releaſe to him ſhall extinguiſh the Seigniory. So if a Reſcous be made an Aſſiſe ſhall not lie againſt the feoffor, and him that made the Reſcous, becauſe the feoffee is Tenant, and in Aſſiſe, the ſurpluſage incroached ſhall bee auoyded. For theſe Actions and Acts concerne the right, but of a ſeiſin, and an auowrie which concerne the poſſeſſion, it is otherwiſe. And if the Lord releaſe to the feoffor this is good betweene them as to the poſſeſſion and diſcharge of the Arrerages, but the feoffee ſhall not take benefit of it, for that, as hath been ſaid, it extendeth not to the right. But the feoffor ſhall plead a Releaſe to the feoffee, for thereby the Seigniorie is extinct, as if Leſſee for life doth waſte, and grant ouer his eſtate, and the Leſſor releaſe to the Grantee, in an Action of waſte againſt the Leſſee, he ſhall plead the releaſe, and yet he hath nothing in the land. And ſo in waſte ſhall tenant in Dower or by the Courteſie in the like caſe, and the vouchee, and the Tenant in a Præcipe after a feoffment made. And ſo in a Contra formam collationis.

4.E.3.22.7.E.3.8.7.E.4.27 29.H.8.tit. auowry. Fr.111. Lib.3.fol.65.66.Pennants caſe.7.H.4.14.

¶ *Le feoffee ne vnques deueigne tenant.* Nota, here an excellent point of Learning, viz. if there bee Lord and Tenant, and the Rent is behind by diuers yeares, and the Tenant make a feoffment in fee, if the Lord accept the Seruice or Rent of the feoffee due in his time, hee ſhall loſe the Arrerages due in the time of the feoffor, for after ſuch acceptance he ſhall not auow vpon the feoffor, nor vpon the feoffee for the Arrerages incurred in the time of the feoffor. But in that caſe if the feoffor dieth, albeit the Lord accept the Rent or Seruice by the hand of the feoffee due in his time, he ſhall not looſe the Arrerages for now the Law compelleth him to auow vpon the feoffee, and that which the Law compelleth him vnto, ſhall not preiudice him.

2.E.4.6.34.H.6.46. 37.H.6.29.H.8.auowrie.

So it is and for the ſame reaſon, if there be Lord, Meſne, and Tenant, and the rent due by the Meſne is behind, and after the Tenant foreiudge the Meſne, and the Lord receiue the Seruices of the Meſne which iſſue out of the Tenancie, he ſhall not be barred of the Arrerages which iſſued out of the Meſnaltie, and ſo if the rent be behind, and the Tenant dieth, the acceptance of the ſeruices by the hand of the heire ſhall not barre him of the Arrerages, for in theſe caſes albeit the perſons be altered, yet the Lord doth accept the ſeruices of him which only ought to doe them.

4.E.3.22.47.E.3.4.

But as long as the feoffor liueth the Lord ſhall not bee compelled to auow vpon the feoffee, vnleſſe he giueth the Lord notice, and tender vnto him all the Arrerages.

21.H.8.cap.19.

But now by the Statute the Lord may auow vpon the Lands ſo holden, as in lands within his Fee or Seigniory without naming of any perſon certaine to bee Tenant of the ſame, and without making of any auowrie vpon any perſon certaine, as hath beene ſaid, which hath much altered the Common Law in the caſes aboueſaid, for the benefit and ſafetie of the Lord.

But yet theſe caſes are neceſſary to bee knowne (for which purpoſe I haue added them) for that the Lord may auow ſtill at the Common Law if he will.

Sect.

Sect. 458.

¶ Auterment eſt lou le veray tenant eſt diſſeiſie, come en le cas auantdit, car ſi le veray tenant que eſt diſſeiſie teigne del Seignior per ſeruice d chiualer, & morust (ſon heire eſteant deins age) le Seignior auera & ſeiſera le garde del heire, & iſſint nauera il my le gard del feoffor que fiſt le feoffment en fee, &c. iſſint il eſt graund diuerſity enter les deux caſes, &c.

OTherwiſe it is where the verie tenant is diſſeiſed, as in the caſe aforeſaid, for if the very tenant who is diſſeiſed, hold of the Lord by Knights Seruice and dieth (his heire being within age) the Lord ſhall haue and ſeize the Wardſhip of the heire, and ſo ſhall he not haue the ward of the feoffor that made the feoffment in fee, &c. So there is a great diuerſitie betweene theſe two caſes.

Of this ſufficient hath bœne ſaid before.

12.H.4.13. 36.E.3.tit gard 10.6.H.7.9. 37.H.6.1. 32. H.6.27.7.E.6.tit.gard

Section 459.

¶ Item ſi vn hõe leſſa a vn auter ſon terre pur terme dans, ſi le leſſor releſſa al leſſee tout ſon droit, &c. deuant que le leſſee auoit enter en meſme le terre per force d meſme l' leas, tiel releas eſt void, pur ceo que le leſſee nauoit poſſ. en la terre al temps del releas fait, mes tantſolement vn droit dauer meſme la terre per force de meſme le leas. Mes ſi le leſſee enter en meſme la terre, & ent eit poſſ. per force de meſme le leas, donque tiel releas fait a luy per le feoffor, ou per ſon heire, eſt ſufficient a luy per cauſe del priuitie, que per force d' leas eſt perenter eux, &c.

ALſo if a man letteth to another his land for tearme of yeares, if the leſſor releaſe to the leſſee all his right, &c. before that the leſſee had entred into the ſame land by force of the ſame leaſe, ſuch releaſe is void, for that the leſſee had not poſſeſſion in the land at the time of the releaſe made, but only a right to haue the ſame land by force of the leaſe. But if the leſſee enter into the land, and hath poſſeſſiõ of it by force of the ſaid leaſe, then ſuch releaſe made to him by the feoffor, or by his heire is ſufficient to him, by reaſon of the priuitie which by force of the leaſe is betweene them, &c.

¶ *Deuant que le leſſee auoit enter, &c.* For before entry the Leſſee hath but intereſſe termini, an intereſt of a terme and no poſſeſſion, and therefore a releaſe which enure by way of inlarging of an eſtate cannot worke without a poſſeſſion, for before poſſeſſion there is no reuerſion, and yet if a tenant for twentie yeares in poſſeſſion make a leaſe to B. for fiue yeares, and B. enter, a releaſe to the firſt leſſee is good, for he had an actuall poſſeſſion, and the poſſeſſion of his Leſſee is his poſſeſſion. And ſo it is if a man make a leaſe for yeares, the remaynder for yeares, and the firſt leſſee doth enter, a releaſe to him in the remaynder for yeares is good to inlarge his eſtate.

49.E.3.28. 33.H.6.8. 37.H.6.18. 21.E.4.37. 4.H.7.10. 15.H.7.14.

22.E.4. Surrender 6.

But if a man make a leaſe for yeares to begin preſently, reſeruing a rent, if before the leſſee doth enter the leſſor releaſeth all the right that hee hath in the land, albeit this releaſe cannot inlarge his eſtate, yet it ſhall in reſpect of the priuitie extinguiſh the rent. And ſo it is if a leaſe be made to begin at Michaelmas, reſeruing a rent, and before the day the leſſor releaſe all the right that hee hath in the land, this cannot enure to

enlarge the eſtate but to extinguiſh the rent in reſpect of the priuitie, as it was reſolued (b) in the Exchequer which I obſerued.

(b) *Mich.*39.&40.*Eliz. in Scaccario, betweene Sir Henry Woodhouſe and Sir William Paſton.*

A man granteth the next auoydance of an Aduowſon to two, the one of them may before the Church become voide releaſe to the other, for although the Grantor cannot releaſe to them to encreaſe their eſtate, becauſe their intereſt is future, and not in poſſeſſion, yet one of them to extinguiſh his intereſt may releaſe to the other in reſpect of the priuity. But after the Church become voide, then ſuch a Releaſe is voide, becauſe then it is (as it were) but a thing in action. And this was reſolued (c) by the whole Court of Common pleas, which I my ſelfe heard and obſerued. And by conſequent in the caſe of Littleton, if a Leaſe for yeares be made to two, albeit the Leſſor before they enter cannot Releaſe to them to enlarge their eſtate, yet one of them may before entrie Releaſe to the other.

(c) *Taſch.*38.*Eliz. in quare impedit for Bennet, verſ. Iueſque de Norwich in Communibanco.*

¶ *Mes tantſolement vn droit,&c.* **Which is not ſo to bee vnderſtood** that hee hath but a naked right, for then he could not grant it ouer, but ſeeing hee hath Intereſſe termini before entrie, he may grant it ouer, albeit for want of an actuall poſſeſſion he is not capable of a Releaſe to enlarge his eſtate.

Pl. Com. 423.

¶ *Mes ſi le leſſee enter en meſme le terre,&c.* **This is euident. And** herein note a diuerſitie betweene a Leaſe for life, and for yeares, for before the Leſſee for yeares enter, a Releaſe cannot be made vnto him, but if a man make a Leaſe for life, the Remainder for life, and the firſt Leſſee dieth, a Releaſe to him in the remainder and to his heires is good before he doth enter to enlarge his eſtate, for that he hath an eſtate of a Freehold in Law in him, which may be enlarged by Releaſe before entrie.

25.*E.*3.53.31.*E.*3. *Confirmat.*14.32.*Aſſ. Pl.*13.

And where our Author ſpeaketh only of a Leſſee for yeares, the ſame law it is of a Tenant by Statute merchant or Staple, or Tenant by Elegit or the like.

Sect. 460.& 461.

21.*H.*6.37.2.*E.*4.6.*b.* 7.*E.*4.27. 8.*E.*4.16. 29.*H.*6. *Releaſe* 6.

¶ By theſe two Sections is to bee obſerued a diuerſitie betweene a Tenant at will and a Tenant at ſufferance, for a releaſe to a Tenant at will is good, becauſe betweene them there is a poſſeſſion with a priuity, but a Releaſe to a Tenant at ſufferance is voyd becauſe he hath a poſſeſſion without priuity. As if Leſſee for yeares hold ouer his terme,&c. a Releaſe to him is voide for that there is no priuity betweene them, and ſo are the bookes that ſpeake of this matter to be vnderſtood.

¶ * *Sed contrariũ tenetur,&c.* **This** is of a new addition, and the booke here cited ill vnderſtood, for it is to be vnderſtood of a Tenant at ſufferance.

¶ *De ſa teſte demeſne occupia.* **Hee** doth not ſay, De ſa teſte

¶ A meſme le maner eſt, come il ſemble, ou leaſe eſt fait a vn home, a tener de l'leſſor a ſa volunt, per force de quel leas le leſſee eit poſſeſſion, ſi le leſſor en ceſt caſe fait vn releas al leſſee de tout ſon droit,&c. ceſt releas eſt aſſets bon pur le priuitie que eſt penter eux, car en vain ſerra ô faire eſtate per vn liuerie de ſeiſin a vn auter, lou il ad poſſeſſion de meſmes les tenements per le leas de meſme celuy deuant,&c.

¶ * Sed contrariũ tenetur, P.2.Ed.4. **ptouts les Juſtices.**

¶ IN the ſame manner it is as it ſeemeth, where a Leaſe is made to a man to hold of the Leſſor at his will, by force of which Leaſe the Leſſee hath poſſeſſion, if the Leſſor in this caſe make a releaſe to the Leſſee of all his right,&c. this releaſe is good enough for the priuity which is betweene them, for it ſhall bee in vaine to make an eſtate by a liuery of ſeiſin to another where he hath poſſeſſion of the ſame land by the leaſe of the ſame mã before,&c.

But the contrarie is holden, *Paſch.*2.*E.*4. by all the Iuſtices.

Sect

demeſn cnt, &c. ſo as this is to bee vnderſtood of a Tenant at ſufferance, viz. where a man commeth to the poſſeſſion firſt lawfully, and holdeth ouer. *Vid. Sect.* 68.

(m) For if a man entreth into land of his owne wrong, and take the profits, his words to hold it at the will of the owner cannot qualifie his wrong, but hee is a Diſſeiſor, and then the Releaſe to him is good, or if the owner conſented thereunto, then hee is a Tenant at will, and that way alſo the Releaſe is good. But there is a diuerſity when one commeth to a particular eſtate in land by the act of the partie, and when by act in Law, for if the Gardein hold ouer, hee is an abator becauſe his intereſt came by act in Law.

(m) *Temps H.*8.*tit. Tenant a volunt, Br.*15. 2.*E.*4.38. 18.*E.*4.25. 39.*E.*3.28. 12.*E.*3.*Aſſ.*86. 11.*E.*3.*ibid.*87. 12.*Aſſ.*21 13.*E.*3.*Aſſ.*92. 28.*Aſſ.*11. 34.*Aſſ.*10. 10.*E.*3.42. 8.*E.*3.63.

*Sect.*461.

¶ Mes lou home de ſa teſte demeſn occupia terrs ou tenements a la volunt celuy que ad le franktenement, & tiel occupier ne claima rien forſq; a volunt, &c. ſi celuy que ad le franktenement voile releaſer tout ſon droit al occupier, &c, tiel Releaſe eſt voide, pur ceo que nul priuity ē perenter eux per leaſe fait al occupier, ne per auter maner, &c.

BVt where a man of his owne head occupieth lands or tenements at the will of him which hath the freehold, and ſuch occupier claimeth nothing but at will, &c. if hee which hath the freehold will releaſe all his right to the occupier, &c. this releaſe is voide, becauſe there is no priuity betweene them by the leaſe made to the occupier, nor by other manner, &c.

Vid. 2. part of the Inſtitutes Marlbr. ca. 16. & 10.*E.*4.9.10.

¶ *Nul priuitye.* Priuitie, is a word common aſwell to the Engliſh, as to the French, and in the vnderſtanding of the Common Law is Fourefoulde. *Old N. B.* 117.137. *Lib.* 3.*fo.* 23. *Walkers caſe. Lib.* 4.*fo.* 123.124. *Vid. Sect.* 454.

1 As Priuies in Eſtate, whereof Littleton here ſpeaketh, as betweene the Donor and Donee, Leſſor and Leſſee, which priuitie is euer immediate.

2 Priuies in Blood, as the heire to the anceſtor, or betweene Coparceners, &c.

3 Priuies in Repreſentation, as Executors, &c. to the Teſtator,

And fourthly, Priuities in Tenure, as the Lord and Tenant, &c. which may bee reduced to two generall heads, Priuies in Deed, and Priuies in Law.

*Sect.*462.&463.

¶ Item ſi home enfeoffe auters hōes de ſa terre ſur confidence, et al entent de performer ſa darreiñ volunt, et le feoffor occupiaſt meſme la terre a le volūt de ſes feoffees, et puis les feoffees releſſont per lour fait a lour feoffor tout lour droit, &c. ceo ad eſte vn queſtion, ſi tiel releas ſoit bon ou non. Et aſcūs ont dit, q̄ tiel releas

ALſo if a man enfeoffe other men of his land vpon confidence, and to the intent to performe his laſt will, & the feoffor occupieth the ſame land at the will of his feoffees, and after the feoffees releaſe by their deed to their feoffor all their right, &c. this hath beene a queſtion if ſuch releaſe be good or no. And ſome haue ſaid, that

¶ HEre is a queſtion moued, and the reaſons of both ſides ſhewed, and as it hath beene obſerued, the latter opinion is the better, being Littletons owne opinion. 12.*E.*4.12.*b.* 15.*E.*4. 9.*H.*7.25. *Vid. Sect.* 302. 176.340.

¶ *Il ſerra entendue per la ley que le feoffor doit maintenant occupie la terre a la volunt de les feoffees.* For intendments of Law mentioned by our Author, See the Sections in the margent. 4.*E.*4.3.*b.* 9.*H.*7.*fo. vltimo.* 15.*H.*7.2.*b.* 14.*H.*8.9.*a.*

Here is to bee obſerued the intendment of Law, that when a feoffment is made to a future vſe, as to the performance of his laſt will the feoffees ſhall bee ſeiſed to the vſe *Sect.* 99.100.110.367.377. 393.406.440. 35.*H.*6. *Subpœna* 22. 15.*H.*7.12.*b.* 37.*H.*6.36. 11.*H.*4.52. 7.*H.*4.22. 1.*Mar.*112. *Dier.*

vſe of the Feoffor and of his heires in the meane time.

Ipſe etenim Leges cupiunt vt iure regantur.

And reaſon would that ſeeing the Feoffement is made without conſideration, and the feoffor hath not diſpoſed of the profits in the meane time, that by conſtruction and intendment of Law the Feoffor ought to occupie the ſame in the meane time. And ſo it is when the Feoffor diſpoſeth the profits for a particular time in præſenti, the vſe of the Inheritance ſhall be to the Feoffor and his heires, as a thing not diſpoſed of. Wherein it is to be obſerued, That Lands and Tenements conueyed vpon confidences, vſes, and truſts, are to be ruled and decided, if queſtion groweth vpon the confidences, vſes, or truſts, by the Iudges of the Law: for that it appeareth by this and the next Section, they are within the Entendment and conſtruction of the Lawes of the Realme.

35. *H.*6. *Subpœna*, 33. 30. *H.*6. *tit. Deuiſe.*

And it is to be obſerued (as hath beene ſayd) that there is a diuerſitie betweene a Feoffement of lands at this day vpon confidence, or to the intent to performe his laſt will, and a Feoffment to the vſe of ſuch perſon and perſons, and of ſuch eſtate and eſtates, as he ſhall appoynt by his laſt will, for in the firſt caſe, the Land paſſeth by the will, and not by the Feoffement, for after the Feoffement the Feoffor was ſeiſed in Fee ſimple as he was before, but in the latter Caſe the will purſuing his power is but a direction of the vſes of the Feoffement, and the Eſtates paſſe by execution of the vſes which were raiſed vpon the Feoffement, but in both caſes the Feoffees are ſeiſed to the vſe of the Feoffor and his heires in the meane time, and all this and much more concerning this matter hath beene adiudged.

*Lib.*6. *fo.*17. 18. *Sir Edward Clere's caſe.*

*Dillon & Frayne's caſe, l.*1. *&c. fol.*123.

Note, vſes are raiſed either by tranſmutation of the eſtate, as by Fine, Feoffement, Common recouerie, &c. or out of the ſtate of the owner of the Land by bargaine and ſale by Deed indented and inrolled, or by couenant vpon lawfull conſideration, whereof you may read plentifully in my Reports.

A Feoffee to the vſe of A. and his heires, before the Statute of 27. H. 8. for mony bargaineth and ſelleth the Land to C. and his heires, who hath no notice of the former vſe, yet no vſe paſſeth by this bargaine and ſale, for there cannot be two vſes in Eſſe, of one and the ſame Land, and ſeeing there is no tranſmutation of poſſeſſion by the Terre-tenant, the former vſe can neither be extinct nor altered. And if there could be two vſes of one and the ſame Land, then could not

eſt voyd, pur ceo que nul priuitie fuit perenter les Feoffees et lour feoffor, entant que nul Leaſe fuit fait apres tiel feoffement per les feoffees al Feoffor, a tener a lour volunt. Et aſcuns ont dit le contrarie, et ceo p̄ deux cauſes.

such Releaſe is voyd, becauſe there was no priuitie between the feoffees and their feoffor, in ſo much as no Leaſe was made after ſuch feoffement by the feoffees to the feoffor, to hold at their will: and ſome haue ſaid the contrarie, and that for two cauſes.

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¶ VN eſt, Que quãt tiel feoffment eſt fait ſur confidence a performer la volunt del feoffor il ſerra intendue per la Ley, que le Feoffor doit maintenant occupier la terre a la volunt de ſes Feoffees, et iſſint il eſt tiel manner de priuitie enter eux, ſicome hõe fait vn feoffement as auters, et ils incontinent ſur le Feoffement, voylent & grãterõt que lour feoffor occupiera la Terre a lour volunt, &c.

ONe is, That when ſuch Feoffement is made vpon confidence to performe the will of the Feoffor, it ſhall bee intended by the Law, that the feoffor ought preſently to occupie the Land at the will of his Feoffees, and ſo there is the like kind of priuitie betweene them: As if a man make a Feoffement to others, & they immediately vpon the feoffement, will and grant, that their Feoffor ſhall occupie the Land at their wil, &c.

not the ſayd Statute execute either of them for the vncertaintie. But if A. diſſeiſe one to the vſe of B. and A. doth bargaine and ſell the land for money to C. C. hath an vſe, and here be two vſes of one land, but of ſeuerall natures, the one, viz. vpon the bargaine and ſale to be executed by the Statute, and the other not.

But ſince Littleton wrote, all vſes are transferred by Act of Parliament, (c) into poſſeſſion, ſo as the caſe which Littleton here puts is therby altogether altered. Yet it is neceſſarie to be knowne what the Common Law was before the making of the Statute, and may ſerue for the knowledge of the Law in like caſe. (c) 27.H.8.ca.10.

¶ *Incontinent ſur le Feoffement.* Quæ incontinenti fiunt in eſſe videnť.

¶ *A lour volant, &c.* Here is implyed euery tenancie at will is at the will of both parties, as before in his proper place hath beene ſhewed.

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¶ VN auk cauſe ils allegeont, Que ſi tiel fre vault xl.ſ. per an. &c. donque tiel feoffor ſerra iure en aſſiſes et en auters enqueſts en plees realx, et auxy en plees perſonalls de quel graund ſum que les Plaintifes voilent counter, &c. Et ceo eſt per l'Common ley de la Terre, Ergo ceo eſt pur vn graund cauſe, et la cauſe eſt, que la Ley voet que tiels Feoffors et lour heyres doient occupier, &c. et prender et enioyer touts maner d profits, iſſues, et reuenues, &c. ſicome les Tenements fuerõt lour meſmes ſans interruption de les Feoffees, nient obſtant tiel feoffement, Ergo meſme la Ley done priuitie perenter tiels feoffors et

ANother cauſe they alledge, That if ſuch land bee worth fortie ſhillings a yere, &c. then ſuch Feoffor ſhall be ſworne in Aſſiſe and other enqueſts in Plees realls, and alſo in Plees perſonalls, of what great ſumme ſoeuer the Plaintife will declare, &c. And this is by the Common Law of the land, *Ergo* this is for a great cauſe, and the cauſe is, for that the Law will that ſuch Feoffors and their heyres ought to occupie, &c. and take and enioy all manner of profits, iſſues, and reuenues, &c. as if the Lands were their own without interruption of the Feoffees, notwithſtanding ſuch Feoffement. *Ergo* the ſame law giueth a priuitie betweene ſuch Feoffors and the Feoffees vpon confidence,

¶ BY the Statute of 2.H.5.cap.3.Statut.2. it is enacted, That in three caſes he that paſſeth in an Enquеſt ought haue Lands and Tenements to the value of fortie ſhillings, viz. Firſt, Vpon trial of the death of a man. Secondly, in Plea reall betweene partie and partie. And thirdly, In Plea perſonall, where the debt or the dammages in the Declaration amount vnto fortie Markes. And it is worthy the noting, That the Iudges that were at the making of that Statute did conſtrue it by equitie: for where the ſtat. ſpeakes in the diſiunctiue debt or dammages, they adiudged that where the debt or dammages amounted to fortie marks, that it was within the Statute. Forteſcue (f) ſaith, Vbi damna vel debitum in perſonalibus Actionibus non excedunt quadraginta Marcas monetæ Anglicanæ hinc non requiritur, quod Iuratores in Actionibus huiuſmodi tantum expendere poſſint: habebunt tamen terram vel redditum, ad valorem competentem, iuxta diſcretionem Iuſticiariorum, &c. And for as much as at the time of the making of this Statute, the greater part of the Lands in England in thoſe troubleſome and dangerous times (when that vnhappie controuerſie betweene the Houſes of Yorke and Lancaſter was begun) were in vſe. And the Statute was made to remedie a miſchiefe, that

28.H.8.Dy.fo.9. Vi.W 2.ca.38. Leſtat. de 23. E.1. de Iuratis ponendis in Aſſiſis, &c.

9.H.5.fo.5.

(f) Forteſc.ca.25.

15.H.7.13.b. 13.H.7.7.b. 5.E.4.7.a.

that the Sheriffe vſe to return ſimple men of ſmall or no vnderſtanding, and therefore the Statute prouided, That hee ſhould returne ſufficient men, and albeit in Law the Land was the Feoffees, yet for that they had it but vpon truſt and Ceſty que vſe tooke the whole profits, as our Author here ſaith, and in equitie and conſcience the Land was his, therefore the Iudges for aduancement and expedition of Iuſtice, extended the Statute (againſt the Letter) to Ceſty que vſe, and not to the Feoffees.

(n) 3.H.6.39.Challeng.19. 21.H.6.39.

(n) But note if a man hath a Freehold pur termie dauter vie, or is ſeiſed in his wiues right, and is returned on a Iurie, yet if after he be returned, Ceſty que vie, or his wife die, hee may be challenged, and ſo it is if after the returne the lands be eſtated.

¶ *Et ceo eſt per le Common Ley.* Here three things are to be obſerued. Firſt, That the ſureſt conſtruction of a Statute is by the rule and reaſon of the Common Law. Secondly, That vſes were at the Common Law. Thirdly, That now ſeeing the Statute (g) of 27.H.8.cap.10. which hath beene enacted ſince Littleton wrote, hath tranſferred the poſſeſſion to the vſe, this caſe holdeth not at this day, but this latter opinion before that Statute was good Law, as Littleton here taketh it.

(g) 27.H.8.ca.10.

¶ *Meſme la Ley done priuitie, &c.* Hereof it followeth, That when the Law giues to any man any eſtate or poſſeſſion, the Law giueth alſo a priuitie and other neceſſaries to the ſame: and Littleton concludeth it with an Illatiue, Ergo meſme la ley done priuitie, which is verie obſeruable for a concluſion in other caſes.

And the (Quære) here made in the end of this Section is not in the Originall, but added by ſome other, and therefore to be reiected.

27.El.ca.6.

Alſo ſince Littleton wrote the ſayd Statute of 2.H.5. is altered: for where that Statute limited fortie ſhillings, now a latter Statute hath raiſed it to foure pounds, and ſo it ought to be contained in the Venire facias.

Pl.Com.352.b. in Dalamere caſe, & 349.b. Li.1 fo.121.122.127.140.in Chudleys caſe. Li.2 fo 58.78. Li.6.fo.64. Li.7.fo.13.& 34.

Note, an Vſe is a Truſt or Confidence repoſed in ſome other, which is not iſſuing out of the land, but as a thing collateral, annexed in priuitie to the eſtate of the land, and to the perſon touching the Land, ſcz. that Ceſty que vſe ſhall take the profit, and that the Terre-Tenaunt ſhall make an eſtate according to his direction. So as Ceſty que vſe had neither Ius in re, nor Ius ad rem, but onely a confidence and truſt, for which he had no remedie by the Common law, but for breach of truſt his remedie was onely by Subpœna in Chancerie: and yet the Iudges for the cauſe aforeſayd, made the ſayd conſtruction vpon the ſayd Statute.

Forteſc.ca.25,26,27.

Now how Iurors ſhall be returned, both in Common Pleas, and alſo in Pleas of the Crowne, and in what manner euidence ſhall be giuen to them, and how they ſhall be kept, vntill they giue their verdict, you may read in Forteſcue, and therefore need not to be here inſerted.

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Flet.li.5.ca.34. 15.H.7.14. 22.E.4.4.

¶ IT is a certaine rule that when a Releaſe doth enure by way of enlarging of an eſtate, that there muſt bee priuitie of eſtate, as betweene Leſſor and Leſſee, Donor and Donee. For if A. make a Leaſe to B. for life, and the

¶ Item Releaſes ſolonque le matter en fait, aſcun foits ont lour effect per force denlarger leſtate celuy, a que le

ALſo Releaſes according to the matter in fact, ſometimes haue their effect by force to enlarge the ſtate of him to

le releaſe eſt fait. Sicome ieo leſſa certain terre a vn home pur terme des ans, per force de que il eſt en poſſ. & puis ieo releſſa a luy tout le droit que ieo aye en le terre ſans pluis parolx mitter en le fait, & deliuer a luy le fait, donques il ad eſtate forſque pur terme de ſa vie. Et la cauſe eſt, pur ceo que quant le reuerſion ou le remainder eſt en vn home, le quel voile enlarger per ſon releas leſtate le tenant, &c. il nauera pluis greinder eſtate, mes en tiel manner & forme, ſicome tiel feoffor fuit ſeiſie en fee, & volloit per ſon fait faire eſtate a vn en certaine forme, & deliuer a luy ſeiſin p force d meſme le fait: ſi en tiel fait de feoffement ne ſoit aſcun parol d enheritance, donques il ad forſqz eſtate pur terme de vie, & iſſint il eſt en tiels releaſes faits per eux en la reuerſion ou en le remainder. Car ſi ieo leſſa la terre a vn home pur terme d ſa vie, & puis ieo releſſa a luy tout mon droit, ſauns plus dire & le releas,

whom the releaſe is made. As if I let certaine Land to one for tearme of yeares, by force whereof hee is in poſſeſſion, and after I releaſe to him all the right which I haue in the land without putting more words in the Deed, and deliuer to him the Deed, then hath hee an eſtate but for tearme of his life. And the reaſon is for that when the reuerſion or remaynder is in a man who will by his releaſe inlarge the eſtate of the Tenant, &c. hee ſhall haue no greater eſtate, but in ſuch manner & forme, as if ſuch leſſor were ſeiſed in fee, and by his Deed will make an eſtate to one in a certain forme, and deliuer to him ſeiſin by force of the ſame Deed: if in ſuch Deed of feoffement there be not any word of Inheritance, then he hath but an eſtate for life, and ſo it is in ſuch Releaſes made by thoſe in the reuerſion or in the remainder. For if I let land to a man for tearme of his life, and after I releaſe to him all my right without more ſaying in the releaſe, his eſtate is not

Leſſee maketh a Leaſe for yeares, and after A. releaſeth to the Leſſee for yeares, and his heires, this releaſe is void to inlarge the eſtate, becauſe there is no priuitie betweene A. and the Leſſee for yeares.

If a man make a Leaſe for twentie yeares, and the Leſſee make a Leaſe for ten yeares, if the firſt Leſſor doth releaſe to the ſecond Leſſee and his heires, this releaſe is void for the cauſe aforeſaid.

For the ſame cauſe, if the Donee in taile make a Leaſe for his owne life, and the Donor releaſe to the Leſſee and his heires, this releaſe is void to inlarge the eſtate.

And as priuitie is neceſſarie in this caſe, ſo priuitie only is not ſufficient. As if an Infant make a Leaſe for life, and the Leſſee granteth ouer his eſtate with warranty, the Infant at full age bringeth a Dum fuit infra ætatem, the Tenant voucheth his Grantor, who entreth into warrantie, the demaundant releaſeth to him and his heires; Here is priuitie in Law, and a tenancie in ſuppoſition of Law, and yet becauſe hee in rei veritate hath no eſtate, it cannot enure to him by way of inlargement, for how can his eſtate bee inlarged, that hath not any.

If a Tenant by the curteſie grant ouer his eſtate, yet he is tenant as to an Action of waſte, Attornement, &c. and yet a Releaſe to him and his heires cannot enure to inlarge his eſtate that hath no eſtate at all.

But if a man make a leaſe for yeares, the remaynder for life, a releaſe by the Leſſor to the Leſſee for yeares, and to his heires, is good for that hee hath both a priuitie and an eſtate, and the releaſe alſo to him in the remaynder for life and his heires is good alſo.

If I grant the reuerſion of my Tenant for life, to another for life, now ſhall not I haue an Action of waſte: but if I releaſe to the Grantee for life and his heires, now hee hath the Fee ſimple, and ſhall puniſh

48.E.3.16. 40 per Perſey & Finchden. 41.E.3.17.a.7.E.4.17.

puniſh the waſte done after.

It is further to bee obſerued, that to a releaſe that enureth by way of inlargement of the eſtate, there is not only required priuitie, as hath bene ſaid, and an eſtate alſo, but ſufficient words in Law to raiſe or create a new eſtate. If a man make a Leaſe to A. for tearme of the life of B. and after releaſe to A. all his right in the land by this, A. hath an eſtate for tearme of his owne life, for a leaſe for terme of his owne life is higher in iudgement of Law, then an eſtate for tearme of another mans life.

ſon eſtate neſt my enlarge. Mes ſi ieo releſſa a luy & a ſes heires, donques il ad fee ſimple, et ſi ieo releſſa a luy & a ſes heires de ſon corps engendres, donques il ad fee taile, &c. Et iſſint il couient de ſpecifier en le fait quel eſtate celuy a q̃ le releas eſt fait auera.

enlarged, but if I releaſe to him and to his heires, then he hath a Fee ſimple, and if I releaſe to him and to his heires of his bodie begotten, then he hath a fee taile, &c. And ſo it behoueth to ſpecifie in the Deed what eſtate hee to whom the Releaſe is made ſhall haue.

16.H.6. releaſe 45. 22.E.2. releaſe. Statham.

If a Feme-Couert be Tenant for life, a releaſe to the husband and his heires is good, for there is both priuitie and an eſtate in the husband, whereupon the releaſe may ſufficiently enure by way of inlargement (a) for by the entermarriage he gaineth a freehold in his wifes right.

(a) 13.H.4.6. Stauf. prer. 7.b. 18.E.4.5.22. Aſſ.12. 11.H.7.19. 10.H.6.11.

¶ *Tout le droit.* Vide Sect. 650.

¶ *Pur terme des ans.* **So it is if a releaſe bee made to tenant by** Statute, Staple, or Merchant, or Tenant by Elegit, as hath bene ſaid, and ſo likewiſe to Gardeine in Chiualrie which holdeth in for the value, by him in the reuerſion of all his right in the land, by this a freehold paſſeth for the life of him to whom the releaſe is made, for that is the greateſt eſtate that can paſſe without apt words of Inheritance.

If a man make a leaſe for ten yeares, the remainder for twentie yeares, he in the remaynder releaſeth all his right to the Leſſee, he ſhall haue an eſtate for thirtie yeares, for one Chattle cannot dzowne another, and yeares cannot be conſumed in yeares.

¶ *Mes ſi ieo releaſe a luy & a ſes heires, &c.* **Here it is to be obſer**ued that when a releaſe doth enure by way of enlargement of an eſtate no Inheritance either in Fee ſimple, or Fee taile, can paſſe without apt words of Inheritance.

9.Eliz. Dier.263. 10.Eliz. Bendoes. Litt.lib.3.fol.68. 69.70.b.130.b.

But there is a diuerſitie betweene a releaſe that enureth by way of enlargement of the ſtate and by way of mitter leſtate, for when an eſtate paſſeth by way of mitter leſtate, there ſometime there need not any words of Inheritance. As if a ioynt eſtate be made to the husband and to his wife, and to a third perſon and to their heires, the third perſon releaſeth all his right to the husband, this ſhall enure by way of mitter leſtate, and not by way of enlargement of the eſtate, becauſe the husband had a Fee ſimple, and needeth not to haue any words of Inheritance. So it is if the releaſe had bene made to the wife.

See before in the Chapter of Fee Simple.

(b) 40.E.3,41.46.E.3. 19.H.6.33.H.6.5.10.E.4.3

(b) If there be three Ioyntenants, and one releaſe to one of the other all his right, this enureth by way of mitter leſtate, & paſſeth the whole Fee ſimple without theſe words (heires.) But if there be two Ioyntenants, and the one of them releaſe all his right to the other, this doth not to all purpoſes enure by way of mitter leſtate, for it maketh no degree, and he to whom the releaſe is made ſhall for many purpoſes be adiudged in from the firſt feoffor, and this releaſe ſhall veſt, all in the other Ioyntenant without theſe words (heires.)

10.E.4.3.b.37.H.8.tit alienation. Br.31.8.H.4.8. 42.Aſſ.5.9.Eliz. Dier 263.

But if there be two Coparceners, and the one releaſe all his right to the other, this ſhall enure by way of mitter leſtate and ſhall make a degree, and without theſe words (heires) ſhall paſſe the whole Fee ſimple. And it is to bee obſerued, that to releaſes that enure by way of mitter leſtate, there muſt be priuitie of eſtate at the time of the releaſe.

If two Coparceners be of a rent, and the one of them take the Tertenant to husband, the other may Releaſe to her, notwithſtanding the rent be in ſuſpence, and it ſhall inure by way of Mitter leſtate, and ſhe may Releaſe alſo to the Tertenant, and that ſhall enure by way of extinguiſhment: but if ſhe Releaſe to her ſiſter and to her husband, it is good to be ſeene how it ſhall enure.

Vid. Litt. ſo.68.69.

Littleton hauing now ſpoken of Releaſes that enure by way of Enlargement of the eſtate, and of Releaſes that enure by way of Mitter leſtate, proceedeth to Releaſes that enure by way of Mitter le droit. So as of that which hath beene and ſhall be ſaid by our Author of Releaſes, it appeareth that ſome doe enure by way of Enlargement of eſtate, ſome by way of Mitter leſtate, ſome by way of Mitter le droit, by way of Entrie and Feoffment, and ſome by Extinguiſhment.

*Sect.*466.

¶ Item aſcuns foits releaſes vera de mitter et veſter le droit celuy que fait le releaſe, a celuy a que le releas eſt fait. Sicome vn home eſt diſſeiſi, et il releſſa a ſon diſſeiſor tout le droit que il ad, en ceſt cas le diſſeiſor ad ſon droit, iſſint que lou ſon eſtate adeuant fuit tortious, ore per tiel releas il eſt fait loyal et droiturel.

ALſo ſometimes Releaſes ſhall enure de mitter and veſt the right of him which makes the Releaſe to him to whom the Releaſe is made. As if a man be diſſeiſed, and he releaſeth to his diſſeiſor all his right. In this caſe the diſſeiſor hath his right, ſo as where before his ſtate was wrongfull, now by this releaſe it is made lawfull and right.

¶ *Et il releſſa a ſon diſſeiſor, &c.* This releaſe ſo putteth the right of the Diſſeiſee to the Diſſeiſor, that it changeth the quality of the eſtate of the Diſſeiſor for where his eſtate was before wrongfull, it is by this Releaſe made lawfull. But how farre and to what reſpects his eſtate is changed ſhall be ſaid hereafter in this Chapter in his proper place.

Sect. 467.

¶ Mes hic nota, que quãt hom eſt ſeiſi en fee ſimple, daſcun terres ou tenements, et vn auter voile releaſer a luy tout le droit que il ad en meſmes les tents il ne beſoigne de parler de les heires celuy a q̃ le releas eſt fait, pur ceo que il auoit fee ſimple al temps de releas fait. Car ſi releas fuit fait a luy pur vn iour, ou pur vn heure, ceo ſerroit auxy fort a luy ẽ ley, ſicome il vſt releas a luy et a ſes heires. Car quant ſon droit fuit ale de luy a vn foits per ſon releas ſans aſcun condition

BVt here note, that when a man is ſeiſed in fee ſimple of any lands or tenements, and another will releaſe to him all the right which he hath in the ſame tenements, he needeth not to ſpeake of the heires of him to whom the releaſe is made, for that he hath a fee ſimple at the time of the releaſe made, for if the releaſe was made to him for a day or an houre, this ſhall bee as ſtrong to him in law, as if he had releaſed to him and his heires. For when his right was once gone from him by his releaſe without any con-

¶ *Et ne beſoigne a parler de les heires, &c.* And the reaſon of Littleton hereof is for that the Diſſeiſor hath a fee ſimple at the time of the Releaſe made And this appeareth by that which hath beene ſaid before, ſo as regularly he that hath a fee ſimple at the time of the Releaſe made of a right, &c. needeth not ſpeake of his heires.

¶ *Car ſi releaſe fuit fait a luy pur vn iour, &c.* For the diuerſity is betweene a Releaſe of part of the eſtate of a Right, and between a Releaſe of a Right in part of the Land. And therefore Littleton here ſaith, that a Releaſe of a Right for a day or an houre is of as good force, as if he had releaſed his right to him and his heires. But if a man be diſſeiſed of two acres hee may releaſe his right in one of them, and yet enter into the other.

Vid. 6. E. 3. 27. 12. E. 4. 11. *Diſcont.* F. 29.

¶ *Sans aſcun condi-*

tion,&c Herein is implied two diuerſities, firſt betweene the quantity of the eſtate in a Right, and the quality thereof, for albeit the Diſſeiſee cannot releaſe part of the ſtate as hath beene ſaid, yet may he releaſe his right vpon condition as here it appeareth by Littleton, (c) and it agreeth with our bookes.

ac.a celuy que ad fee ſimple, il eſt ale a touts iours.

dition,&c.to him that hath the fee ſimple, it is gone for euer.

(c) 4.E.3.Releas 50. 43.Aſſ.12. 17.Aſſ.2. 31.Aſſ.13. 21.H.24.

Alſo here is another diuerſitie betweene a right whereof Littleton putteth his caſe which is fauoured in Law, and a Condition created by the party which is odious in Law, for that it defeateth eſtates. And therefore if a Condition be releaſed vpon Condition, the Releaſe is good, and the Condition voide.

What things may be done vpon Condition is too large a matter to handle in this place, our Author hauing treated of Conditions before, only to giue a touch of ſome things omitted there, ſhall ſuffice. In expreſſe Manumiſſion of a Villeine cannot be vpon condition, for once free in that caſe, and euer free, alſo an Attornment to a Grantee vpon condition, the Condition is voide becauſe the Grant is once ſettled. But this is to bee vnderſtood of a Condition ſubſequent, and not of a Condition precedent, for in both theſe caſes the Condition precedent is good. One Letters pattents of Denization made to an Alien may be either vpon Condition ſubſequent or precedent, and ſo may the King make a Charter of pardon to a man of his life vpon Condition as is aboueſaid.

Rot.Parliament.17.H.6.num.29.Ap. Gwilliams caſe. 19.E.3.cap 2. 3.H.7 fol.6.

Sect. 468.

¶ MEs lou home ad vn reuerſion en fee ſimple, ou vn remainder ẽ fee ſimple, al temps de releas fait, la ſil voyle releaſer al tenant per terme dans, ou pur terme de vie, ou al tenant en le taile, il couient a determiner leſtate que celuy a que le releas eſt fait auera per force de meſme le releas, pur ceo que tiel releas enurera pur enlarger leſtate de celuy, a que le releas eſt fait.

BVt where a man hath a reuerſion in fee ſimple, or a remainder in fee ſimple at the time of the releaſe made, there if hee will releaſe to the tenant for yeares, or for life, or to the tenant in taile, hee ought to determine the eſtate, which he to whom the releaſe is made ſhal haue by force of the ſame releaſe, for that ſuch releaſe ſhall enure to enlarge the eſtate of him to whom the releaſe is made.

Of this ſufficient hath beene ſaid before.

Sect. 469.

¶ MEs autrement eſt lou home ad forſque droit a la terre, et nad riens en le reuerſion ne en l'remainder en fait. Car ſi tiel home releſſa tout ſon droit a vn que eſt teñ de le franktenement, tout ſon droit eſt ale, coment que nul mention ſoit fait de les heires celuy a que le releas eſt fait. Car ſi ieo leſſa terres a vn home pur terme

BVt otherwiſe it is where a man hath but a right to the land, and hath nothing in the reuerſion nor in the remainder in Deed. For if ſuch a man releaſe all his right to one which is tenant of the freehold, all his right is gone, albeit no mention be made of the heires of him to whom the releaſe is made: for if I let lands to one for terme of his life, if I after releaſe

de

de ſa vie, ſi ieo puis releas a luy pur enlarger ſon eſtate, il couient q̄ ieo releſſa a luy et a ſes heires de ſon corps engender, ou a luy et a ſes heires, ou per tiels pols: A auer et teñ a luy et a ſes heirs de ſon corps engendres, ou a les heires males de ſon corps engendres, ou tiels ſemblables eſtates, ou autrement il nad pluis greinō eſtate q̄ il auoit adeuant.

to him to enlarge his eſtate, it behoueth that I releaſe to him and to his heires of his body engendred, or to him and his heires, or by theſe words, to haue and to hold to him and to his heires of his body engendred, or to the heires males of his body engendred, or ſuch like eſtates, or otherwiſe hee hath no greater eſtate then hee had before.

¶ *A Vn que eſt tenant de franktenement.* Here it appeareth that to a Releaſe of a right, made to any that hath an eſtate of freehold in Deed or in Law no priuitie at all is requiſite. As if a Diſſeiſor make a Leaſe for life, if the Diſſeiſor releaſe to the Leſſee, this is good, and directly within the rule of Littleton becauſe the Leſſee hath an eſtate of freehold, albeit there be no priuitie. And ſo it is if a Diſſeiſor make a Leaſe to A. and his heires during the life of B, and A. dieth, a Releaſe by the Diſſeiſee to his heire before he doth actually enter is good.

Section 470.

¶ MEs ſi mon teñ a terme de vie, leſſa meſme la terre ouſter a vn auter pur terme de vie de ſon leſſee, le remainder a vn auter en fee, ore ſi ieo releſſa a celuy a que mon tenant leſſaſt pur terme de vie, ceo ſerra barre a touts iours, coment que nul mention ſoit fait ō ſes heires, pur ceo que al temps de releas fait ico auoy nul reuerſion, mes tantſolement vn droit dauer la reuerſion, car p̄ tiel leas, et le remainder ouſter que mon tenant fiſt en ceo cas, mon reuerſion fuit diſcontinue, &c. & tiel releas vera a celuy ē l' remainder, dauer aduantage de ceo auſibien come al tenant a terme de vie.

BVt if my tenant for life letteth the ſame land ouer to another for terme of the life of his Leſſee, the remainder to another in fee, now if I releaſe to him to whom my tenant made a Leaſe for terme of life, I ſhall bee barred for euer, albeit that no mention bee made of his heires, for that at the time of the releaſe made I had no reuerſion, but only a right to haue the reuerſion. For by ſuch a releaſe and the remainder ouer which my tenant made in this caſe my reuerſion was diſcontinued, &c. and this releaſe ſhall enure to him in the remainder to haue aduantage of it as well as to the tenant for terme of life.

¶ Littleton hauing before ſpoken of releaſes which enure by way of Enlargemēt, by way of Mitter l'eſtate & by way of Mitter le droit, here ſpeaketh of a releaſe of a right which in ſome reſpects enureth by way of Extinguiſhment, as in this caſe which Littl: here putteth, the Releaſe to the Leſſee of the Leſſee doth not enure by way of Mitter le droit, for then ſhould he haue the whole right, but as it were by way of Extinguiſhment, in reſpect of him, that made the Releaſe, and that it ſhall enure to him in the remainder which is a quality of an inheritance

extinguiſhed. But yet the right is not extinct in deed, as ſhall be ſayd hereafter in this Chapter.

¶ *Mon reuerſion fuit diſcontinue, &c.* Heere Diſcontinue is in a large ſence taken for Diuerted, though the entrie of the Leſſor be not taken away, which is implied in this (&c.)

Section 471.

¶ *Sont come vn Tñt en Ley.* Which is certainly true in this caſe of Remainder, and ſo it is alſo in caſe of a Reuerſion, as if a Diſſeiſor make a Leaſe for life, and the Diſſeiſee doth releaſe all his right to the leſſee, this Releaſe ſhall enure to him in the reuerſion, albeit they haue ſeuerall eſtates, as hath beene ſayd, which is implied in this (&c.)

¶ Car a cel intent le Tenaunt a terme de vie et celuy en le remainder ſont ſicome vn Tenaunt en Ley, et ſont ſicõe vn Tenant fuit ſole ſeiſie en ſon demeſne come de fee al temps de tiel releaſe fait a luy, &c.

FOr to this intent the tenant for term of life, and he in the remainder, are as one Tenant in Law, and are as if one Tenaunt were ſole ſeiſed in his Demeſne as of Fee at the time of ſuch Releaſe made vnto him, &c.

But if a Diſſeiſor make a Leaſe for life, the remainder in fee, albeit they to ſome purpoſes (as here is ſayd) are as one Tenant in Law, yet if the Diſſeiſee releaſe the Actions to the Tenant for life, after the death of the Tenant for life, he in the remainder ſhall not take benefit of this releaſe, for it extended onely to the Tenant for life, as it is holden (a) in Edward Altham's caſe And in like manner if the Diſſeiſor make a Leaſe for life, and the Diſſeiſee releaſe all Actions to the Leſſee, this inureth not to him in the reuerſion, and ſo our Author is to be vnderſtood of a Releaſe of Rights, and not of a Releaſe of Actions, to the tenant for life, as to or for the benefit of him in the remainder or reuerſion.

(a) *Lib.8.fo.148. Edw. Altham's caſe.*

Section 472.

21.E.6.41.

¶ *Si home ſoit diſſeiſie, &c.* This is to be vnderſtood where tenant in Fee ſimple is diſſeiſed and releaſe: for if Tenant for life be diſſeiſed by two, and he releaſeth to one of them, this ſhall inure to them both, for he to whom the releaſe is made, hath a longer eſtate than hee that releaſeth, and therefore cannot enure to him alone, to hold out his companion, for then ſhould the Releaſe enure by way of entrie and grant of his eſtate, and conſequently the Diſſeiſor to whom the releaſe is made ſhould become Tenant for life, and the Reuerſion reueſted in the Leſſor, (b) which ſtrange tranſmutation and change of eſtates in this caſe the Law will not ſuffer. But if Leſſee for yeres be ouſted, and he in the reuer-

(b) *13.E.4.tit.Diſcont.F.29*

¶ Item ſi hõe ſoyt diſſeiſie per dux, ſil releſſa a vn d cux, il tiendra ſon compaignion hors de Terre, et per tiel releaſe il auera le ſole poſſeſſion et eſtate en la Terre. Mes ſi vn Diſſeiſour enfeoffa deux en Fee, et l diſſeiſee releſſa a lun des feoffees, ceo vera a ambideux de les Feoffees, et la cauſe de diuerſity enſ ceux deux caſes eſt aſſets preignant. ¶ Pur ceo

ALſo if a man bee diſſeiſed by two, if hee releaſe to one of them, hee ſhall hold his Companion out of the Land, and by ſuch Releaſe hee ſhall haue the ſole poſſeſſion and eſtate in the Land. But if a Diſſeiſor infeoffe two in fee, and the Diſſeiſee releaſe to one of the feoffees, this ſhal inure to both the feoffees, & the cauſe of the diuerſity between theſe two caſes is pregnant e-

ceo que ils veignont eins per feoffment, et lauters per tort, &c.

enough. For that they come in by feoffment, and the others by wrong, &c.

ſion diſſeiſed, and the Leſſee releaſe to the Diſſeiſor, the Diſſeiſee may enter, for the terme for yeares is extinct and determined. But otherwiſe it is in caſe of a Leſſee for life, for the Diſſeiſor hath a Freehold whereupon the Releaſe of Tenant for life may enure, but the Diſſeiſor hath no terme for yeares whereupon the Releaſe of the Leſſee for yeares may enure.

And ſo it is if Leſſee in Taile be diſſeiſed by two, and releaſeth to one of them, it ſhal enure to them both. But if the Kings Tenant for life be diſſeiſed by two, and he releaſeth to one of them, he ſhall hold out his Companion, for the Diſſeiſor gained but the eſtate for life. So if two Joyntenants make a leaſe for life, and after doe diſſeiſe the Tenant for life, and he releaſe to one of them, he ſhal hold out his Companion, for the Diſſeiſin was but of an eſtate for life.

If Tenant for life be diſſeiſed by two, and he in the reuerſion and Tenant for life joyne in a Releaſe to one of the Diſſeiſors, he ſhall hold his Companion out, and yet it cannot enure by way of entrie and feoffement. But if they ſeuerally releaſe their ſeuerall rights, their ſeuerall Releaſes ſhall enure to both the Diſſeiſors.

But here in Littletons caſe, where Tenant in Fee ſimple is diſſeiſed by two, and releaſeth to one of them, this for many purpoſes enureth by way of entrie and feoffement, and therefore he to whom the Releaſe is made ſhall hold out his companion, and be made ſole Tenant of the fee ſimple. And this holdeth not onely in caſe of a Diſſeiſin, but alſo in caſe of Intruſion and Abatement: but neceſſarily hee to whom the Releaſe is made muſt bee in by wrong, and not by Title.

If two men doe gaine an Aduowſon by vſurpation, and the right Patron releaſeth to one of them, he ſhall not hold out his Companion, but it ſhall enure to them both; for ſeeing their Clerkes came in by admiſſion and inſtitution, which are iudiciall acts, they are not meerely in by wrong: for an vſurpation ſhal cauſe a Remitter, as it appeareth in F.N.B. 31.m.

But if a Leaſe for life be made, the remainder for life, the remainder in fee, and he in remainder for life diſſeiſeth the Tenant for life, and then Tenant for life dieth, the Diſſeiſin is purged, and he in the remainder for life hath but an eſtate for life. And ſo note a diuerſity where the particular eſtate for life is precedent, and when ſubſequent. 19.H.6.22.38.H.6.28.*Caſe de Occupant.*

Where our Author putteth his caſe of one diſſeiſed, put the caſe that two Joyntenants in Fee be diſſeiſed by two, & one of the Diſſeiſees releaſe to one of the Diſſeiſors all his right, he ſhal not hold out his companion, becauſe the Releaſe is but of the moitie, without any certaintie. If a man be diſſeiſed by two women, and one of them take huſband, and the Diſſeiſee releaſe to the huſband, this ſhall enure to the aduantage of both the Diſſeiſors, becauſe the huſband was no wrong doer, but in a manner in by title.

¶ *Il auera le ſole poſſeſſion & eſtate.* **If two Diſſeiſors be, and they** make a Leaſe for life, and the Diſſeiſee releaſe to one of them, this ſhall enure to them both, and to the benefit of the Leſſee for life alſo: for he cannot by the Releaſe haue the ſole poſſeſſion and eſtate, for part of the eſtate is in another.

And ſo it is (as it ſeemeth) if the Diſſeiſors make a Leaſe for yeares, and the Diſſeiſee releaſe to one of them, this ſhall enure to them both, for by the Releaſe he cannot haue the ſole poſſeſſion: And it appeareth by Littleton, That he muſt haue the ſole poſſeſſion, and hold his Companion. But the Mortgagee vpon condition, hauing broken the Condition, is diſſeiſed by two, the Mortgagor hauing title of entrie for the Condition broken, releaſe to the one Diſſeiſor, albeit they be in by wrong, yet the Releaſe ſhall enure to them both for two cauſes: Firſt, For that they are not wrong doers to the Mortgagor, but to the Mortgagee, and by Littletons caſe it appeareth, That wrong is done to him that made the Releaſe. Secondly, That hee that make the Releaſe hath but a title by force of a Condition, and Littletons caſe is of a right. Like Law of an entrie for Mortmaine, or a conſent to vauiſhment, &c.

¶ *Mes ſi vn Diſſeiſor infeoffa deux, &c.* **And the reaſon of this di-** 21.H.6.41.
uerſitie is, For that the Feoffees are in by Title, and are preſumed to haue a Warranty, which is much fauoured in Law, and the Diſſeiſors are meerely in by wrong. And the equitie of the Law doth preſerue in this caſe the benefit of the eſtranger to the Releaſe, comming in by one ioynt Title.

¶ *Pur ceo que ils veignont eins per Feoffement, & lauters per Tort.* This is of a new addition, and not in the Originall, and therefore I paſſe it ouer.

Sect.

Section 473.

¶ Item ſi ieo ſue diſſeiſie, et mon diſſeiſor eſt diſſeiſie, ſi ieo releas a le diſſeiſor de mon diſſeiſor, ieo nauera a vnque aſſ. ne entra ſur le diſſeiſor, pur ceo que ſon diſſeiſor ad mon droit per mon releaſe, &c. Et iſſint il ſemble en tiel cas, ſi ſoyent xx. diſſeiſors, cheſcun ayre s auter, et ieo releſſa a ſe darreine diſſeiſor, celuy diſſeiſor barrera touts les auters de lour actions et lour titles. Et la cauſe eſt, come il ſemble, pur ceo que en mults caſes, quant vn home ad loyal title dentre, coment que il nentra pas, il defeatera touts mean titles per ſon releas, &c. Mes ceo neſt my ẽ cheſcun cas, come ſerr̃ dit apres.

ALſo if I be diſſeiſed, and my diſſeiſor is diſſeiſed, if I releaſe to the diſſeiſor of my diſſeiſor, I ſhall not haue an aſſiſe nor enter vpon the diſſeiſor, becauſe his diſſeiſor hath my right by my releaſe, &c. And ſo it ſeemeth in this caſe if there be xx. diſſeiſed one after another, and I releaſe to the laſt diſſeiſor, this diſſeiſor ſhall barre all the others of their actions and their titles. And the cauſe is, as it ſeemeth, for that in many caſes when a man hath lawfull title of entrie, although he doth not enter, he ſhall defeat all meane titles by his releaſe, &c. but this holds not in euery caſe, as ſhall be ſaid hereafter.

¶ HEre it is to be obſerued, that a Releaſe by one whoſe entry is lawfull to him that is in by wrong, ſhall purge and take away all meane Eſtates and Titles. And where our Author firſt putteth his caſe of two eſtates by wrong, and after of twentie Diſſeiſins, all Eſtates be wrong.

21.H.6 41.11.H.4.33. 9.H.7.25.2.E.4.16. 21.E.4.78. 12.Aſſ.22. *Vide* 3.H.6.38.

If A. diſſeiſe B. who enfeoffeth C. with warrantie, who enfeoffe D. with warrantie, and E. diſſeiſeth D. to whom B. the firſt Diſſeiſee releaſeth, this doth defeate all the meane Eſtates and Warranties, becauſe the releaſe of B. is made to a Diſſeiſor, and his Entry is lawfull.

Section 474.

¶ *Item ſi mõ diſſeiſor leſſa, &c.* If the Diſſeiſor make a Leaſe for life, and the Leſſee maketh a feoffment in fee, and the Diſſeiſee releaſeth to the Feoffee, the Diſſeiſor ſhall not enter vpon the Feoffee, for albeit the releaſe to one ioynt feoffee of a Diſſeiſor, as hath beene ſaid, ſhal not excluds the other, yet a releaſe to the Feoffee of a Tenant for life in this caſe ſhall take away the Entry of the Diſſeiſor for the alienation which was made to his Diſinheritance, hee hauing

¶ Item ſi mon diſſeiſor leſſa ſes tenements dont il moy diſſeiſiſt a vn auter home pur terme de vie, et puis le tenant a terme de vie aliena en fee, et ieo releſſa al alienee, &c. donque mon diſſeiſor ne poit enter, Cauſa qua ſupra, coment que a vn

ALſo if my Diſſeiſor letteth the tenements whereof hee diſſeiſed mee to another for tearme of life, and after the Tenant for tearme of life alieneth in fee, and I releaſe to the alienee, &c. then my Diſſeiſor cannot enter, *Cauſa qua ſupra*, albeit that at one

foits lalienation fuit a ſon diſenheritance, &c.

time the alienation was to his diſinheritance, &c.

the Inheritance by diſſeiſin, ſo as hee could haue no warrantie annexed to it, and tenant for life hath forfeited his eſtate. But if the entry of the Diſſeiſee were not lawfull, it is otherwiſe. As if a man make a Leaſe for life, and the Leſſee for life is diſſeiſed, and that Diſſeiſor is diſſeiſed, and he in the reuerſion releaſeth to the ſecond Diſſeiſor, the firſt Diſſeiſor ſhall enter vpon the ſecond Diſſeiſor, and his entry is lawfull, and if the Leſſee for life re-enter, he ſhall leaue the reuerſion in the firſt Diſſeiſor, and the cauſe is, for that the entry of the Diſſeiſor at the time of the releaſe made was not lawfull. And the Booke of (m) 9.H.7.25. is to be intended of an Eſtate tayle mutatis mutandis.

(m) 9.H.7.25.

If in the caſe aforeſaid, the Diſſeiſor make a Leaſe for life, and the Leſſee infeoffeth two, and the Diſſeiſee releaſe to one of the Feoffees, this ſhall barre the Diſſeiſor, as hath beene ſaid, but yet he ſhall not hold out his companion for the cauſe aforeſaid.

Sect. 475.

¶ Item ſi home ſoit diſſeiſi, le ql ad fits deins age et moruſt, et eſteant le fits deins age, le diſſeiſor moruſt ſeiſi, et la terre diſcendiſt a ſon heir, & vn eſtrang abate, et puis le fits le diſſeiſee quant il vient a ſon plein age releſſa tout ſon droit a labator en ceſt caſe lheire le diſſeiſor nauera aſſiſe de Mordanceſter enuers labator mes ſerra bar, pur ceo que labator ad le droit del fits le diſſeiſee p ſon relas, et lentrie le fits fuit congeable, pur ceo que il fuit deins age al temps del diſcent, &c.

ALſo if a man be diſſeiſed who hath a ſonne within age and dieth, and the ſonne being within age the Diſſeiſor dieth ſeiſed, and the land diſcend to his heire, and a ſtranger abate, & after the ſonne of the Diſſeiſee when hee commeth to his full age releaſeth all his right to the abator, in this caſe the heire of the Diſſeiſor ſhall not haue an Aſſiſe of Mordanceſter againſt the abator, but ſhall bee barred becauſe the abator hath the right of the ſonne of the Diſſeiſee by his releaſe, and the entry of the ſonne was congeable, for that hee was within age at the time of the Diſcent, &c.

¶ The reaſon of this caſe is for that the entrie of the heire is congeable, and the Abator is in the land by wrong.

¶ *Abate.* Is both an Engliſh and French word and ſignifieth in his proper ſence to Diminiſh, or Take away, as here by his entrie he Diminiſheth and Taketh away the Freehold in Law diſcended to the heire, and ſo it is ſaid to Abate an account ſignifying Subtraction or withdrawing, &c. and to Abate the courage of a man. In another ſence it ſignifieth to Proſtrate, Beate downe or Ouerthrow, as to Abate Caſtles, Houſes, and the like, and to Abate a writ, and hereof commeth a word of Arte, Abatamentum which is an Entry by Interpoſition. Now the difference inter Diſſeiſinam, Abatamentum, Intruſionem, Deforciamentum, & Vſurpationem, & Purpreſturam, is this.

Vet.N.B.115. Britton cap.51 Bracton lib.4.cap.2. F.N.B.203.f.W.1.cap.17.

A Diſſeiſin is a wrongfull putting out of him that is actually ſeiſed of a Freehold. And Abatement is when a man died ſeiſed of an eſtate of Inheritance, and betweene the death and the entry of the heire, an eſtranger doth interpoſe himſelfe, and abate.

Intruſion firſt properly (n) is when the Anceſtor died ſeiſed of any eſtate of Inheritance expectant vpon an eſtate for life, and then tenant for life dieth, and betweene the death and the entry of the heire an eſtranger doth interpoſe himſelfe and intrude.

(n) F.N.B.203. Fleta lib.4 cap.30.

Secondly, (o) he that entreth vpon any of the Kings Demeſnes, and taketh the profits is ſaid to Intrude vpon the Kings poſſeſſion.

(o) Pl.Com.caſe de mynes

(p) F.N.B.141.f.g.h. Thirdly, (p) when the heire in ward entreth at his full age without satisfaction for his marriage, the writ saith, quod intrusit.

Deforciamentum comprehendeth not only these aforenamed, but any man that holdeth land whereunto another man hath right, be it by discent or purchase, is said to be a Deforceor. Usurpation hath two significations in the Common Law, one when an estranger that no right hath presenteth to a Church, and his Clarke is admitted and instituted, hee is said to bee an usurper, and the wrongfull act that he hath done is called an Usurpation.

(q) Glanvil.lib.9.cap.11. Britton fol.28.29. Secondly, when any subiect doth vse without lawfull warrant, Royall Franchises, he is said to usurpe vpō the King those Frāchises. Purpresture or Pourpresture a Purpresture (q) Purpresture est, &c. generaliter quoties aliquid fit ad nocumentū regij tenementi, vel regiæ viæ (vel aquarū publicarum) vel ciuitatis, &c. And because it is properly when there is a house builded, or an Inclosure made of any part of the Kings Demesnes, or of an high way, or a common street or publike water, or such like publike things, it is deriued of the French word Pourpris which signifieth an Inclosure, but specially applied, as is aforesaid, by the Common Law.

Sect. 476.

9.H.7.25. THere the entry of the disseisee is congrable, and yet the release doth not auoid the condition because the feoffee is in by title, as hath beene said, and may haue a warrantie. And herein our Author expresseth a diuersitie betweene a Condition in Law, and a Condition in Deed, for in the case before when the Disseisee releaseth to the Feoffee of the Tenant for life, the Condition in law is taken away, but otherwise it is in this case of a Condition in Deed.

Lib.1.fol.147. Mayowes case. But if the Feoffee vpon Condition make a feoffment in fee ouer without any Condition, & the Disseisee release to the second Feoffee, the condition is destroyed by the release before the Condition broken or after. For the state of the second feoffee was not vpon any expresse Condition, as Littleton here putteth his case, and he may haue aduantage of the release, because it is not against his owne proper acceptance as Littleton speaketh in the next Section.

¶ MEs si home soit disseisi, & le disseisor fait feoffment sur condition, cestasauoir, de rendre a luy certaine rent, & pur default de payment vn reentre, &c. si le disseisie relessa al feoffee sur condition vncore ceo nemēdra lestate le feoffee sur condition, car nient obstant tiel releas, vncore son estate est sur condition sicome il fuit deuant.

¶ Et cum hoc concordat opinio omnium Iusticiariorum, P.9.H.7.¶.

BVt if a man be disseised and the disseisor maketh a feoffement vpon condition, *viz.* to render to him a certaine rent, and for default of payment a re-entry, &c. if the disseisee release to the feoffee vpon condition, yet this shall not amend the estate of the feoffee vpon condition, for notwithstanding such release, yet his estate is vpon condition as it was before.

¶ And with this agreeth the opinion of all the Iustices, *Pasch.9.H.7.*

But if it be a wrongfull title, such a title is taken away by a release, as if A. disseise B. to the vse of C. B. release to A. this shall take away the agreement of C. to the Disseisin, because it should make him a wrong doer, as if the disseisor be disseised, the disseisee releaseth to the second Disseisee, this taketh away the right the first Disseisor had against the second, and a relation of an estate gained by wrong shall neuer defeat an estate subsequent gained by right, against a single opinion, not affirmed by any other in one of our Bookes.

14.H.8.11.per Tot.

Section 477.

ET le Disseisor grant vn Rentcharge, &c. Here is implyed Commons or any

¶ EN meisme le manner est, lou home soit diss. de certein terre, & le disseisor

IN the same manner it is where a man is disseised of certaine lands & the Disseisor,

ſor grant vn rent charge hors ō meſm̃ la terre, &c. coment que apres le diſſeiſee releſſa al diſſeiſor, &c. vncore l' rent charge demurt en ſa force. Et la cauſe en ceux deux caſes eſt ceo, q̃ home nauera aduantage per tiel releas q̃ ſerra encounter ſon proper acceptance, et encounter ſon grant demeſne: & coment q̃ aſcuns out dit que lou lentre ō home eſt congeable ſur vn tenant ſil releaſiſt a meſme le tenant, que ceo auaileroit a l' tenant, ſicome il vſt enter ſur le tenant, et puis luy enfeoffa, &c. ceo neſt pas voier en cheſcun cas. Car en le primer cas de ceux deux auauntdits caſes, ſi le diſſeiſie vſt enter ſur l' feoffee ſur condition, et puis luy enfeffa, donques eſt le condition tout defeat et auoid. Et iſſint en le ſecond caſe, ſi le diſſeiſie entraſt et enfeoffa celuy que granta l' rent charg̃, donques eſt le rent charge anient et auoid, mes il neſt pas void per aſcun tiel releas ſans entry fait, &c.

grant a rent charge out of the ſame land, &c. albeit the Diſſeiſee doth afterwards releaſe to the Diſſeiſor, &c. yet the Rent-charge remaynes in force. And the reaſon in theſe two caſes is this, that a man ſhall not haue aduantage by ſuch releaſe, which ſhall bee againſt his proper acceptance, & againſt his own grant. And albeit ſome haue ſaid, that where the entry of a man is Congeable vpon a Tenant if hee releaſeth to the ſame Tenant, that this ſhall auaile the Tenant, as if he had entred vpon the Tenant and after enfeoffed him, &c. this is not true in euery caſe, for in the firſt caſe of theſe two caſes aforeſaid, if the Diſſeiſee had entred vpon the Feoffee vpon condition, and after enfeoffed him, then is the Condition wholly defeated and auoided. And ſo in the ſecond caſe if the diſſeiſee entreth and enfeoffeth him who granted the Rent charge, then is the Rent-charge taken away and auoided, but it is not void by any ſuch releaſe without entrie made, &c.

other profit out of the lands. And the reaſon is becauſe he ſhal not auoid his owne grant by a releaſe, hee himſelfe hath acquired ſince the grant, but if the Diſſeiſor in that caſe be diſſeiſed, and the Diſſeiſee releaſe to the ſecond Diſſeiſor he ſhall auoid it, as by that which hath beene ſaid, Sect. 473. appeareth. So likewiſe if A. and B. bee ioynt Diſſeiſors, and B. grant a Rent-charge, and the Diſſeiſee releaſe to A. all his right. A. ſhal auoid the Rent-charge becauſe it was not granted by him, and ſo not within the reaſon of our Author.

If there bee two Femes ioynt Diſſeiſors and the one taketh huſband, and the Diſſeiſee releaſe to the other, ſhee is ſole ſeiſed, and ſhall hold out the huſband and wife.

If two Diſſeiſors be, and they infeoffe another, and take backe an eſtate for life or in fee, albeit they remaine Diſſeiſors to the Diſſeiſee as to haue an aſſiſe againſt them, yet if hee releaſe to one of them hee ſhall not hold out his companion, becauſe their eſtate in the land is by feoffment.

If there be two Diſſeiſors and they be diſſeiſed, and they releaſe to their Diſſeiſor, and after diſſeiſe him, and then the Diſſeiſee releaſe to one or both of them, yet the ſecond Diſſeiſor ſhall re-enter, for they ſhall not hold the land againſt their owne releaſe; for Littleton here ſaith, that they ſhall not auoid their owne grant, and by like reaſon they ſhall not auoid their owne releaſe, & ſic de ſimilibus.

¶ *Come ſil vſt enter ſur le tenant & luy enfeoffe.* Here is another kind of releaſe, viz. a releaſe which enureth by way of entry and feoffment, for if a Diſſeiſee releaſe to one of the Diſſeiſors to ſome purpoſe this ſhall enure by way of entry and feoffment, viz. as to hold out his companion. But as to a Rent-charge granted

ted by him it ſhall not enure by way of entrie and feoffment, for if the diſſeiſee had entred and enfeoffed him, the Rent charge had beene auoyded. But it is a certaine rule that when the entrie of a man is congeable, and he releaſeth to one that is in by title (as hereto the feoffee vpon condition is) it ſhall neuer enure by way of entrie and feoffment, either to auoide a condition with which he accepted the Land charged, or his owne grant, or to hold out his Companion.

And where it appeareth by our Author that acts done by the Diſſeiſor ſhall not be auoyded by the Releaſe of the Diſſeiſee. It is to be noted that acts made to the Diſſeiſor himſelfe ſhall not be auoyded by the alteration of his eſtate by the releaſe of the Diſſeiſee, as if the Lord before the Releaſe had confirmed the eſtate of the Diſſeiſor to hold by leſſer ſeruices, the Diſſeiſor ſhall take aduantage of it, and ſo of Eſtouers to be burnt in the houſe, and the like law of a warrantie made vnto him.

If the heire of the Diſſeiſor indow his wife Ex aſſenſu patris, and the Diſſeiſee releaſe to the Diſſeiſor, he ſhall not auoide the indowment, for that is like the caſe put by Littleton of the Rent-charge.

If an Alien be a Diſſeiſor and obtaine Letters of Denization, and then the Diſſeiſee Releaſe vnto him, the King ſhall not haue the land, for the Releaſe hath altered the eſtate, and it is as it were a new purchaſe, otherwiſe it is if the Alien had beene the Feoffee of a Diſſeiſor.

If the Lord diſſeiſe the Tenant, and is diſſeiſed, the Diſſeiſee releaſe to the ſecond Diſſeiſor, yet the Seigniory is not reuiued, for betweene the parties the Releaſe enures by way of Entrie and Feoffment as to the land, but not hauing regard to the Seigniory, and for that the poſſeſſion was neuer actually remoued or reuerted from the Diſſeiſor who claymeth vnder the Lord, the Seigniory is not reuiued. But if the Lord and a ſtranger diſſeiſe the Tenant, and the Diſſeiſee releaſe to the ſtranger, there the Seigniory by operation of Law is reuiued, for the whole is veſted in the ſtranger which neuer claymed vnder the Lord. And in that caſe, if the Lord had died, and the land had ſuruiued, the Seigniory had beene reuiued. But if the Lord had diſſeiſed the Tenant, and beene diſſeiſed by two, and the Diſſeiſee releaſed to one of them, the Seigniory is not reuiued, becauſe he claymed (as hath beene ſaid) vnder the Lord.

Sect. 478.

Vid.Sect.514.

28.E.3.98. 9.E.446. 21.E.4.55. 41.E.3.10. 2.H.412.

¶ Q*Vel briefe de eux il eſliera, &c.* Note many times in one caſe the Law doth giue a man ſeuerall remedies, and of ſeuerall kindes, as in this caſe by action and by entrie, by action, either a Writ of right, or Dum fuit infra ætatem.

¶ *Et puis le Diſſeiſor porta breife de droit, &c.* Here it appeareth that there is a great art and knowledge for a man that hath diuers remedies to chooſe his aptеſt remedie, as in this caſe, if he bring his Writ of right, the Diſſeiſor ſhall be barred, but if he had entred vpon the heire of the Alienee, he ſhould haue enioyed the land for euer. For in that caſe the heire of the Alienee after ſuch an entrie ſhall neuer haue a Writ of right no more then if the Diſſeiſee entreth vpon the heire of the Diſſeiſor, and make a Feoffment in fee, if the heire of the Diſſeiſee

¶ Item ſi hom ſoit diſſeiſi pur vn enfant, le quel aliena en fee, & alienee deuie ſeiſie, et ſon heire enter, eſteant le Diſſeiſor deins age, ore eſt en election le Diſſeiſour, d auer vn brieſe de Dum fuit infra ætatem, ou brieſe d droit enuers le heire del alienee, et quel brieſe de eux q il eſliera, il doit recouer per la ley, &c. Et auxi il poit enter en la terre ſans aſcun recouerie, et en ceſt caſe lentre l Diſſeiſie eſt tolk, &c. Mes en ceſt cas ſi le diſſeiſie releſſa ſon droit al heire

ALſo if a man bee diſſeiſed by an infant, who alien in fee, and the Alienee dieth ſeiſed, & his heire entreth, the diſſeiſor being within age, now is it in the election of the diſſeiſor to haue a writ of *Dum fuit infra ætatem*, or a Writ of right againſt the heire of the alienee, and which writ of them hee ſhall chooſe, hee ought to recouer by the law, &c. And alſo he may enter into the land without any recouery, & in this caſe the entrie of the diſſeiſee is taken away,

heire del alienee, et puis l' diſſeiſor porta brē ō dīt envers l'heir dalience, et il ioyne le miſe ſur l' mere droit &c. le graunde aſſiſe doit trouer per la ley que l' tenant ad pluis mere droit que ad le diſſeiſour, &c. pur ceo que le tenant ad le droit le diſſeiſie per ſon releas, le quel eſt pluis anciēt et pluis mere droit. Car p tiel leas tout le droit le diſſeiſee paſſa a le tenant, et eſt en le tenant. Et a ceo que aſcuns ont dit, que en tiel caſe lou hom̄ que ad droit al terres ou tenements (mes ſon entrie neſt pas congeable) ſil releſſa al tenant tout ſon droit &c. que tiel releas vera per voy dextinguiſhment: Quant a ceo il puit eſtre dit, q̄ ceo eſt voyer quant a celuy que releſſa, car p ſon releas il ad luy demiſe quietmēt de ſon droit, quant a ſon perſon, mes vncore le droit que il auoit bien poit paſſer a le tenant per ſon releaſe: Car enconuenient ſerroit que tiel ancient droit ſerroit extinct tout ouſterment, &c. Car il eſt cōmunement dit que

&c. But in this caſe if the diſſeiſee releas his right to the heire of the alienee, and after the diſſeiſor bringeth a writ of right againſt the heire of the alienee, and hee ioyne the miſe vpon the meere right, &c. the great aſſiſe ought to finde by the law that the tenant hath more meere right then the diſſeiſor, &c. for that the tenant hath the right of the diſſeiſee by his releaſe, the which is the moſt ancient & moſt meere right: for by ſuch releaſe all the right of the diſſeiſee paſſeth to the tenant, and is in the tenant. And to this ſome haue ſaid that in this caſe where a man which hath right to lands or tenements (but his entrie is not congeable) if hee releaſe to the tenant all his right, &c. that ſuch releaſe ſhall enure by way of extinguiſhment. As to this it may bee ſaid that this is true, as to him which releaſeth, for by his releaſe he hath diſmiſſed himſelfe quite of his right as to his perſon, but yet the right which he hath may well paſſe to the tenant by his releaſe. For it ſhould bee inconuenient that ſuch an ancient right ſhould bee extinct altogether, re-enter he ſhall detaine the land for euer, and the Feoffee ſhall not maintaine any writ of right, for a bare right ſhall neuer be left in the Feoffee, but ſhall euer follow the poſſeſſion, as hath beene ſaid, but if the Diſſeiſee entreth vpon the heire of the Diſſeiſor, and make a Feoffment in fee vpon condition, and entreth for the condition broken before the heire of the Diſſeiſor enter, hee is reſtored to his right againe. 38.E.3.16. 24 H.6. Reſtore al primer actum 5. Vid.Sect.447.

A man maketh a gift in tayle, the remainder in fee, Tenant in tayle dieth without iſſue, an eſtranger intrude, and he in the remainder bringe a Formedon, and recouereth by default, and maketh a Feoffment in fee, the Intruder reuers the recouery in a writ of diſceit and entreth he ſhall detaine the land for euer, and the Feoffee ſhall not haue a writ of right. 9.H.7.24.

And ſo likewiſe if a Diſſeiſor die ſeiſed, and a ſtranger abate and the Diſſeiſee releaſe to him, the heire of the Diſſeiſor ſhall enter and detaine the land for euer. For the right to the poſſeſſion ſhall draw the right of the land to it, and ſhall not leaue a right in him to whom the releaſe is made, as hath beene ſaid before in the 447. Section. 9.H.7.24.

¶ *Le droit del diſſeiſee paſſa al tenant, & eſt en le tenant.* For ſeeing the Tenant hath the whole fee ſimple, he is capable of the whole right of the diſſeiſee, and as Littleton here ſaith, the right is in the Tenant.

¶ *Inconuenient ſerroit.* Here againe as hath beene often obſerued, an argument Ab inconuenienti is forcible in Law, and that Iudges by the authority of our Author are to iudge of inconueniences as of things vnlaw- Vid.Sect.87. 138. 139. 232. 269. 440. 722.

full, as hereby and by many other places it appeareth.

¶ *Vn droit ne poit pas morier.* Dormit aliquando ius, moritur nunquam. For of ſuch an high eſtimation is right in the eye of the Law, as the Law preſerueth it from death and deſtruction: trodden downe it may be, but neuer troden out. For where it hath beene ſaid that a releaſe of a right doth in ſome caſes enure by way of extinguiſhment. It is ſo to be vnderſtood either (as Littleton doth here) in reſpect of him that makes the releaſe, or in reſpect that by conſtruction of Law it enureth not alone to him to whom it is made, but to others alſo who be ſtrangers to the releaſe, which as hath beene ſaid is a quality of an inheritance extinguiſhed.

droit ne poit pas morier. &c. for it is commonly ſaid, that a right cannot die.

14.H.8.6.b. As if there be Lord and Tenant, and the Tenant maketh a Leaſe for life the remainder in fee, if the Lord releaſe to the Tenant for life, the rent is wholly extinguiſhed, and he in the remainder ſhall take benefit thereof, euen ſo when the heire of a Diſſeiſor is diſſeiſed, and the Diſſeiſor make a Leaſe for life, the remainder in fee, if the firſt Diſſeiſee releaſe to the Tenant for life, this is ſaid to enure by way of extinguiſhment, for that it ſhall enure to him in the remainder, who is a ſtranger to the Releaſe, and yet in truth the right is not extinct but doth follow the poſſeſſion, viz the Tenant for life hath it during his time, and he in the remainder to him and to his heires, and the right of the inheritance is in him in the remainder, for a right to land cannot die or be extinct in Deed, and therefore if after the death of Tenant for life the heire of the Diſſeiſor bring a Writ of right againſt him in the remainder and he ioyne the miſe vpon the mere right, it ſhall be found for him, becauſe in iudgement of Law he hath by the ſaid Releaſe the right of the firſt Diſſeiſee.

Sect.479. & 480.

14.H.8.fol.5.6.
21.H.7.25. 30.H.6. tit.barre.39. 38.E.3.10.

¶ HEre Littleton putteth a diuerſitie betweene Releaſes which enure by way of extinguiſhment againſt all perſons and whereof all perſons may take aduantage, and Releaſes which in reſpect of ſome perſons enure by way of extinguiſhment, and of other perſons by way of Mitter le droit. Or betweene Releaſes which in Deed enure by extinguiſhment for that hee to whom the Releaſe is made cannot haue the thing releaſed, and Releaſes which hauing ſome quality of ſuch Releaſes are ſaid to enure by way of extinguiſhment, but in troth doe not, for that he to whom the Releaſe is made may receiue and take the thing releaſed. And here Littleton putteth caſes where Releaſes doe abſolutely enure by extinguiſhment without exception hauing reſpect to all perſons, and firſt of the Lord and Tenant. Secondly of the Rent charge. Thirdly, of the Common of paſture.

First of the Lord and Tenant, and the Lord releaſe to

¶ MEs releaſes q̃ enurera per voy dextinguiſhmẽt enuers touts perſons, ſont lou celuy a que le releas eſt fait, ne poit auer ceo que a luy eſt releas. Sicome ſi ſoyent Sñr & tenant, et le Sñr releſſa al tenant tout le droit que il ad en la ſeigniory, ou tout le droit que il ad en le terre, &c. tiel releas va per voy de extinguiſhment enuers touts perſons, pur ceo que le tenant ne poit auer ſeruice pur prender de luy meſme.

BVt releaſes which enure by way of extinguiſhment againſt all perſons, are where hee to whom the releaſe is made cannot haue that which to him is releaſed. As if there bee Lord and tenant, and the Lord releaſe to the tenant all the right which hee hath in the ſeigniory, or all the right which hee hath in the land, &c. this releaſe goeth by way of extinguiſhment againſt all perſons, becauſe that the tenant cannot haue ſeruice to receiue of himſelfe.

Sect.480.

EN meſn̄ le maner eſt de releas fait al Tenant del terre de vn rent charge ou common de paſture, &c. pur ceo que le tenant ne poit auer ceo que a luy eſt releſſe, &c. iſſint tiels releaſes vyera per extinguiſhment en touts voyes.

IN the ſame manner is it of a Releaſe made to the tenant of the land of a Rent-charge or Common of paſture, &c. becauſe the tenant cannot haue that which to him is releaſed, &c. ſo ſuch releaſes ſhall enure by way of extinguiſhment in all wayes.

the Tenant his Seigniory, this muſt of neceſſitie enure by way of extinguiſhment to all men, for the Tenant cannot haue ſeruice to bee taken of himſelfe, nor one man can bee both Lord and Tenant. The ſecond is of a Rent-charge, a man cannot haue land and a rent iſſuing out of the ſame land. Thirdly, a man cannot haue land and a Common of paſture iſſuing out of the ſame land, Et ſic de cæteris. For in all theſe caſes and the like he to whom the Releaſe is made cannot haue and enioy the thing that is releaſed. But in the caſe of the right of land, the Tenant of the land may take and enioy it for ſtrengthening his eſtate therein.

The meſne being a Feme entermarrie with the Tenant peraunſe, if the Lord releaſe to the Feme, the Seigniory only is extinct. but if hee releaſe to the huſband, both Seigniory and meſnaltie are extinct. And in this caſe, if the Lord releaſe to the huſband and wife, it is a queſtion how the releaſe ſhal enure, but it is no queſtion but that a Releaſe may be made to a Meſnaltie or a Seigniory ſuſpended in part of the eſtate.

(r) 13.E.3.tit.Extinguiſhment, Brook 45. & tit. Voucher F.120. 30.E.3.13. 19.H.6 19. 21.E.3.33. 38.Aſſ.17.

But here obſerue a diuerſity where a Releaſe enureth by way of extinguiſhment of an inheritance which is in poſſeſſion and may be granted ouer, and a Releaſe of a right, or an action to lands which cannot be granted ouer. (r) For the Lord may releaſe his Seigniorie to the Tenant of the land for life or in taile, Et ſic de cæteris. But ſo cannot one releaſe a right or an action, for if it be releaſed but for an houre, it is extinct forever, as hath beene ſaid.

11.H.4.tit.Releaſe, 21. 18.E.2 ibid. 5.26.H.8.5. 41.Aſſ.6.

And two things are to be obſerued here, firſt that by the Releaſe of all the right in the land the Seigniorie is extinct, as well as by the Releaſe of all the right in the Seigniorie, for the Seigniorie iſſueth out of the land. Secondly, That by the releaſe of all his right in the ſeigniorie or the land, the whole Seigniorie is extinct without any words of Inheritance. If the Tenancie be giuen to a Lord and to a ſtranger, and to the heirs of the ſtranger, the Lord releaſe to his Companion all the right in the land, this Releaſe doth not onely paſſe his eſtate in the Tenancie, but extinguiſheth alſo his right in the Seigniorie, and ſo one Releaſe enures to extinguiſh ſeuerall rights in one and the ſame land.

If there be Lord and Tenant by Fealtie and Rent, the Lord granteth the Seigniorie for yeares, and the Tenant attorneth, the Lord releaſeth his Seigniorie to the Tenant for yeres, and to the Tenant of the land generally, the whole Seigniorie is extinct, and the ſtate of the Leſſee alſo. But if the Releaſe had beene to them and their heyres, then the Leſſee had had the Inheritance of the one moitie, and the other moitie had beene extinct. And the reaſon of this diuerſitie is, becauſe when the Releaſe is made generally, it can enure to the Leſſee but for life, becauſe it enureth by way of enlargement of eſtate, and being made to the Tenant of the Land, it enureth by way of extinguiſhment, as Littleton here ſaith, and then there cannot remain a particular eſtate in the Seigniorie for life. But when the Releaſe is made to them and their heires, each one takes a moitie, the one by way of encreaſing of the eſtate, and the other by extinguiſhment.

Sect. 481.

ITEM de prouer que le graund Aſſiſe doit paſſer pur le demandant en le caſe auauntdit, ieo aye oye ſouent la Lecture de Leſtatute

ALſo to proue that the graund Aſſiſe ought to paſſe for the demandant, in the caſe aforeſaid I haue often heard the reading of the Statute of Weſt. 2.

Ieo aye oye ſouent la Lecture de Weſt. 2. Here it is to be obſerued, of what authoritie antient Lectures or Readings vpon Statutes were, for that they had fiue excellent qualities: Firſt, They declared what the Common Law

Law was before the making of the Statute, as heere it appeareth. Secondly, They opened the true ſence and meaning of the Statute. Thirdly, Their caſes were briefe, hauing at the moſt one poynt at the Common Law, and another vpon the Statute. Fourthly, Plaine and Perſpicuous, for then the honour of the Reader was to excell others in authorities, argumẽts, & reaſõs for proof of his opinion, and for confutation of the obiections againſt it. Fifthly, They read, to ſuppreſſe ſubtill inuentions to creepe out of the Statute. But now Readings hauing loſt the ſaid former qualities, haue loſt alſo their former authorities: for now the caſes are long, obſcure, and intricate, full of new conceits, like rather to Riddles than Lectures, which when they are opened they vaniſh away like ſmoake, and the Readers are like to Lapwings, who ſeeme to be neereſt their neſts when they are fartheſt from them, and all their ſtudie is to find nice euaſions out of the Statute. By the authoritie of Littleton antient Readings may be cited for proofe of the Law, but new Readings haue not that honour, for that they are ſo obſcure and darke.

de weſtminſter ſecond, que commence, In caſu quo vir amiſerit per defaltam tenementum quod fuit ius vxoris ſuæ, &c. que a le Common Ley deuant meſm Leſtatut, ſi Leaſe ſoit fait a vn home pur terme de vie, le remainder ouſter en fee, et vn eſtrange per feint Action vſt recouer enuers le tenant a ẽme de vie per default, et puis le Tenant morust, celuy en le remainder nauoit aſcũ remedie deuaunt le Statute, pur ceo que il nauoit aſcun poſſeſſion del terre. which begunne thus: *In caſu quo vir amiſerit per defaltam Tenementũ quod fuit ius vxoris ſuæ, &c.* that at the Common Law before the ſayd Statute, if a leaſe were made to a man for terme of life, the remainder ouer in fee, and a Stranger by feigned Action recouered againſt the Tenant for life by default, and after the Tenant dieth, he in the remainder had no remedie before the Statute, becauſe hee had not any poſſeſſion of the Land.

¶ *Leſtatute de W.2.* which is the third Chapter.

(a) 24.E.3.35. 28.E.3.96. 18.E.2. Entrie 74. 3.E.2. Entrie 7. 6.E.3.24. 7.E.3. Ent.62. 7.E.3.54.55 15.E.4 15. F.N.B.217.d. Regiſter 241.

¶ *Le remainder ouſter en fee.* Here is to be obſerued, That although the Statute ſpeaketh of a Reuerſion, (a) yet by the authoritie of Littleton a remainder is within the Statute.

See the Statute of 14.Eliz.ca.8. which prouideth fully for him in the remainder.

¶ *Feint Action.* Feint is a Participle of the French word Fiendre, which is to feigne or falſly pretend, ſo as a faint Action is a falſe Action.

(b) W.2.cap.5.

Vide 34.E.3.Formdon 31. 11.E.3.ibid. 31. 8.E.3.59. F.N.B.217.d.7.H.7.13.

¶ *Nauoit aſcun remedie deuant Leſtatute.* (b) Here it appeareth by Littleton, That if a man maketh a Leaſe for life, the remainder in fee, and Tenant for life ſuffereth a Recouerie by default, that he in the remainder ſhould not haue a Formedon by the common Law: for Littleton ſaith, That he had not any remedie before the Statute. Neither is there any ſuch writ in that caſe in the Regiſter, albeit in ſome Bookes mention is made of ſuch a writ.

Sect. 482.

38.E.3.3. Tit. Iuris vtrum 1.

¶ HEere a Diſſeiſin gotten by wrong, and defeated by the entrie of him that right hath, is ſufficient to maintaine a writ of Right againſt the recouerer in this caſe, for albeit

¶ Mes ſi celuy en le remainder vſt enter ſur le tenant a ẽme de vie, et luy diſſeiſiſt, & apres le

BVt if he in the remainder had entred vpon the Tenant for life, and diſſeiſed him, and after the Te-

le Tenaunt entre ſur luy, et apꝛs le tenant a terme de vie, per tiel recouery perde per default & mozuſt, ozе celuy en l' remainder bien pott auer bziefe de Dzoit enūs celuy que recouera, pur ceo que le miſe ſerra ioiñ ſolement ſur le meere dzoit, &c. Uncoze en ceſt caſe, le ſeiſin de celuy en le remainder fuit defeat per entrie del tenant a terme de vie. Mes peraduenture aſcuns voilent argue et dire, que il nauera bziefe ō Dzoit en ceſt caſe, pur ceo q̄ quant le miſe ẽ ioine, il eſt ioiñ en tiel maū, s̄, ſi le tenant ad plus mere dzoit en le terre en le manner come il tyent, q̄ le demandāt ad en le maner come il demanda, et pur ceo que le ſeiſin del dōt fuit defeat per lentry de le tenant a terme de vie, &c. Donque il ad nul dzoit en l' maū come il demaund.

nant enter vpon him, and after the Tenaunt for life by ſuch recouerie loſe by default and die, now hee in the remainder may well haue a Writ or Right againſt him wch recouers, becauſe the Miſe ſhalbe ioined only vpon the mere right, &c. Yet in this caſe the Seiſin of him in the Remainder was defeated by the entrie of the tenant for life. But peraduenture ſome wil argue and ſay, That hee ſhall not haue a Writ of Right in this caſe, for that when the Miſe is ioyned, it is ioyned in this manner, (*ſcilicet*) if the Tenaunt hath more mere right in the land in the manner as he holdeth, than the demandant hath in the manner as hee demādeth, & for that the ſeiſin of the demādant was defeated by the entrie of the tenant for term of life, &c. he hath no right in the manner as he demandeth.

the Seiſin is defeated betweene the Leſſee for life, and him in the remainder, yet hauing regard to the Recouerour, who is a meere ſtranger and hath no title, it is ſufficient againſt him. But otherwiſe it is againſt the partie himſelfe that defeated the Seiſin, and the Law is propenſe to giue remedie to him that right hath. And where ſome haue thought, that there is no authoritie in Law to warrant Littletons opinion herein, they are greatly miſtaken, for Lit. hath good warrant for all that he hath written. 7.E.3 62. 38.E.3.37. Tit. Iur. vtr.1.

Lands are letten to A. for life, the remainder to B. for life, the remainder to the right heires of A. A dieth, B. entreth and dieth, a ſtranger intrudeth, the heire of A. ſhall haue a Writ of Right of the Seiſin which A had as Tenaunt for life.

Lands are letten to A. and B. and to the heires of A. A. dieth, a recouerie is had againſt B. the heire of A. ſhall haue a Writ of Right of the whole, for euery Joyntenant is ſeiſed per my & per tout.

If lands be giuen in tayle, the remainder to A. in Fee, the Donee dieth without Iſſue, his wife priuemēt enſeint, A. entreth, the Iſſue is borne and entreth vpon him and dieth without Iſſue, A. ſhall haue a Writ of Right, of the Seiſin which he had.

If Lands be giuen in taile to A. the remainder to his right heires, A. dieth without Iſſue, the collaterall heire of A. ſhall haue a Writ of Right of the ſeiſin of A. 4.E.3.16.27.

And ſo note a diuerſitie betweene a Seiſin to cauſe poſſeſſio fratris, &c. for there is required a more actuall ſeiſin, 40.E.3.8.42.E.3.20.37.Af.4 24.E.4.24.7.H.5.4.11.H.4 11.

and a Seiſin to maintaine a Writ of Right. And hereby alſo are the (&c.) in this Section explained.

Sect. 483

CAr ceo poit eſtre dit, que ceux parols (modo & forma, put &c.) in mults ōs caſes tōt parols

TO this it may be ſaid, that theſe words (*modo & forma prout, &c.*) in many caſes are words

parols de forme de pleder, & ne-my parols de ſubſtance. Car ſi home port briefe dentre In caſu prouiſo, del alienation fait per le tenant en dower a ſon diſinheritance, et counta del alienation fait en fee, et le tenant dit, que il ne aliena pas en le manner come le demaundant ad declare, et ſur ceo ſount a iſſue, et troue eſt per verdict, que le tenant alyenaſt en le taile, ou pur terme dauter vie, le demaundant recouera: vncore lalyenation ne fuit en le manner come le demaundant auoit declare, &c.

of forme of pleading, and not words of ſubſtance, for if a man bring a Writ of Entrie *in caſu prouiſo*, of the alienation made by tenant in Dower to his diſinheritance, and counteth of the alienation made in fee, and the tenant ſaith, that he did not alien in maner as the Demandant hath declared, and vpon this they are at iſſue, and is found by verdict, that the Tenant aliened in taile, or for tearme of another mans life, the Demandant ſhall recouer, yet the alienation was not in manner as the Demandant hath declared, &c.

¶ WHere Modo & Forma are of the ſubſtance of the iſſue, and where but words of forme, this diuerſitie is to be obſerued, (c) where the iſſue taken goeth to the point of the Writ or Action, there Modo & forma, are but words of forme, as here in the Caſe of the Writ of Entrie in caſu prouiſo, and ſo is the (&c.) well explained in this Section. But otherwiſe it is, when a collaterall point in pleading is trauerſed, as if a feoffment be alleadged by two, and this is trauerſed Modo & Forma, and it is found the feoffment of one, there Modo & Forma is materiall. So if a feoffment be pleaded by Deed, and it is trauerſed Abſque hoc quod feoffauit modo & forma, vpon this Collaterall Iſſue, modo & forma are ſo eſſentiall, as the Jury cannot find a feoffment without deed.

(c) 9.H.6.1. 42.E.3.3c. 21.E.4.22. F.N.B.206.g. 42.E.3.5. 32.H.8.iſſue Br. 80. *Vide Sect. ſequent.*

12.E.4.4.

Section 484.

¶ *Troue eſt per verdict que il tient per fealtie tantum.* Here is another diuerſitie to bee obſerued, That albeit the iſſue be vpon a collaterall point, yet if by the finding of part of the iſſue, it ſhall appeare to the Court that no ſuch action lieth for the plaintife no more then if the whole had beene found there modo & forma are but words of forme, as here in the caſe which Littleton putteth of the Lord and Tenant, appeareth.

Vide Sect. preced.

10.E.4.7. 8.E.4.15. 20.E.4.3. 21.E.4.3. *Marlebr. cap.3.*

¶ *Car le matter del iſſue eſt le quel il tient de luy ou nemy, &c.*

Here it appeareth, that

¶ AVxy ſi ſoient Sñr & t, & le t tient ol Sñr per fealtie ſolement, et le Sñr diſtreine le tenant pur rent & le tenant porta briefe de Treſpas enuers ſon Seignior de ſes auers iſſint priſes, & le Seignior plede que le tenant tient de luy per fealtie & certain rent, & pur le rent arere il vient a diſtreiner, &c. & demaunde iudgemẽt de briefe port vers luy, Quare vi & armis, &c. & lauter dit que il ne tient de luy en le maner come il ſuppoſe, et ſur ceo

ALſo if there bee Lord and Tenant, and the Tenant hold of the Lord by fealty only, and the Lord diſtreine the Tenant for rent, and the Tenant bringeth a Writ of Treſpaſſe againſt his Lord for his cattle ſo taken, and the lord plead that the tenãt holds of him by fealtie and certaine Rent, and for the Rent behind hee came to diſtreine, &c. and demand iudgement of the Writ brought againſt him, *Quare vi & armis, &.* And the other ſaith, that hee doth not

ceo ſont a iſſue, et troue eſt per verdict que il tient de luy per fealtie tantum, en ceſt caſe le briefe abatera, et uncore il ne tient de luy en le maner come le ſeignior auoit dit. Car le matter del iſſue eſt, le quel le tenant tient de luy ou nemy, car ſil tient de luy, coment que le Seignior diſtreina le tenant pur auter ſeruices que ne doit auer, uncore, tiel briefe de Treſpaſſe, Quare vi & armis, &c. ne giſt enuers le Seignior, mes ſerra abate.

Quare vi & armis, &c. Lord, but ſhall abate.

hold of him in the manner, as he ſuppoſe, and vpon this they are at iſſue, and it is found by verdict that he holdeth of him by fealtie only. In this caſe the Writ ſhall abate, and yet hee doth not hold of him in the manner as the Lord hath ſaid, for the matter of the iſſue is whether the Tenant holdeth of him or no, for if hee holdeth of him, although that the Lord diſtreine the Tenant for other ſeruices which hee ought not to haue, yet ſuch Writ of Treſpaſſe, doth not lie againſt the

if the matter of the iſſue be found it is ſufficient. And this rule holds in criminall cauſes. For if A. be appealed, or indicted of Murder, viz. that hee of malice prepenſed killed I. A. pleadeth that he is not guiltie modo & forma, yet the Jury may find the Defendant guiltie of Man-ſlaughter without malice prepenſed, becauſe the killing of I. is the matter and malice prepenſed is but a circumſtance. *Pl.Com.101.*

In Aſſiſe of Darreine preſentment, if the plaintife alleadge the auoydance of the Church by priuation, and the Jury finde the voydance by death, the Plaintife ſhall haue iudgement, for the manner of voydance is not the title of the Plaintife, but the voydance is the matter. *6.E.3.41.b. 25.E.3.36. 9.H.7.3.13.H.7.14. 29.E.3.38.*

(d) If a Gardeine of an Hoſpitall bring an Aſſiſe againſt the Ordinary, hee pleadeth that in his viſitation he deprined him as Ordinary, whereupon iſſue is taken, and it is found that he deprined him as Patron, the Ordinary ſhall haue iudgement, for the deprination is the ſubſtance of the matter. (d) *8.E.3.70.8.Aſſ.29. & 39.9.E.3.338.24.E.3.34 5.H.42 7.H.4.11.Pl.Com. 92. 3.Mar.Dier, 116. 40.E.3.35.*

The Leſſee conenant with the Leſſor not to cut down any trees, &c. & bind himſelfe in a bond of forty pounds for performance of Couenants, the Leſſee cut downe ten trees, the Leſſor bringeth an Action of Debt vpon the bond, & aſſigneth a breach that the Leſſee cutteth downe twentie trees, whereupon iſſue is ioyned & the Jury find that the Leſſee cut downe ten, iudgement ſhall bee giuen for the Plaintife. For ſufficient matter of the iſſue is found, for the Plaintife. *De.2.& 3.Ph.& Mar. 115.b. Trin.22.Eliz.Rot.912. Wolmans caſe. 48.E.3.28.34.Aſſ.3. 30.Aſſ.5. 41.E.3.28. 33.E.3.verdict.47. 21.E.3.1.b.28.E.3 48. 31.E.3.account.58. 28.Aſſ 48.*

Sect. 485.

CAury en bricke de treſpaſſe de batterie, ou des biens emports, ſi le defendant plede de rien culpable, en le mañ come le Plaintife ſuppoſe, et troue eſt que le defendant eſt culpable en auter ville, ou a auter iour que le Plaintife ſuppoſe, uncore il recouera.

ALſo in a Writ of Treſpaſſe for batterie, or for goods carried away, if the Defendant plead not guiltie, in manner as the Plaintife ſuppoſe, and it is found that the Defendant is guiltie in another Towne, or at another day then the Plaintife ſuppoſe, yet hee ſhall recouer.

CEN *briefe de treſpaſſe de battery & des biens emports, &c.*

Here Littleton ſpeaketh of Actions brought for things tranſitorie. In which caſes the wrong beeing done in one Towne, the Plaintife may not only alleage it in another Towne, as Littleton here ſaith, but alſo in another Countie, and the Jurors vpon not guiltie pleaded, are boũd to find for the plaintife.

Neither can the aſſault, batterie or taking of goods, &c. alleadged in another Countie, be trauerſed without ſpeciall cauſe

cauſe of iuſtification which extendeth to ſome certaine place, as if a Conſtable of a towne in another Countie arreſt the body of a man, that breaketh the peace, there hee may trauerſe the County (but he muſt not reſt there) but all other places ſauing in the Towne whereof he is Conſtable. And ſo it is of taking of goods, the Defendant iuſtifie for damage feaſant in another Countie he muſt trauerſe as before. But where the cauſe of the iuſtification is not reſtrained to a certaine place that is ſo locall as it cannot be alledged in any other Towne as in the caſes before alledged, and the like, then albeit the action bee brought in a forraine Countie, yet he muſt alledge his iuſtification in the Countie where the action is brought. As if a man be beaten in the County of Middleſex, and he bringeth his action in the Countie of Buck. the Defendant cannot pleade that the Plaintife aſſaulted him in the County of Midd. &c. and trauerſe the County, but he muſt pleade his iuſtification in the County of Buck. for that the cauſe of his iuſtification is good in any place. And ſo it is in caſe of bailement of goods, and other caſes for tranſitory things, as for example.

Et iſſint en pluſors auters caſes, ceux parols, ſ. en le maner come le demaundant ou le plaintife ad ſuppoſe, ne font aſcun matter de ſubſtance del iſſue. Car ē briefe de droit, lou le miſe eſt ioyne ſur le mere droit, il eſt a tant a dire, et a tiel effect, ſ. le quel ad pluis mere droit, le tenant ou le demandant al choſe en demand.

And ſo in many other caſes theſe words, ſ. in manner as the demandant or the plaintife hath ſuppoſed, doe not make any matter of ſubſtance of the iſſue, for in a Writ of right, where the miſe is ioyned vpon the meere right, that is as much to ſay, & to ſuch effect, *viz.* whether the tenāt or demaundant hath more meere right to the thing in demand.

*Trin.*30.*Eliz. in the Kings bench, betweene Inglebert and Iones. And herewith agreeth a iudgement in the Court of Common pleas, Taſh.* 38.*Eliz. Rot.*1656.

In an action vpon the caſe the Plaintife declared for ſpeaking of ſlanderous words which is tranſitorie, and laid the words to be ſpoken in London, the Defendant pleaded a concord for ſpeaking of words in all the Counties of England, ſauing in London, and trauerſed the ſpeaking of the words in London: the Plaintife in his replication denied the concord, whereupon the Defendant demurred, and iudgement was giuen for the Plaintife. For the Court ſaid, that if the concord in that caſe ſhould not be trauerſed, it would follow that by a new and ſubtile inuention of pleading, an ancient principle in Law, (that for tranſitorie cauſes of action the Plaintife might alledge the ſame in what place or Countie he would) ſhould be ſubuerted, which ought not to be ſuffered, and therefore the Iudges of both Courts alloweth a trauerſe vpon a trauerſe in that caſe: And the wiſedome of the Iudges and Sages of the Law haue alwayes ſuppreſſed new and ſubtile inuentions in derogation of the Common Law. And therefore the Iudges ſay in one booke (e) we will not change the Law which alwayes hath beene vſed. And another ſaith (f) it is better that it be turned to a default, then the Law ſhould be changed, or any innouation made.

A man did grant a rent, with a new inuented clauſe of Diſtreſſe, viz. That the Grantee ſhould hold the Diſtreſſe againſt gages and pledges, and yet by the whole Court he ſhall gage deliuerance, for otherwiſe by this new inuention all Repleuyes ſhall be taken away.

(*) See many other new inuentions in derogation of the Common Law diſallowed by the Iudges and by the Court of Parliament.

(h) Where the Iury is bound to finde aſwell locall things in many caſes as tranſitory in other Counties, ſee at large in my Reports.

By this which hath beene ſaid you ſhall know the Law as it is now in vſe in theſe caſes, and the better vnderſtand our (i) bookes when you ſhall reade them concerning as well locall, as tranſitory things, wherein you ſhall finde great variety of opinion in our bookes.

(e) 38.*E.*3.1.
(f) 2.*H.*4.18.
31.*E.*3.*Gager deliuer*,5.
(*) 42.*Aſſ.*12. 4.*E.*3.*ca.*5. 18.*E.*3.*ca.*1. *& ca.*6. 4.*H.*4.*ca.*2.
(h) *Lib.*6.*fo.*46.47. *Dowdales caſe.* 3.*E.*3. *Aſſ.*446. 27.*E.*3.86. 1.*Aſſ.*16. 3.*Aſſ.*4. 6.*Aſſ.*4. 5.*Aſſ.*7. 18.*E.*3.38. 21.*Aſſ.*8. 29.*Aſſ.*5. 44.*E.*3.6.*b.* 14.*H.*4.35. 5.*H.*5.2. 10.*H.*6.13. 21.*H.*6.51. 37.*H.*6.2. 7.*E.*4.45. 18.*E.*4.1. 22.*E.*4.19. 13.*H.*7.17. 2.*Mar. Br. attaint.*104. 10.*Eliz. Dier*,271.
(i) 19.*H.*6.48. 11.*H.*6.16. 43.*E.*3.23.*b.* 46.*E.*3.3.*a.* 9.*H.*6.61. 21.*H.*6.27. 14.*H.*8.24. 18.*E.*4.1. 30.*H.*6.2. 34.*H.*6.42. 14.*H.*6.21.22. 4.*H.*6.13. 33.*H.*6.25. 12.*E.*4.12. 28.*H.*8.*Dier.*29. 21.*E.*4.19.80. 27.*H.*8.19. 12.*H.*8.1. 11.*H.*4.65. 19.*H.*8.6.

¶ *Si le defendant plead de rien culpable.* This is a good iſſue if the Defendant committed no battery at all, but regularly by the Common Law if the Defendant hath cauſe of iuſtification or excuſe, then can he not pleade not guilty, for then vpon the euidence it ſhall be found againſt him, for that he confeſſeth the battery, and vpon that iſſue cannot iuſtifie it, but he muſt pleade the ſpeciall matter, and confeſſe and iuſtifie the battery.

The like Law is in other caſes, and therefore this is a learning neceſſary to be knowne, for that the loſſe of moſt cauſes dependeth thereupon. As if in battery the Defendant may iuſtifie the ſame to be done of the Plaintifes owne aſſault he muſt pleade it ſpecially, and muſt not pleade the generall iſſue, and ſo of the like. In treſpaſſe of breaking his cloſe, vpon not guilty

his

he cannot giue in euidence, that the beaſts came thorow the Plaintifes hedge, which he ought to keepe, nor vpon the generall iſſue iuſtifie by reaſon of a Rent-charge, Common, or the like. 25.H.8. Br.

In detinue the Defendant pleadeth Non detinet, he cannot giue in euidence, that the goods were pawned to him for money, and that it is not paid, but muſt pleade it, but he may giue in euidence a gift from the Plaintife, for that proueth, he detaineth not the Plaintifes goods. 22.H.6.33.

(d) So in an action of waſte, vpon the plea Nul waſt fait, he may giue in euidence any thing, that proueth it no waſte, as by tempeſt, by lightning, by enemies, and the like, but he cannot giue in euidence iuſtifiable waſte, as to repaire the houſe or the like. (e) If one doth waſte, and before the action brought the Leſſee repaireth it, and after the Leſſor bringeth an Action of waſte, and the Leſſee plead Quod non fecit vaſtum, hee cannot giue in euidence the eſpeciall matter. (d) 12 H.8.1. 19.E.2. waſte 30. 20.E.3. waſt.34. (e) 10.Eliz. Dier, 276. 2.Mar. Dier. 212.

If two men be bound in a bond ioyntly, and the one is ſued alone, he may plead this matter in abatement of the Writ, but he cannot plead Non eſt factum, for it is his Deed, though it be not his ſole Deed. (f) See in Whelpdales caſe, where a man may ſafely plead Non eſt factū, and where not, and the former bookes that treat of that matter well reconciled. (f) Lib.5.fo.119. Whelpdales caſe. 7.E.4.5.7.E.6.Br. Non eſt fact.14. 1.H.7.15. 14.H.8.28. Pl.Com. Dine & Man caſe. 36.H.8.Dier 59. 2.Mar. Dier 112. 1.Eliz.Dier.167.

(g) Upon Plene adminiſtrauit pleaded by an Executor Et iſſint riens inter maines, if it bee proued that he hath goods in his hands which were the Teſtators, he may giue in euidence, that he hath paid to that value of his owne money, and need not plead it ſpecially. (g) Hill.10.H.8. Rot.323. in Comuni banco. Et Mich. 6.E.6. in Comuni banco Bendloes.

In an Aſſiſe if the Tenant plead Nul tort nul diſſeiſin, he cannot giue in euidence a Releaſe after the Diſſeiſin, but a Releaſe before the Diſſeiſin he may, for then there is no Diſſeiſin vpon the matter. 7.H.5.9. 6.H.7.10. 34.E.3.Dreſ.29.

In a Writ of Right if the Tenant ioyne the Miſe vpon the meere right, hee cannot giue in euidence a collaterall warrantie, for he hath not any right by it, and therefore it ought to haue beene pleaded.

Of this learning you ſhall reade plentifully in our bookes, and in my Reports. This little taſte ſhall here ſuffice to make the reader capable of the reſt. Regularly whenſoeuer a man doth any thing by force of a warrant or authority, he muſt plead it. 9.E.3.32. 8.E.3.24. 33.E.3.Verdis. 18.H.6.24. 39.H.6.38. 18.E.3.19. Pl.Com.81.173. 21.H.7 76 16. Kellwey 21.E.4.11. 22.E.4.45. 13.H.7.13. Stanf.Pl.Cor.15. 22.Aſſ.55. 37.H.6.21.

But all that hath beene ſaid muſt be vnder two cautions. Firſt that whenſoeuer a man cannot haue aduantage of the ſpeciall matter by way of pleading, there he ſhall take aduantage of it in the euidence. For example the rule of Law is, that a man cannot iuſtifie in the killing or death of a man, and therefore in that caſe, he ſhall be receiued to giue the eſpeciall matter in euidence, as that it was Se defendendo, or in defence of his houſe in the night againſt theeues and robbers or the like.

Secondly, That in any action vpon the caſe, Treſpaſſe, Battery, or of falſe impriſonment againſt any Iuſtice of peace, Maior, or Bailife of Citie or Towne corporate, Headborough, Port-reue, Conſtable, Tithingman, Collector of Subſidie or Fifteene, in any his Maieſties Courts in Weſtminſter, or elſewhere concerning any thing by any of them done by reaſon of any of their offices aforeſaid, and all other in their aide or aſſiſtance or by their commandement, &c. they may plead the generall iſſue, and giue the ſpeciall matter for theire excuſe or iuſtification in euidence. 7.Ia ca.5.

In an Action of treſpaſſe or other ſuite againſt any perſon for taking of any Diſtreſſe or other Act doing by force of the Commiſſion of Sewers, the Defendant in any ſuch Action ſhall and may make Auowrie, Conuſance or Juſtification generally, that it was done by authority of the Commiſſion of Sewers for Lotte or Tax aſſeſſed by that Commiſſion, &c. and the Plaintife ſhall reply he did it of his owne wrong without ſuch cauſe. And both theſe acts were made for auoyding of prolixity and captiouſneſſe of pleading tending to the great charge and danger of Officers and miniſters of Juſtice, &c. 23.H 8.ca.5.

Euidence, *Euidentia.* This word in legall vnderſtanding doth not only containe matters of Record, as Letters patents, Fines, Recoueries, Inrolments, and the like, and writings vnder ſeale, as Charters and Deeds, and other writings without ſeale, as Court Rolles, Accounts, and the like, which are called Euidences Inſtrumenta, but in a larger ſence it containeth alſo Teſtimonia, the Teſtimony of witneſſes, and other proofes to be produced and giuen to a Jury, for the finding of any iſſue ioyned betweene the parties. And it is called Eutdence, becauſe thereby the point in iſſue is to be made euident to the Jury. Probationes debent eſſe euidentes, (id eſt) perſpicuæ & faciles intelligi. But let vs now returne to Littleton.

¶ *Ou a auter iour que le Plaintife ſuppoſe.* (g) As if the Treſpaſſe were done the fourth of May, and the Plaintife alledgeth the ſame to be done the fifth of May or the firſt of May, when no treſpaſſe was done, yet if vpon the euidence it falleth out, That the Treſpaſſe was done before the Action brought, it ſufficeth: and this is warranted by Littleton who ſpeaketh indefinitely, that the Jurie may find the Defendant guiltie at another day than the Plaintife ſuppoſeth. (g) 19.H.6.47. 9.E 4.5. 21.E.4.66.

¶ *Et a tiel effect.* Here is to be obſerued, That the Law of Eng-

land reſpecteth the effect and ſubſtance of the matter, and not euerie nicitie of forme or circumſtance, Qui hæret in litera, hæret in cortice, & apices iuris non ſunt iura.

Section 486.

¶ Item ſi home ſoit diſſeiſie, et le Diſſeiſor deuie ſeiſie, &c. et ſon fits et Heire eſt eins per diſcent, et le Diſſeiſee enter ſur lheire Diſſeiſor, le quel entrie eſt vn diſſeiſin, &c. ſi lheire port Aſſiſe ou Briefe de Entre en nature de Aſſiſe, il recouera.

ALſo if a man bee diſſeiſed, and the diſſeiſor dieth ſeiſed, &c. and his ſonne and heire is in by diſcent, and the Diſſeiſee enter vpon the heire of the Diſſeiſor, which entrie is a Diſſeiſin, &c. if the heire bring an Aſſiſe or a Writ of Entrie in nature of an Aſſiſe, hee ſhall recouer.

¶ AND the reaſon hereof is, for that in the Writ of Right mentioned in the next Section the charge of the grand Aſſiſe vpon their Oath is vpon the meere right, and not vpon the poſſeſſion.

Sect. 487.

¶ *CAr ſi le heire le Diſſeiſor, &c.* Here is a diuerſitie to bee obſerued concerning that which hath beene ſayd, when the poſſeſſion ſhall draw the right of the land to it, and when not. And therefore when the poſſeſſion is firſt, and then a right commeth thereunto, the entrie of him that hath right to the poſſeſſion ſhall gaine alſo the right, which as before it appeareth in thoſe caſes there put, followeth the poſſeſſion, and the right of poſſeſſion draweth the right vnto it, but when the right is firſt, and then the poſſeſſion commeth to the right, albeit the poſſeſſion be defeated, (as here in Littletons caſe it is by the heire of the Diſſeiſor) yet the right of the Diſſeiſee remaineth.

52.E.3.7.

V.Sect.447.

¶ *Briefe Dentrie en le Per.* A. dieth ſeiſed, and the land diſcendeth to B. his ſonne, before he entreth an eſtranger abateth and dieth ſeiſed, B. entreth, againſt whom the heire of the Abator recouereth in an Aſſiſe, B. may haue a Writ of Mort-dancester

5.Aſſ.1.10.Aſſ.16.

¶ MEs ſi lheire port Briefe de droit enuers le Diſſeiſee il ſerra barre, pur ceo que quant le graund Aſſiſe eſt iure, lour ſerement eſt ſur le mere droit, et nemy ſur le poſſeſſion. Car ſi lheire le Diſſeiſor ſuiſt vn Aſſiſe de Nouel diſſeiſin, ou briefe Dentre en natur dalſiſe, et recoueraſt vs le Diſſeiſee, et ſuiſt executiõ, vncore poit le Diſſeiſee auer bre Dentre en le Per enuers luy, de le diſſeiſin fait a luy per ſon pere, ou il poit auer enuers lheire briefe de droit.

BVt if the heyre bring a Writ of Right againſt the Diſſeiſee, he ſhall bee barred, forthat when the graund Aſſiſe is ſworne, their Oath is vpon the meere right, and not vpon the poſſeſſion: For if the Heyre of the Diſſeiſor ſue an Aſſiſe of *Nouel diſſeiſin*, or a Writ of *Entrie* in nature of an Aſſiſe, and recouers againſt the Diſſeiſee, and ſueth execution, yet may the Diſſeiſee haue a Writ of *Entrie* in the *Per*, againſt him, for the Diſſeiſin made to him by his father, or he may haue againſt the heire a writ of Right.

dancester, and recouer the land against him. And if the Diſſeiſin had bene done to A. &c. then after the recouerie in the Aſſiſe B. ſhould haue had a Writ of Entrie in the Per, becauſe the heyre that is in by diſcent is in the Per.

Sect. 488.

¶ MES ſi le Heyre doit recouer enuers le Diſſeiſee en le caſe auantdit, per bꝛe de Dꝛoit, donque tout ſon dꝛoit ſerroit clerement ale, pur ceo que iudgement final ſerroit done enuers luy, que ſerroit encounter reaſon, lou le Diſſeiſee ad l' pluis meere dꝛoit, &c.

BVt if the Heire ought to recouer againſt the Diſſeiſee in the caſe aforeſayd by a Writ of Right, then all his right ſhould be cleerely taken away, for that iudgement finall ſhall bee giuen againſt him, which ſhould bee againſt reaſon where the Diſſeiſee hath the more meete right.

¶ *Iudgement final.* The foꝛme whereof you ſhall ſee in the laſt Section of this Chapter.

¶ *Que ſerra encounter reaſon.* Argumentum ab inconuenienti. *V. Sect. 87. &c.*

Section 489.

¶ ET ſaches mon fits que en bꝛiefe de Dꝛoit, apꝛes ceo que les quater chiualers ont eſlie le grand Aſſiſe, donques il nad pluis greinder delay que en vn bꝛiefe de Formedon, apꝛes ceo que les parties ſont a iſſue, &c. et ſi le miſe ſoit ioyne ſur le Battaile, donques il ad meinꝰ delay.

AND know (my ſonne) that in a Writ of Right after the foure Knights haue choſen the grand Aſſiſe, then he hath no greater delay than in a Writ of *Formedon*, after the parties be at iſſue, &c. And if the Miſe bee ioyned vpon battaile, then hee hath leſſer delay.

¶ B*Attaile.* See foꝛ this woꝛd in the laſt Section of this Chapter.

¶ *Iſſue, &c.* Dꝛ Demurrer, which is an Iſſue in Law.

*Sect.*490. & 491.

¶ ITem releaſe de tout l' dꝛoit, &c. en aſcun caſe eſt bone, fait a celuy que eſt ſuppoſe tenãt en Ley, coment que il nad riens en les Tenements. Sicome en Præcipe quod reddat, ſi le Tenãt aliena la terre pendant le bꝛiefe, et puis le demaundant releſſa a luy

ALſo a releaſe of all the right, &c. in ſome caſe is good made to him which is ſuppoſed Tenant in Law, albeit he hath nothing in the Tenements. As in a *Præcipe quod reddat*, if the Tenaunt alien the land hanging the Writ, and after the Demandant releaſeth

lup tout ſon droit, &c. tel releaſe eſt bone, pur ceo que il eſt ſuppoſe deſtre tenant per le ſuit del Demandant, et uncore il nad riens en la Terre al temps de Releaſe fait.

to him all his right, &c. this Releaſe is good, for that hee is ſuppoſed to be Tenant by the ſuit of the Demandant, and yet hee hath nothing in the land at the time of the Releaſe made.

Sect.491.

CEn meſme le manner eſt, ſi ē Præcipe quod reddat le tenant vouche, & le Vouchee ent en le Garrantie, ſi apres le Demandant releſſa al vouchee tout ſon droit, ceo eſt aſſets bone, pur ceo que l'Vouchee apres ceo que il auoit enter en le Garrantie, eſt Tenaut en Ley al Demandant, &c.

IN the ſame manner it is in a *Præcipe quod reddat*, the tenant vouch, and the Vouchee enters into Warrantie, if afterward the Demand. releaſe to the vouchee al his right, this is good enough, for that the Vouchee after that he hath entred into Warranty is Tenant in Law to the Demandant, &c.

CHere it doth appeare, That there is a Tenant in Deed and a Tenant in Law, and Littleton in this and the next Section putteth two examples of Tenants in Law, viz (h) the Tenant to a Præcipe after alienation, and of the Vouchee, whereof ſomewhat hath beene ſayd before.

(h) 19.E.4.13. 12.Aſſ 41. 22.Aſſ.13.23.E.3.21. 25.E 3. 40.38.E.3.10.11 7.E.3. 6. 19.E.3.tit.Reſceit. 34.E.3.tit.Reſceit, 9.E.4.15.39.H.6 40.17.ſ. 24.8.H.7.5.20.Aſſ.2.14.E. 3.Procedends,4.9 E.3.17. 32 E.3.Quare Impedit 2. Dyer 17.Eliz.341. Sect.437.

And it is obſeruable, That Littleton ſaith, That in both caſes hee is Tenant in Law to the Demandant, and yet he hath nothing in the Land. And therefore if after the Vouchee hath entred into warrantie, and become Tenant in Law, an Anceſtor collaterall of the demandant releaſeth to the Vouchee with warrantie, he ſhall not plead this againſt the Demaundant, for that the Releaſe by the Eſtranger is voyd, which beſides the authorities before vouched, appeareth by Littleton himſelfe, * for he ſaith, That he is Tenaunt in Law to the Demaundant, whereby he excludeth, that he is Tenant in reſpect of any eſtranger.

* Vid uant, Sect. 447.

Section 492.

Glanu.li.1.ca.1. Bract.li.3. fo.101. Brit.fo.71. Flet li.1. ca 15.& 16.

CNota, there bee two kind of Actions, viz. one that concern the Pleas of the Crowne, Placita Coronæ, or Placita Criminalia, another that concerne Common Pleas, Placita Communia ſeu Ciuilia. Of that which concerneth Pleas of the Crowne, Littleton ſpeaketh hereafter in this Chapter. Of Actions concerning Common Pleas, Littleton ſpeaketh in this place. And theſe are threefold (that is to ſay) Reall, Perſonall and Mixt. Placitorum aliud perſonale, aliud reale, aliud mixtum. Or Actionum quædam ſunt in

Mix.ca.2.§.1. Bract.ob.ſup. Flet.li 1.ca.1.

CItem quant al releaſes dactions reals et p̄ſonals, il eſt iſſint, que aſcuns actions ſont mixt en le realty et en le perſonaltie, ſicome vn action de waſte ſue enuers tenant a terme de vie, ceſt action eſt en le realtie, pur ceo que le lieu waſte ſerra recouer. Et auxy en le per-

ALſo as to releaſes of Actions Realls, and Perſonals it is thus. Some actions are mixt in the realtie and in the perſonaltie, as an action of waſt ſued againſt Tenant for life. This Action is in the Realtie, becauſe the place waſted ſhall bee recouered, and alſo in the Perſonaltie, becauſe

perſonaltie, pur ceo que treble damages ſerront recouers p̄ le toꝛtious waſt fait p̄ le tenant, & pur ceo en ceſt action, vn releas dactions reals eſt bon plee en barre, et iſſint eſt vn releas dactions perſonals.

treble dammages ſhall bee recouered for the wrongfull waſte done by the Tenant, And therefore in this action a releaſe of actions reals is a good plea in barre, and ſo is a Releaſe of actions perſonals.

Rem, quædam in Perſonam, & quædam mixtæ. And generally, Actio is defined. (i) Actio nihil aliud eſt quam ius proſequendi in iudicio quod ſibi debetur. Or Action neſt auter choſe que loiall demande de ſon droit.

(i) *Vide Sect.*444. *Bract.lib.*3.*fol.*98. *Flet.lib.*1.*cap.*15. *Mirror cap.*2.§.1.

(k) And by the releaſe of all Actions, cauſes of action be releaſed, but within a ſubmiſſion of all actions to arbitrement, cauſes of action are not contained.

(k) *Lib* 8.153. *Alibarns caſe.* 35.*H.*8. *Dier* 57. 5.*Mar.*217. *Vide* 36.*H.*6.8. *Vide* 42.*E.*3.22.23.

¶ *Tenant pur vie.* And ſo it is if it bee brought against tenant for yeares becauſe it agreeth with the reaſon of Littleton here readged, viz that the place waſted ſhall be recouered, and therefore foundeth in the realtie.

¶ *Auxy en le perſonaltie pur ceo que treble damages ſerra recouers*, which doe ſound in the perſonaltie. Wherefore Littleton concludeth, that in an Action mixt a Releaſe of all actions reals is a good barre, and ſo is a releaſe of all actions perſonals.

And here is to be obſerued a diuerſitie betweene the act of the partie, & an act in Law, for a man by his owne act cannot alter the nature of his action, and therefore if the Leſſee for life or Leſſee for yeares doe waſte, now is an action of waſte giuen to the Leſſor, wherein he ſhall recouer two things, viz. the place waſted, and trebie dammages; in this caſe if the Leſſor releaſe all actions reals, he ſhall not haue an Action of waſte in the perſonaltie only. And if he releaſe all Actions perſonals he ſhall not haue an Action of waſte in the realtie only.

(l) And ſo it is if the Leſſee doth waſte, and after ſurrendreth to the Leſſor his eſtate, and the Leſſor accept thereof, the Leſſor ſhall not haue an Action of waſte.

(l) 19.*H.*6.66. 14.*H.*6.14. 11.*R* 2.*Waſte* 99. 14.*H.*8.14 23.*H.*8.*Br.Waſte.*

But by act in Law the nature of the action may be changed, as if a man make a Leaſe pur terme dauter vie, and the Leſſee doth waſte, and then Ceſty que vie dieth, an Action of waſte ſhall lie for dammages only becauſe the other is determined by act in Law.

And againe, hereupon is another diuerſitie to be obſerued, that in caſe when an action is well begun, and part of the Action determineth by act in Law, and yet the like action for the reſidue is giuen, there the writ ſhall not abate, but proceed. But where by the determination of part the like action remayneth not for the reſidue, there the Action well commenced ſhall abate. As if an Action of waſte be brought against tenant, pur terme dauter vie, and hanging the writ Ceſty que vie, dieth, the writ ſhall not abate, but the Plaintife ſhall recouer dammages only, becauſe if Ceſty que vie had died before any action brought the Leſſor might haue an action of waſte for the dammages: So if an Eiection firme be brought, and the tearme incurreth hanging the action, yet the Action ſhall proceed for dammages only, becauſe an Eiectione doth lie after the tearme for dammages only. But if tenant pur auter vie, bring an Aſſiſe, and Ceſty que vie dieth, hanging the writ, albeit the writ were well commenced, yet the writ ſhall abate, becauſe no Aſſiſe can be maintainable for dammages only.

11.*H.*6.43. 9.*E.*4.50. 24.*E.*3.72. 18 *E.*3.28. 9.*H.*6.30.

So if an Action of waſte be brought by Baron and Feme in remainder, in eſpeciall taile and hanging the writ the wife dieth without iſſue, the writ ſhall abate, becauſe euery kind of Action of waſte muſt be ad exhæredationem.

2.*H.*4.22. 6.*E.*2.*briefe* 807.

If a writ of Annuitie be brought, and the Annuitie determineth hanging the writ, the writ faileth for euer, becauſe no like Action can be maintained for the Arrerages only, but for the Annuitie and Arrerages.

34.*H.*6.10. 9.*E.*4.39. 14.*H.*7.31. 18.*E.*3.*Scire facias* 10.

But where dammages only are to be recouered, there albeit by act in Law, the like Action lieth not afterwards, yet the Action well commenced ſhall proceed, (m) as if a Conſpiracie be brought against two, and one of them dieth hanging the writ, it ſhall proceed.

(m) 22.*R.*2.*briefe* 888. 18.*E.*4.1.

And in an Aſſiſe of Nouell diſſeiſin, a writ of Annuitie, Quare impedit and other mixt Actions, a releaſe of Actions reals is a good Plea, and ſo it is of a releaſe of Actions perſonals.

2.*H.*4.13. 9.*H.*6.57.

But if three Joyntenants be diſſeiſed, and they arraigne an Aſſiſe, and one of them releaſe to the Diſſeiſor all Actions perſonals, this ſhall barre him, but it ſhall not barre the other Plaintife, for having regard to them the realtie ſhall bee preferred, & omne maius trahit ad ſe minus dignum. (n) And in a writ of Ward brought by two, the releaſe of the one ſhall not grieue the other, but ſhall enure to his benefit, for he ſhall recouer the whole Ward, and hold his companion out.

30.*H.*6.*Barre* 59.

(n) 30.*H.*6.*vbi ſupra.* 45.*E.*3.*fol.*6. 18.*E.*3.*fol.*56. 21.*H* 6.18.*a.*

But here a diuerſitie is to be obſerued betweene reall actions wherein dammages are to bee

recouered at the Common Law, as in an Aſſiſe, &c. and reall actions where dammages are not to be recouered by the Common Law, but are giuen by the (o) Statute, for there a releaſe of all Actions perſonals is no barre, as in the Writ of Dower, Entrie ſur diſſeiſin in le per &c. Mordane', Ariel, &c.

(o) *Merton cap.1. in dower. Glouc.cap.1.*

Sect. 493.

¶ TEn Quare impedit, vn releas dactions perſonals eſt bone plee, & iſſint eſt vn releaſe dactions reals, Per Martin, qd' fuit conceſſum H.9.H.6.57.*

AND in a *Quare impedit*, a releaſe of Actions perſonals is a good Plea, and ſo is a releaſe of Actions reals, *Per Martin. Quod fuit conceſſum. Hill.9.H.6.fol.57.*

9.H.6.57.

22.H.6.27.b.

¶ THis is an addition to Littleton, which although it be Law, and the Booke truly cited, yet I paſſe it ouer. But yet note by the way that a releaſe of Actions perſonals, is alſo a good barre in a Quare impedit, becauſe it is an Action mixt.

Sect. 494.

¶ LE *diſſeiſor bien poet pleder, &c.*

Nota, euery man ſhall plead ſuch Pleas as are proper for him, and apt for his defence to be pleaded. (q) As a diſſeiſor that hath nothing in the land may plead a releaſe of actions perſonals, becauſe dammages are to bee recouered againſt him, and therefore for his defence hee may plead it, but a releaſe of actions reals hee cannot plead, becauſe he hath no eſtate in the Land, and none ſhall plead a releaſe of Actions reals in an Aſſiſe, but the tenant of the Land. Et ſic de cæteris. But the Tenant in an Aſſiſe ſhall plead a releaſe of Actions perſonals to the Diſſeiſor, for that Plea proueth that the Plaintiffe hath no cauſe of action againſt him.

(q) 11.*Aſſ.*9. 18.*E.*3.2.23. 24 21.*E.*3 *quare Imp.* 161. 7.*E.*3.5.9.*E.*3.4 30.*E.*3.30 22.*E.*3.2.13.*H.*4 7.3.*E.*2. *quare imp.*44. 38.*E.*3 20.31. 5.*E.*3.25. 21.*E.*3,16.17. 5.*H.*7.34.8 *H.*6.14.22.*H.*6 28.26.1.*H* 7.34.27.8.3.81. 32 *H.*6.15.*b.*17.*Aſſ* 25. 2.*H.*7.14.13.*H.*8.13.14. 44.*E.*3.12.40.*E.*3.13. 16.*E.*4 11.24.*E.*3 34. 4 *E.*4 18.7.*H.*4.34. 2.*R.*2 *encumbent* 4.33.*E.*3. *quare Imp.*194.

13.*E.*4.2.a.

¶ ET meſme le maner eſt en aſſiſe de Nouel diſſeiſin, pur ceo que il eſt mixt en le realtie, et en le perſonalty. Mes ſi vn tiel aſſ. ſoit arraigne enter ie diſſeiſor et le tenant, le diſſeiſor bien poit plede vn releas dactions perſonals, pur barrer laſſ. mes nemp vn releas dactions reals, car nul pledera releas dactions reals en aſſ. forſq; le tenant.

IN the ſame manner it is in an Aſſiſe of *Nouel diſſeiſin*, for that it is mixt in the realtie and in the perſonaltie; but if ſuch an Aſſiſe be arraigned bee againſt the Diſſeiſor, and the Tenant, the Diſſeiſor may well plead a releaſe of Actions perſonals to barre the Aſſiſe, but not a releaſe of Actions reals, for none ſhall plead a releaſe of Actions reals in an Aſſiſe, but the tenant.

If the Diſſeiſee releaſe to the Diſſeiſor all actions reals, and the Diſſeiſor maketh a feoffement in fee, and an Aſſiſe is brought againſt them, the Feoffee ſhall not plead the releaſe to the Diſſeiſor, for that he is not priuie to the releaſe, for a releaſe of actions ſhall only extend to Priuies.

If a Diſſeiſor make a leaſe for life the remainder in fee, and the Diſſeiſee releaſe all Actions, to the Tenant for life, after the death of Tenant for life, he in the remaynder ſhall not plead the releaſe.

(r) 19.*H.*6.23.a.

If the Diſſeiſee releaſe all Actions to the Diſſeiſor, and die, this doth barre him, but for his life, for after his deceaſe his heire ſhall haue an Action (r) as ſome haue ſaid. And hereby may appeare a manifeſt diuerſitie betweene a releaſe of a Right, and a releaſe of Actions.

Sect.

Section 495.

¶ Item, en tiels actions reals q̄ couient deſtre ſue enuers le tenant del franktenement, ſi le tenant ad vn releas dactions reals del demandant fait a luy deuant le briefe purchaſe, et il plede ceo, il eſt bon plee pur le demandant adire, que celuy que pleda le plee nauoit rien, en le franktenement al temps del releas fait, car adonque il nauoit cauſe dauer aſcun action real enuers luy.

ALſo in ſuch Actions Reals which ought to bee ſued againſt the tenant of the Free-hold, if the tenāt hath a releaſe of actions reals from the Demandant made vnto him before the Writ purchaſed, and he plead this, it is a good plea for the demandant to ſay, that hee which plead the Plea had nothing in the Freehold at the time of the releaſe made, for then hee had no cauſe to haue an Action reall againſt him.

¶ This is euident enough by that which hath beene ſaid, that a releaſe of all actions reals muſt be made to him that is Tenant of the Land, becauſe a reall Action muſt be brought againſt ſuch a Tenant.

Sect. 496.

¶ Item en tiel cas ou home poet enter en Terres ou Tenements, et auxy poit auer vn Action real de ceo que eſt done p̄ la Ley enuers le Tenant, ſi en ceſt caſe le demandant releſſa al tenant touts maners de Actions reals, uncore ceo ne tolle le demandant de ſon entrie, mes le demandant bien poit enter nient contreſteāt tiel releas pur ceo que nul choſe eſt releſſe forſque laction, &c.

ALſo in ſuch caſe where a man may enter into Lands or Tenements, and alſo may haue an Action reall for this, which is giuen by the Law againſt the tenant, if in this caſe the Demandant releaſeth to the Tenant all manner of Actions realls, yet this ſhall not take the Demaundant from his entrie, but the Demaundant may well enter notwithſtanding ſuch releaſe, for that nothing is releaſed but the Action, &c.

¶ *Poet enter.* Here it appeareth, That where a man may enter, a Releaſe of all Actions doth not barre him of his right, becauſe he hath another remedy, viz. to enter. And this is agreeable with the authoritie of our (*f*) Bookes. But where his entrie is not lawfull, there a Releaſe of all Actions is by conſequence a barre of his right, becauſe he hath releaſed the mean whereby he might recouer his right. As if the Diſſeiſee releaſe all Actions to the heire of the diſſeiſor, which is in by Diſcent, he hath no remedie to recouer the land, but yet the diſſeiſee hath a right, for that he hath releaſed his Action, & not his right as ſhal be ſaid hereafter in the Chapter of Remitter in his proper place. If the heire of the Diſſeiſor make a feoffment in fee to two, and the diſſeiſee releaſeth to one of the Feoffees all Actions and hee dieth, the Suruiuour ſhall not plead this releaſe for the cauſes aboueſaid. And hereby alſo again appeareth another diuerſitie betweene a releaſe of a right, and a releaſe of Actions.

(*f*) 18.E.3.34. 19.E.3. Title 35.

It is to be obſerued when a man hath ſeuerall remedies for one and the ſelfeſame thing be it reall, perſonall, or mixt, albeit he releaſeth one of his remedies, he may vſe the other.

10.Aſſ.3. 30.E.3.19.6. 19 H.6.4.6. 21.H.7.23.b. 7.H.6.6.

Sect.497.

¶ Eſm meſme le maner eſt de choſes perſonals, ſicom home a tort prent mes biens, ſi ieo releſſa a luy touts actions perſonals, vncore ieo puiſſe p le ley prender mes biens hors de ſon poſſeſſion.

IN the ſame manner is it of things perſonall, as if a man by wrong take away my goods, if I releaſe to him all actions perſonals, yet I may by the Law take my goods out of his poſſeſſion.

This of it ſelfe is euident.

Sect. 498.

¶ *Briefe de detinue.* Breue de detentione dicitur a detinendo, becauſe Detinet is the principall word in the Writ. And it lyeth where any man comes to goods either by deliuery, or by finding. In this Writ the Plaintife ſhall recouer the thing detained, and therefore it muſt bee ſo certaine as it may be knowne, and for that cauſe, it lyeth not for money out of a bagge, or cheſt, and ſo of corne out of a ſacke and the like, theſe cannot be knowne from other. (t) A man ſhall haue an action of Detinue of Charters which concerne the inheritance of his land if hee know the certaintie of them, and what land they concerne, or if they be in Bagge ſealed, or Cheſt locked, though he knoweth not the certaintie of them: and it is good pollicie (if poſſibly he can) in that caſe to declare of one Charter in eſpeciall, (u) and then the Defendant ſhall not wage his Law. (x) An action of Detinue for Charters doth ſound in the realty, for therein ſummons and ſeuerance lyeth, and in Detinue of goods a Capias doth lye, but for Charters in ſpeciall a Capias lyeth not, and yet a Releaſe of actions perſonals in a Writ of Detinue of Charters is a good barre.

Glanvil.lib.10.ca.13.

41.E.3.2.

(t) 41.E.3.2. 8.H.6.18. 28.19. 21.E.3.28.. 3.H.6.19. 30.H.6.4. 9.H.6.18.

(u) 10.H.6.20. 21.H.6.1. 14.H.6.4. 14.H.4.23.24. 27.

(x) 20.H.6.45. 19.E.3. Seuerans 14. 31.E.3.ib.32. 42.E.3.13. 40.E.3.25.

¶ Auxy ſi ieo ay aſc cauſe dau breife de Detinue de mes biens vers vn auter, coment q̄ ieo releſſa a luy touts actions perſonals, vncor ieo puiſſe per le ley prendre mes biens hors d̄ ſon poſſeſſion, pur ceo que nul droit d̄ les biens eſt releſſe a luy, mes ſolement laction, &c.

ALſo if I haue any cauſe to haue a a Writ of Detinue of my goods againſt an other, albeit that I releaſe to him all actions perſonals, yet I may by the Law take my goods out of his poſſeſſion, becauſe no right of the goods is releaſed to him but only the action, &c.

Sect. 499.

¶ *Per cauſe del Statute.* That is to ſay the Statute of 4.H.4. cap.7. and 11 H.6.ca 4.

¶ *Car ſil voet pleder le releaſe generalment.* Here it appeareth that when the Statute had giuen the action reall a-

¶ Item ſi hom ſoit diſſeiſie, & le diſſeiſor fait feoffment a diuers perſons a ſon vſe, et le diſſeiſor continualment prist les profits, &c. et le diſſeiſee releſſa a luy touts

ALſo if a man bee diſſeiſed, and the diſſeiſor maketh a feoffmēt to diuers perſons to his vſe, and the diſſeiſor continually taketh the proffits, &c. & the diſſeiſee releaſe

touts actions reals, et puis il ſuiſt vers luy cõe Dentre en nature daſſiſe p cauſe de leſtatute, pur ceo que il prent les proſits, &c. Quære, comẽt le diſſeiſor ſerra aide per le dit releas: car ſil voile pleder le releas generalment, donques l demandãt poit dire q̃ il nauoit riens en le franktenement al temps del releas fait, & ſil pleda releas ſpecialment, donques il couient conuſtr̃ vn diſſeiſin, et donqꝛs puit le demandant enter en le tre, &c. p ſon conuſans de l diſſeiſin, &c. Mes peraduenture p eſpecial pleader il luy poit barr̃ de laction que il ſuiſt, &c. coment le demandant poit enter.

to him all actions reals, and after hee ſueth againſt him a Writ of entrie in nature of an aſſiſe by reaſon of the ſtatute, becauſe hee taketh the proffits, &c. *Quære*, how the diſſeiſor ſhall bee ayded by the ſaid releaſe, for if he will plead the releaſe generally, then the demandant may ſay that hee had nothing in the freehold at the time of the releaſe made, and if hee plead the releaſe ſpecially, then he muſt acknowledge a diſſeiſin, and then may the demandant enter into the land, &c. by his acknowledgement of the diſſeiſin, &c. but peraduenture by ſpeciall pleading he may barre him of the actiõ which hee ſueth, &c. though the demandant may enter.

gainſt the perſon of the proffits, it enableth him to take and pleade a Releaſe of all actions reals, and yet he hath neither Ius in re, nor jus ad rem, which point is worthy of obſeruation for manifeſtation of the equity of the Law. 3.H.7.2.

¶ *Donques il couient conuſtre vn diſſeiſin, &c.* In a Writ of Dower the Tenant pleaded that before the Writ purchaſed A. was ſeiſed of the land, &c. vntil by the Tenant himſelfe hee was diſſeiſed, and that hanging the Writ A. recouered againſt him, &c. iudgement of the Writ, and adiudged a good plea, in which plea the Tenant confeſſed a Diſſeiſin in himſelfe. 15.E.4.4.b.

¶ *Donques poit le demandant enter.* So might he haue done in this caſe that Littleton putteth, albeit the Tenant confeſſed no diſſeiſin. And therefore it is no preiudice to the Tenant to confeſſe a diſſeiſin in himſelfe, &c and then, as Littleton here holdeth, the action ſhall be barred.

But the reader is to obſerue, that now by the Statute of 27 H 8. ca 10. which executeth the poſſeſſion to the vſe, all the Statutes againſt Ceſty q̃ vſe, or pernor of the proffits haue loſt their force, 28.H.8.Dier.32. 27.H.8.ca.10.

Sect. 500.

¶ Tẽ ſi home ſuiſt appeale de felony del mort ſon anceſter enuers vn auter, coment que lappellant releſſa al defendant touts maners dactions reals et plonals ceo ne aidera my le defendãt, pur ceo que ceſt appeal neſt pas

ALſo if a man ſue an appeale of felony of the death of his anceſter againſt another, though the appellant releaſe to the defendant all manner of actions reall & perſonall, this ſhall not aide the defendant for that this appeale is not

¶ OUr Author hauing ſpoken of Common pleas now treateth of certaine Pleas criminall or Pleas of the Crowne whereof it is ſaid, (a) Item, criminalium alia maiora, alia minora, alia maxima, ſecundum criminũ quantitatem; Sunt enim Crimina Maiora & dicuntur capitalia eò quod vltimum inducunt ſuppliciũ, &c. Minora verò, quæ fuſtigationem inducunt, vel pœnam pilloralem, vel tumboralem, vel (a) *Bracton, lib.*3.*fo.*101.*b.*

vel carceris incluſionem, &c.

(b) *Flet.li.1.ca.15.*

(b) Criminalium quædam ſententialiter mortem inducunt, quædam vero minime.

(c) *Mir.ca.1.§.4. & ca. 4. des paines en diuers manners.*

(c) De peche eſt briefe diuiſion, car eſt mortal ou venial ſolonque ceo que appiert es paines. And that crime is called mortall or corporall: mortall, becauſe it deſerueth death; and ſuch crimes are called Venſall, as may bee redemed or ſatisfied by ſome other puniſhment than by death.

(u) *Mir.ca.2.§.7. Bract.li.3 fo.137. Brit.ca.22.23. Flet.li.1.ca.31.32.33.*

¶ *Appeale de Felonie.* (x) Appellum ſignifieth accuſatio, an Accuſation, and therefore to appeale a man is as much as to accuſe him, and in (y) antient Bookes he that doth appeale is called Accuſator, and is peculiarly in legall ſignification applied to Appeales of three ſorts. First, Of wrong to his Anceſtor, whoſe heire male he is, and that is onely of death, whereof our Author here ſpeaketh. The ſecond is of wrong to the husband, and is by the wife onely of the death of her husband to be proſecuted. The third is of wrongs done to the Appellants themſelues, as Robberie, Rape, and Mayhem. The word Appellum is derined of Appeller, to call becauſe Appellans vocat reum in iudicium. He calleth the Defendant to iudgement, and the Plaintife is called the Appellant.

(y) *Glanuill Lib.7.cap.9. Et lib.14.cap.1.cl 3.*

action real, entant que lappellant ne recouera aſcun realtie en tiel Appeale: Ne tiel appeale neſt pas Action perſonal, entant que le tort fuit fait a ſon Auncеſtor, et nemy a luy. Mes ſil releſſa a le Defendant tout manners Actions, donque il ſerra bone barre en Appeale. Et iſſint home poit beyer que releaſe de touts maners dactions, eſt melior que Releas de Actions reals & perſonals, &c.

an Action reall, in as much as the Appellant ſhall not recouer any Realtie in ſuch Appeale, neither is ſuch Appeale an Action perſonall, in as much as the wrong was done to his Anceſtor, and not to him. But if he releaſe to the Defendant all manner of Actions, then it ſhal be a good barre in an Appeale. And ſo a man may ſee that a Releaſe of all manner of Actions is better than a releaſe of Actions reals and perſonalls, &c.

24.H.8.ca.12.1.El.ca.1.

¶ *Appeale.* Appellatio is a remouing of a cauſe in any Eccleſiaſticall Court to a Superior, but of this there needeth no ſpeech in this place.

¶ *De mort.* Appeale of death is of two ſorts, of Murder and of Homicide. Murder is when one is ſlaine with a mans will, and with malice prepenſed or forethought Homicide as it is legally taken, is when one is ſlaine with a mans will, but not with malice prepenſed. Chance-medlie, or Per infortunium, is when one is ſlaine caſually, and by miſaduenture, without the will of him that doth the act, whereupon death inſueth, but of this no Appeale doth lie. Murder commeth of the Saxon word Mordeu.

Lamb.Expoſ.verb.Eſtimatio Flet.li.1.ca 42. Houed.f.344.

Were is an old Saxon word ſometime written Wera, and ſignifieth the price of the life of a man, Eſtimatio capitis, that is, ſo much as one payd for the killing of a man, by which it appeareth, that ſuch gouernment was in thoſe dayes, as ſlaughters of men were moſt rarely committed, as Maſter Lambard collecteth. And you ſhall not read of any inſurrection or rebellion before the Conqueſt, when the view of Frankpledge and other antient Lawes of this Realme were in their right vſe.

¶ *Mes ſil releaſe al Defendant touts manners d'actions, &c.* And the reaſon is, for that then all Actions, as well criminall as reall, perſonall and mixt, be releaſed.

31.H.6.18.

But a releaſe of all Actions reall and perſonall cannot barre an Appeale of death, becauſe that Releaſe extendeth to common or ciuile Actions, and not to Actions criminall: but releaſes of all Actions criminall or mortall, or concerning Pleas of the Crowne, are good barres in an Appeale of Death, and ſo the (&c.) in the end of this Section is well explained.

Section 501.

¶ Item en appeal de Robberie, ſi l'defendant voit pleader vn releaſe de lappellant de touts Actions perſonals, ceo ſemble nul Plee. Car Action d'Appeale, lou lapellee aña iudgement de mort, &c. eſt pluis hault que Action perſonal eſt, et neſt pas proprement dit Action perſonal: Et pur ceo ſi le defendant voiloit plead vn releaſe del appellant de barrer lay dappeale, en ceſt caſe il couient dauer vn releaſe d'touts mañs dappeals, ou touts manners dactions, cõe il ſemble, &c.

ALſo in an Appeale of Robberie, if the Defendant will plead a releaſe of the Appellant, of all Actions perſonalls, this ſeemeth no Plea: for an Action of Appeale where the Appellee ſhall haue iudgement of death, &c. is higher than an Action perſonall is, and is not properly called an action perſonall, and there if the Defendant will plead a Releaſe of the appellant, to barre him of the Appeale, in this caſe hee muſt haue a Releaſe of all manner of Appeales, or all manner of Actions, as it ſeemeth, &c.

¶ *Robberie.* Roboria properly is when there is a felonious taking away of a mans goods from his perſon, and it is called Robberie, becauſe the goods are taken as it were De la Robe: from the Robe, that is, from the perſon: but ſometimes it is taken in a larger ſence. 22.*Aſſ.*39. *W.*1.*ca.*29.

¶ *Iudgement de mort, &c.* By this (&c.) is implied Appeales of Rape, of Arſon or Burning, of Felonie or Larcenie, for therein alſo is iudgement of death, and are within our Authors reaſon.

¶ *Come il ſemble, &c.* It is to be vnderſtood, That firſt a releaſe of all Actions criminall, mortall or concerning Pleas of the Crowne. Secondly, A Releaſe of al Actions generally. Thirdly, A releaſe of al Appeales. And laſtly, a releaſe of all demands are good barres in all theſe kind of Appeales. *V.Sect.*508.

Sect. 502.

¶ MEs en Appeal d'Mayhem, vn releaſe de touts manners dactions perſonals eſt bone plee en Barre, pur ceo que en tiel Action il ne recouera forſque damages, &c.

BVt in Appeale of Mayhem a Releaſe of all manner of Actions perſonals is a good plea in Barre, for that in ſuch an Action hee ſhall recouer nothing but dammages.

¶ *Mayhem* Mahemium, membri Mutilatio or Obtruncatio, commeth of the French word Mehaigne, and ſignifieth a Corporall Hurt whereby hee looſeth a Member, by reaſon whereof hee is leſſe able to fight; as by putting out his eye, beating out his foretеeth, breaking his ſcull, ſtriking off his arme, hand or finger, cutting off his leg or foot, or whereby he looſeth the vſe of any of his ſaid members. *Mir.ca.*1.§.9. *Glanv.li.*14. *ca.*7. *Bract.li.*3. *Tract.*2. *c.*24. *Brit fo.*48, *ca.*25. *Flet.li.*1. *ca.*38. *Stanf. Pl. Cor. fo.*38.*b.* 28.*E.*3.94. 8.*H.*4.21.

¶ *Damages, &c.* V.Sect.194.

¶ *Releaſe de touts manners Actions Perſonalls eſt bone Plea, &c.* And the reaſon is, for that euerie Action wherein dammages onely are recouered by the Plaintife, is in Law taken for an Action perſonall. 21.*H.*6.16.

Sect.

Section 503.

Vi.li.11.fo.39.41.in Mercalfes caſe vpon what iudgments and awards a writ of Error doth lie.

¶ *Briefe de Error.* This writ lieth when a man is grieued by any error in the foundation, proceeding, iudgement or execution, and thereupon it is called Breue de errore corrigendo. But without a iudgement or an award in nature of a iudgment no writ of Error doth lie, for the words of the writ be, Si iudicium redditum ſit: and that iudgement muſt regularly be giuē by iudges of record and in a Court of Record, and and not by any other inferiour Iudges in baſe Courts, for thereupon a writ of falſe iudgment doth lie. In this caſe of Vtlawrie vpon Proceſſe the iudgement is giuen (in the Countie Court, which is no Court of Record) by the Coroners, (ſauing in London iudgment is giuen by the Recorder, and not by the Maior, who is Coroner by the Cuſtome of the Citie:) for after the Defendant is Quinto exactus, and maketh default, the iudgement is, Ideo vlagetur per iudicium Coronatorum, and in London, Per iudicium Recordatoris: ſo as by the Outlawrie the Plaintife recouers nothing, but the King taketh the whole benefit thereof, for the Law did intend, That the Defendant would rather appeare and anſwer the Plaintife, &c. than to forfeit all his Goods and Chattels, Debts and Duties to the King, by his default and contumacie. But Littleton is to be intended, That the Sheriffe doe returne the Exigent whereby the Outlawrie appeares of Record, or that the Outlawrie be remoued by Certiorari, for before that time that the Outlawrie appeare of Record, the Defendant doth not forfeit his goods, nor the Plaintife can be diſabled, nor any writ of Error doth lie in that caſe. And this is the cauſe that the goods of Outlawes cannot be claimed by Preſcription, becauſe they are not forfeited vntill the Outlawrie appeare of Record Vid. Sect. 197. where it appeareth by Littleton, That the Plaintife cannot be diſabled by Outlawrie, vnleſſe it appeareth of Record.

Li.3.fo.111.Fowlers caſe. Li.7.fo.11.12.Ieukins caſe.

15.El.Dyer 317.

Li.9.fo.119.S.Zouches caſe.

28.Aſſ.49. 12.E.3.Vtlag.3. 38.E 3.13.Mich.4.& 5.El. Dy.fo.222.Vi.Sect.197.

¶ **Item ſi home ſoit vtlage en Action perſonal per proces ſur le Original, et port cē Derrour, ſi celuy a que ſuit il fuit vtlage, voile pleader enuers luy vn releas ō toutz manners Actions Perſonals, ceo ſemble nul plee, car per le dit Action il ne recouera rien en perſonaltie forſque tantſolement de reuerſer le Vtlagarie: mes vn Releaſe de Briefe Derrour eſt bone plea.**

ALſo if a man bee outlawed in an Action perſonal by proceſſe vpon the Originall, and bringeth a Writ of Error, if hee at whoſe ſuit hee was outlawed will plead againſt him a Releaſe of all manner of Actions perſonalls; this ſeemeth no plea, for by the ſaid action hee ſhall recouer nothing in the perſonaltie, but onely to reuerſe the Outlawrie: But a releaſe of the writ of error, is a good plea.

¶ *Car per le dit Action il recouera rien en le perſonaltie.* Hereupon is to be obſerued a diuerſitie, when by the Writ of Error the Plaintife ſhall recouer, or be reſtored to any perſonall thing, as Debt, Damnage, or the like, for then by the reaſon that Littleton here poſeth, the releaſe of all Actions perſonals is a good plea, for that the Plaintife is to recouer, or to be reſtored to ſomething in the perſonaltie. And ſo likewiſe when land is to be recouered, or to be reſtored in a Writ of Error, a Releaſe of all Actions reals is a good barre. But where by a Writ of Error the Plaintife ſhall not be reſtored to any perſonal or reall thing, there a releaſe of all Actions reall or perſonall, is no barre, and therefore Littleton here puttech his caſe with great caution: If a man (ſaith he) by Proceſſe vppon the Originall bee outlawed, there in deed he ſhall be reſtored to nothing in the perſonaltie againſt the Plaintife. But where by the Outlawrie he forfeited all his goods and chattels to the King, he ſhall be reſtored to them; alſo thereby he ſhall be reſtored to the Law, and to be of abilitie to ſue, &c. But if the Pl' in a perſonall Action recouer any debt, &c. or damnages, and be outlawed after iudgment, there in a Writ of Error brought by the Defendant vpon the principall iudgement, a releaſe of all Actions perſonalls is a good plea. And ſo it is where a Iudgement is giuen in a reall Action, a releaſe of all Actions reals is a good barre in a Writ of Error brought thereupon.

1.H.4.6.

If the Tenant in a reall Action releaſe to the Defendant after recouery his right in the Land, he ſhall not haue a Writ of Error, for that he cannot be reſtored to the Land. 9.H.6.47.

And ſo it is if debt, &c. or dammages be recouered in a perſonall action by falſe Verdict, and the Defendant bringeth a Writ of Attaint, a (a) releaſe of all Actions perſonals is a good barre of the attaint, for thereby the Plaintife is to bee reſtored to the debt, &c. or dammages which he loſt, the like Law is if a Judgement be giuen vpon a falſe Verdict in a reall Action, a releaſe of all Actions reals is a good barre in an Attaint. For both the Writ of Error, and the Writ of Attaint doe inſue the nature of the former Action, &c. (a) 26.H.8.3.b.13.E.4.1.2. 34.H.6.31.35.H.6.19. 29.Aſſ.35.47.E.3.6. 21.E.3.27.

And ſo it is if a Writ of Audita Querela be brought by the Defendant in the former action to diſcharge himſelfe of an execution, a Releaſe of all actions perſonalis is a good barre, becauſe hee is to diſcharge himſelfe of a perſonall Execution.

¶ *Mes vn releaſe de briefe de error eſt bone plea, &c.* So as in this ſpeciall caſe here put by Littleton wherein the Plaintife is to recouer or be reſtored to nothing againſt the partie, yet for that the Plaintife in the former Action is privy to the Record, a releaſe of a Writ of Error to him is ſufficient to bar the Plaintife in the Writ of Error of the ſuit & vexation by the Writ of Error. And ſo note that an Action reall or perſonall doth imply a recouery of ſomething in the realty or perſonaltie, or a reſtitution to the ſame, but a Writ implyeth neither of them which is worthy of obſeruation.

Section 504.

¶ Item, ſi home recouer̄ debt ou dammages, & il releſſa al defendant touts maners dactions, uncore il puit loialment ſuer execution per Capias ad ſatisfaciendum, **ou per** Elegit, **ou** Fieri facias, **car execution per tiel briefe ne poit eſtre dit action.**

ALſo if a man recouer debt or dammages, and hee releaſeth to the defendant all manner of Actions, yet hee may lawfully ſue Execution by *Capias ad ſatisfaciendum*, or by *Elegit*, or *Fieri facias*: For Execution vpon ſuch a Writ cannot bee ſaid an Action.

¶ HEre appeareth a diuerſitie betweene an Action and an Execution. For regularly an Action is ſaid in his proper ſence to continue vntill iudgement bee giuen, and after Judgement then doth Proceſſe of Execution begin, and therefore a releaſe of all Actions regularly is (b) no barre of Execution, for the Execution doth beginne when the Action doth end. And therefore the foundation of the firſt is an originall Writ, and doth determine by the Judgement, and Writs of Execution are called Judiciall, becauſe they are grounded vpon the Judgement. *Vide Sect.* 233. 8.3.9..4.E.3.*Attorney* 18. 35.H.6.49. 34.H.6.51. (b) 13.H.4.*Releaſe* 53. 19.H.6.3.26.H.6.*Execution* 7.

¶ *Per Cap. ad ſatisfaciendum.* This is a Iudiciall Writ for the taking of the bodie in Execution vntill he hath made ſatisfaction, where a Capias ad ſatisfaciendum lyeth at the Common Law, and where it is giuen by Statute, you may reade at large in my Reports. *Sir William Herberts caſe lib.*3.*fol.*11.12.

I haue read two ancient Records touching the taking of the body in Execution, whereof to my remembrance, I neuer read any touch in our Bookes, yet will I recite them, and leaue them to the iudicious Reader. William de Walton brought an Action of Treſpaſſe of breaking his Cloſe againſt Iohn Martin, and vpon not guiltie pleaded, hee was found guiltie and dammages aſſeſſed, whereupon iudgement was giuen that the Plaintife ſhould recouer his dammages, Et quod prædictus Iohannes capiatur. And the Record ſaith, Quod prædictus Iohannes venit coram Domino Rege & reddidit ſe priſone, & quia conſtat Curiæ per inſpectionem corporis ipſius Iohannis, quod idem Iohannes eſt talis ætatis quod pœnam impriſonamenti ſubire non poteſt, ideo dictum eſt ei, quod eat inde ſine die. *Paſch.*14.E.3.*Rot.*106.*coram Rege in Theſaur. Surrey.*

The other Record is, That Ellen Allot brought an Appeale of Robbery againſt Iohn Boskiſeleke Clarke, Richard Charra and others who pleaded not guilty, and were not found guilty: whereupon Iudgement was giuen that they ſhould goe quite, Et prædicta Elena pro falſo appello ſuo committatur priſonæ, &c. (for (b) by the Statute ſhe ought to be impriſoned in that caſe for a yeare.) But the Record ſaith, Quia eadem Elena prægnans fuit, & in periculo mortis, ipſa dimittitur per manucaptionem, &c. ad habendum corpus vſque Quind. Michaelis &c. *Mich.*41.E.3.*Rot.*27. *coram Rege Cornub. in Theſaur.* (b) *W.*2.*cap.*12.

There be certaine maximes in the Law concerning Executions, as taking ſome in ſtead of many. Ea quæ in Curia noſtra rite acta ſunt, debitæ executioni demandari debent. Patum eſt latam eſſe ſententiam niſi mandetur executioni. Executio iuris non habet iniuriam. Executio eſt fructus & finis legis. Iuris effectus in executione conſiſtit. Proſecutio legis eſt grauis vexatio, executio legis coronat opus. Boni Iudicis eſt iudicium ſine dilatione mandare executioni. Fauorabiliores ſunt executiones alijs proceſſibus quibuſcunque. But now let vs heare what Littleton ſaith.

¶ *Per Elegit* This is alſo a iudiciall Writ, and is giuen by the Statute either vpon a recouery for debt or dammages, or vpon a Recognizance in any Court. And it is called a Writ of Elegit, for that according to the ſtatute that ſaith, (c) Sit de cæterò in electione illius, &c. ſequi breue quod Vicecomes fieri faciat, &c. vel quod liberet ei, &c The words of the Writ be Elegit ſibi liberari, &c. And thereupon it is called an Elegit. By this Writ the Sherife ſhall deliuer to the Plaintife, Omnia catalla debitoris, (exceptis bobus & aſris carucæ) & medietatem tetræ. And this muſt be done by an inqueſt to be taken by the Sherife.

(c) *W.2 cap.18.*

when Littleton wrote, by force of certaine Acts (d) of Parliament, execution might bee had of Lands (beſides by force of the Elegit) vpon Statutes Merchant, Statutes Staple, and Recognizances taken in ſome Court of Record, and ſince he wrote vpon a Recognizance or Bond taken by force of the Statute (*) of 23.H.8. before one of the Chiefe Juſtices, or the Maior of the Staple, and Recorder of London out of Tearme, which hath the effect of a Statute Staple. The manner of the Executions vpon Bodie, Lands and Goods, appeareth in the Statutes quoted in the margent.

(d) *11.E.1.Stat.de Acton Burnell. 13.E.1.de mercatoribus. 27.E.3.cap.22. Vide Fleta lib.2.cap.57.25.E.3.53*
(*) *23.H.8.cap.6.*

Since Littleton wrote a profitable Statute hath beene made (e) concerning executions of Lands, Tenements and Hereditaments, whereby it is prouided that if after ſuch Lands, &c. be had and deliuered in Execution vpon a iuſt or lawfull title, wherewithall the ſaid Lands, &c. were liable, tied, or bound at ſuch time, as they were deliuered or taken into execution, ſhall be recouered, deueſted, taken, or euicted out of, or from the poſſeſſion of any ſuch perſon, &c. before ſuch times, as the ſaid Tenants by Execution their Executors or Aſſignes ſhall haue fully leuied their debt and dammages, for the which the ſaid Lands, &c. were taken in Execution, then euery ſuch Recoueror, Obligee, and Recogniſee, ſhall haue a Scire facias out of the ſame Court from whence the former Execution did proceed, againſt ſuch perſon or perſons as the former Execution was purſued, their Heires, Executors or Aſſignes, to haue Execution of other Lands, &c. liable and to be taken in Execution for the reſidue of the debt or dammages. Sed opus eſt interprete.

(e) *32.H.8.cap.5.*

Therefore firſt it is to be knowne, that where the Tenant by Execution hath remedie giuen to him by Law after euiction, there the Statute extendeth not to it, for the Act ſaith, by reaſon whereof, the ſaid Recouerors, Obligees and Recognizees, haue beene clerely ſet without remedie, &c. and the bodie referreth to the preamble, and the party ought not to haue double ſatisfaction, one by the former Lawes, and another by this Statute.

Lib.4.fol.66. Fulwoods caſe.

And therfore if part of the Land, &c. be euicted from the Tenant by Execution, this Statute extendeth not to it, becauſe he ſhould hold the reſidue, till he be fully ſatisfied, and he muſt be contented if all be euicted ſauing one Acre to hold that, thongh it bee but a poore remedie: for no new Execution in that caſe hee can haue vpon this Statute. Therefore if the Conuſee hath remedie in præſenti for part, or in futuro for all, or part, this Statute extendeth not to it.

Secondly, If a man be bound to A. in a Statute of a thouſand pounds, and by a latter Statute to B. in a hundred pounds, and B. firſt extendeth, and then A. extendeth and taketh the Land from B. yet B. ſhall haue no aide of the Statute, becauſe after the extent of A. B. ſhall re-entoy the Land, by force of his former Execution.

Thirdly, If the wife of the Conuſor recouer Dower againſt the Tenant by Execution, he ſhall hold ouer, and ſhall haue no ayde of this Statute.

Fourthly, If a man put out his Leſſee for yeares, or diſſeiſe his Leſſee for life, and after knowledge a Statute, and Execution is ſued againſt him, and the Leſſees re-enter, the Tenant by Execution after the Leaſes ended, ſhall hold ouer, and haue no aide of this Statute.

Fiftly, This Statute muſt not be taken litterally but according to the meaning, therefore where the letter is vntill hee, &c. or his Aſſignes ſhall fully and wholly haue leuied the whole debt or dammages: if he hath aſſigned ſeuerall parcels to ſeuerall Aſſignes, yet all they ſhall haue the Land, but till the whole debt be paid.

Sixtly, where the words be, for the which the ſaid Lands, &c. were deliuered in Execution. A Diſſeiſor conuey lands to the King who granteth the ſame ouer to A. and his heires to hold by fealtie, and twenty pound rent, and after granteth the Seignorie to B. B. knowledgeth a Statute,

Statute, and Execution is ſued of the Seigniory. A. dieth without heire and the Conuſee entereth, and is euicted by the Diſſeiſee, he ſhall haue the aide of this Statute, and yet it is out of the letter of the Law, for the Seigniory was deliuered in Execution and not the tenancy, but he was Tenant by execution of thoſe lands, and therefore within the ſtatute. But the perquiſite of a Villeine being euicted is out of the ſtatute, for he is Tenant in fee ſimple thereof and not Tenant by execution.

Seuenthly, where the words be (deliuered and taken in execution) yet if after the Liberate, the Conuſee entereth, (as he may) ſo as the land is neuer deliuered, yet is he within the remedie of this ſtatute, for he is Tenant by execution.

Eighthly, where the ſtatute ſaith, then euery ſuch Recouerer, Obligee, & Recognizee ſhall, &c. and ſaith not, their Executors, Adminiſtrators or Aſſignes, but they are omitted in this materiall place, yet by a benigne interpretation, this ſtatute ſhall extend to them, becauſe they are mentioned in the next precedent clauſe of the euiction, and the remedie muſt by conſtruction be extended to all the perſons, that appeare by the Act to bee grieued, a point worthy the obſeruation.

Ninthly, where the Statute giueth a Scire fac' out of the ſame Court, &c. if the Record be removed by Writ of Error into another Court, and there affirmed, the Tenant by Execution that is euicted ſhall haue a Scire fac' by the equity of this Statute out of that Court, becauſe the Scire fac' muſt be grounded vpon the Record, Et ſic de ſimilibus.

Tenthly, where the Statute giueth the Scire fac' againſt ſuch perſon or perſons, &c. that were parties to the firſt Execution, their Heires, Executors or Aſſignes, &c. this muſt not be taken ſo generally as the Letter is, for if the firſt Execution were had againſt a Purchaſor, &c. ſo as nothing was liable in his hands but the Land recouered, if this Land be euicted from Tenant by Execution, no Scire fac' ſhall be awarded againſt him, his Heires, Executors or Aſſignes, but if he hath other lands ſubiect to the Execution, then a Scire fac' lyeth againſt him or his Aſſignes, but not againſt his Executors, neither in that caſe can he haue a Scire fac' vpon this Statute againſt the firſt Debtor or Recognizor, becauſe it giueth it only againſt him, &c. that was partie to the firſt Execution his Heires, Executors or Aſſignes. But if there be ſeuerall Aſſignees of ſeuerall parcells of lands ſubiect to the Execution, one Scire fac' vpon this Statute ſhall lye againſt all the Aſſignes. Sed eſt modus in rebus. This little taſte ſhall giue a light to the diligent reader, not only to ſee into the ſecrets of this Statute, but to others alſo of like nature.

And by the Statute of 23.H.8. it is prouided that the Obligee, &c. ſhall haue in euery point againſt ſuch Recogniſor, &c. like Proces, Execution, Commodity and aduantage in euery behalfe, as hath beene had or made vpon the Statute ſtaple, and vnder ſuch manner and forme, as is for the ſame Statute ſtaple prouided: by force of which branch, if the Tenant by execution by force of the act of 23.H.8. be euicted, he ſhall haue the remedie prouided for Tenants by execution vpon a Statute ſtaple by the Act of 32.H.8. In like manner by force of that clauſe of 23.H.8. if the extendors vpon a Statute ſtaple, &c. doe extend the lands, &c. at too high a rate, the Obligee may pray, that the Extendors themſelues may take the lands, &c. at that rate, &c. by force of the ſaid Statutes of Acton Burnel, and De Mercatoribus. Alſo no execution ſhall be ſued againſt the heire within age.

40.E 3.26.b. 44.E.3. 2.H.4.17. 15.H.7.15.

But note that vpon a Writ of Elegit the Plaintife cannot make any ſuch prayer, becauſe thoſe ancient Statutes doe extend to a Statute Merchant or a Statute Staple only, and neither to a Recouery of debt or damages, nor to a Recognizance in Court, and ſo hath it beene reſolued. (f)

(f) *Mich* 4. & 5. *Th.* & *Mar. Bendloes, by all the Iuſtices of the Common pleas.* 15.E.3.*Extent*,7.

Nota, it appeareth by the Preamble of the ſaid Act of 32.H.8. and by diuers (g) bookes, that after a full and perfect execution had by extent returned and of Record, there ſhall neuer be any re-extent vpon any euiction: but if the extent be inſufficient in Law, there may goe out a new Extent.

(g) 15.E.3.*Extent*.7. 22.E.3.*Recouery in value*. 22. 31.E.3.*Extent* 13. 17.E.3.76. 19.E.3. *Scire fac*.115. 7.H.4.19. 22.*Aſſ*.44. 22.E.3.*fo.vlt*. 44.E.3.10. 9.H.7.9. 13.H.7.15. 13.*Eliz*. *Dier* 292. 19.H.8. *Stat. Marchant Br*.40.

(h) If a man haue a Iudgement giuen againſt him for debt or damages, or be bound in a Recognizance and dieth his heire within age, or hauing two daughters, and the one within age no execution ſhall be ſued of the lands by Elegit during the minority, albeit the heire is not ſpecially bound but charged as Terre tenant (i) and ſo againſt an heire within age no execution ſhall be ſued vpon a Statute merchant or Staple nor vpon the Obligation or Recognizance vpon the Statute of 23.H.8. for it is excepted in the Proces againſt the heire. Neither if the heire within age indow his mother ſhall Execution be ſued againſt her during his minority.

(h) 21.E.3.*age* 4. 15.E.3.*age* 95. 24.E.3.28. 29.*Aſſ*.37. 29 E.3 50. 47.*Aſſ*.4. 47.E.3.7.*lib*.3. *fo*.13. *Sir William Herberts caſe. Brooke, age* 33.

(i) *Temp* E.1.*Aſſ*.402.417 16.H.7.6. *Litt. tenur*.545. *Brooke, age* 33.

Note, that by the Statute (k) of 27.E.3. the execution of Lands vpon a Statute ſtaple is referred to the Statute Merchant, and by the Statute De Mercatoribus no Execution ſhall be had againſt the heire, ſo long as he is within age.

(k) 27.E.3.*cap*.22.

Alſo ſince Littleton wrote there is a right profitable Statute (l) made againſt fraudulent Feoffments, Gifts, Grants, &c. Iudgements and Executions, aſwell of Lands and Tene-

(l) 13.*Eliz. cap*.5. *Lib*.3.*fo*.80. *&c. Twynes caſe*. *Lib*.5.*fo*.60. *Pembers caſe*.

Lib.6.fo.18. Pakeman's caſe. Lib.10.fo.56.the Chanc. of Oxford's caſe. See the ſtatutes of 3.*H.*7.*ca.*4. & 50.*E.*3.*ca.*6. *Mich* 12. & 13.*Eliz. Dier.*295. 18.*Eliz.*351. *Dyer.*

ments, as of Goods and Chattels, to delay, hinder or defraud Creditors and others of their iuſt and lawfull Actions, Suites, Debts, Damages, Penalties, Forfeitures, Heriots, Mortuaries and Releaſes, for the expoſition of which and other Statutes ſee the Authorities quoted in the Margent.

And it is to be obſerued that the words of the ſaid Act of 13.Eliz. are, Be it therefore declared, ordained, and enacted: and therefore like caſes in ſemblable miſchiefe ſhall be taken within the remedie of this Act, by reaſon of this word (Declared) whereby it appeareth, what the Law was before the making of this Act. But let vs now returne to Littleton.

*W.*2.*ca.*18.

¶ *Fieri facias.* This is a Writ mentioned in the ſaid Statute, but is a Writ of execution at the Common Law. And is called a Fieri facias, becauſe the words of the Writ directed to the Sheriffe be Quod fieri facias de bonis & catallis, &c. and of thoſe words the Writ taketh his denomination.

But note that a Capias ad ſatisfaciendum, is not mentioned in the ſaid Statute, becauſe no Capias ad ſatisfac' did lye at the Common Law vpon a Iudgement for debt, &c. or damages, but only when the originall action was Quare vi & armis, &c. But latter Statutes haue giuen a Capias ad ſatisfac' where debt, &c. or damages are recouered, as it appeareth at large (m) in Sir William Herberts caſe whereunto I referre the reader.

(m) *Lib.*3.*fo.*11. *Sir William Herbert's caſe.*

And it is to be obſerued that theſe three Writs of execution ought to be ſued out within the yeare and the day after iudgement, but if the Plaintife ſueth out any of them within the yeare, he may continue the ſame after the yeare vntill he hath execution. And to none of theſe Writs of Executions the Defendant can pleade, but if he hath any matter ſince the iudgement to diſcharge him of Execution, he may haue an Audita querela, and relieue himſelfe that way, but plead he cannot. As if the Plaintife after Releaſe vnto the Defendant all Executions, yet in none of theſe three Writs he ſhall pleade it, but is driuen to his Audita querela, as hath beene ſaid.

*Sect.*505.

¶ *Scire facias.* This is a iudiciall Writ and properly lyeth after the yeare & day after iudgement giuen, and is ſo called becauſe the words of the Writ to the Sheriffe be, Quod Scire facias præfat' T. (being the Defendant) Quod ſit coram, &c. oſtenſurus ſi quid pro ſe habeat aut dicere ſciat, quare, &c. So as by the Writ it appeareth that the Defendant is to be warned to plead any matter in Barre of Execution, and therefore albeit it bee a iudiciall Writ, yet becauſe the Defendant may thereupon plead, this Scire facias is accounted in Law to bee in nature of an action, and therefore (n) a Releaſe of all actions is a good barre of the ſame, and likewiſe a Releaſe of Executions is a good barre in a Scire facias, this Writ was gi-

(n) 19.*H.*6.3.28.*E.*4.7.

¶ Mes ſi apres lan et iour le plaintife voit ſuer vn Scire facias, a ſacher ſi le defendant poit rien dire pur que le plaintife nauera execution, donques il ſemble que tiel releas de touts actions ſerra bon plee en barr': Mes aſcuns ont ſemble contrary, entant que le briefe de Scire facias eſt vn bē execution, & eſt dauer executiō, &c. Mes vncore entant que ſur ñ le briefe le defendant poit pleader diuers matts puis le iudgement rendue de luy ouſter execution, come vtlagary, &c. et diuers autres matters,

BVt if after the yeare and day the plaintife will ſue a *Scire facias*, to know if the defendant can ſay any thing why the plaintife ſhould not haue execution, then it ſeemeth that ſuch releaſe of all actions ſhall be a good plea in barre. But to ſome ſeemes the contrary, in as much as the writ of *Scire facias* as is a writ of execution, and is to haue execution &c. But yet in aſmuch as vpon the ſame writ the Defendant may plead diuers matters after iudgement giuen to ouſt him of execution, as outlawry, &c. and diuers other matters, this

matters, ceo bien poit eſtre dit action, &c. may bee well ſaid an action, &c.

uen in this caſe by the Statute of W.2. for at the Common Laws if the Plaintife had ſurceaſed to ſue Execution by Fieri facias, or Leuari facias a yeare and a day, he had beene driuen to his new originall. *W.2 cap.45. 8.E.3.297.298 18.E.3.32. lib.3.fol.12. Sir William Herberts caſe. Fleta, lib.2.cap.12.*

¶ *Ceo bien poet eſte dit action.* **Here it is to be obſerued that euery writ whereunto the Defendant may pleade, be it originall or iuditiall is in Law an action.**

*Sect.*506.

¶ Et ieo croy, que en vn Scire facias **hors duu fine, vn releas de touts maners dactions, eſt bon plee en barre,**

And I take that in a *Scire facias* vpon a fine, a releaſe of all manner of actions is a good plea in barre.

This vpon that which hath beene ſaid is euident of it ſelfe.

Sect. 507.

¶ Mes lou home recouera debt ou damages, et eſt accord perenter eux, que le plaintife ne ſuer execution, donqs il couient q̄ le plaintife fait vn releas a luy de touts maners dexecutions.

But where a man recouereth debt or damages, and it is agreed betweene them that the plaintife ſhall not ſue execution, then it behoueth that the plaintife make a releaſe to him of all manner of executions.

¶ *Il conient.* **Albeit** Littleton here ſaith, hee ought or muſt, &c. yet there bee other words which will releaſe an Execution without expreſſe words of a releaſe of Execution.

As if a man releaſe all ſuites the Execution is gone, for no man can haue Execution without prayer and ſuit, but the King only, and therefore if the King releaſeth all ſuites, it is no barre of his Execution becauſe in the Kings caſe the Iudges ought to award execution Ex officio without any ſuite, but a releaſe of Executions doth barre the King in that caſe. And ſo note a diuerſity betweene a releaſe of all actions, and a releaſe of all ſuites. *19.H.6.4. 26.H.6. Execution 4. lib.8.fa.153. Ealthams caſe. Vid. Brooke, tit. Releaſes 87.*

So if the body of a man be taken in Execution, and the Plaintife releaſeth all actions, yet ſhall he remaine in Execution, but if he releaſe all debts or duties he is to be diſcharged of the Execution becauſe the debt or dutie it ſelfe is diſcharged. *26.H.6.tit.Execution,7.*

In the ſame manner if Execution be ſued vpon a Recognizance by Elegit, and the Conuſee by Deed make a Defeaſance, that if the Conuſor doth ſuch an act, that then the Recognizance ſhall be voide, by this the Execution is diſcharged. *20.Aſſ.p.7.*

So it is if iudgement be giuen in an action of debt, and the body of the Defendant is taken in execution by a Capias ad ſatisfac' and after the Plaintife releaſeth the Iudgement, by this the body ſhall be diſcharged of the Execution. *26.H.6.vbi ſupra.*

If the Plaintife after Iudgement releaſe all demands the Execution is diſcharged, as ſhall appeare by that which next hereafter ſhall be ſaid.

If A. be accountable to B, and B. releaſeth him all his duties, this is no barre in an Action of account, for Duties extend to things certaine, and what ſhall fall out vpon the account is incertaine; and albeit the Latyn word is Debita, yet Duties doe extend to all things due that is certaine, and therefore diſchargeth Iudgements in perſonall actions, and Executions alſo. *20.H.6.6. per Paſton.*

Section 508.

¶ *Touts manners de demands.*

¶ *Demande*, Demandum is a word of Art, and in the vnderſtanding of the Common Law is of ſo large an extent, as no other one word in the Law is, vnleſſe it be Clameum, whereof Littleton maketh mention Sect.445. And here is to bee obſerued, that there bee two kind of demands or claimes, viz. a demand or claime in Deed, and a demand or claime in Law; or an expreſſe, and an implied demand or claime. Littleton here putteth examples of both, and firſt he ſpeaketh of Reall Actions, wherein hee that bringeth his Action maketh his demand, and therefore he is properly called a demandant, and hee that defendeth is called Tenant, becauſe he is Tenant of the Freehold of the land.

*Lib.Sect.*445. *Bract.lib.*5. *ca.*10 *Pl.Com.Stanl.caſe*, 359, *&c.*

¶ Item ſi hée releſſa a vn auter touts manners de demands, ceo eſt le plus melior releaſe a luy a que le Releaſe eſt fait que il poet auer, et plus vzera a ſon aduantage. Car per tiel releaſe de touts manners de demands, touts maners dactions reals, perſonals, et Actiõs dappeale ſont ales et extincts, et touts manners de executiõs ſont ales et extincts.

ALſo if a man releaſe to another all manner of demãds, this is the beſt releaſe to him to whome the Releaſe is made, that he can haue, and ſhall enure moſt to his aduantage. For by ſuch releaſe of all manner of demands, al manner of Actions realls, perſonalls, and Actions of Appeale, are taken away and extinct, and all manner of executions are taken away and extinct.

Of demands implied, or in Law, Littleton putteth examples: Firſt, Of all Actions perſonalls. Secondly, Of Appeales, for in both thoſe caſes he that bringeth the ſuit is called Plaintife, and not Demandant, and he that defendeth is called Defendant. Thirdly, Of Executions. Fourthly, Of title or right of Entrie, either by force of a Condition, or by any former right, which meerly is a demand or claime in Law, but otherwiſe it is in the Kings caſe. Fiftly, Of a Rent ſeruice, Rent charge, Common of paſture, &c. which alſo are meere demaunds or claimes in Law. All which, Littleton here and in the two next Sections following, putteth but for examples, for by the releaſe of all demands other things alſo be releaſed, as Rents ſeck, all mixt Actions, a Warrantie which is a Couenant reall, and all other Couenants reall and perſonall, Eſtouers, all manner of Commons and profits apprender, Conditions before they be broken or performed, or after, Annuities, Recognizances, Statutes Merchant or of the Staple, Obligations, Contracts, &c. are releaſed and diſcharged.

*38.H.8.tit. Releaſes Br.*9. *6.H.7.*15. *19.H.6* 3,4. *20. Aſſ.Pl.*5 *40.E.*3.22.49 *E.*3 *7.b.*50. *Fpl.*6.14. *H.*4.8. *13.R.*2.*tit.Anow.*89. *Lib.*8. *fo* 153. *Ed.Altham caſe. Lit.*170. *Sect.*748. *Dyer* 5. *El.*217.

Sect. 509.

¶ ET ſi hõe ad title de entry en aſcuns terres ou tenements, per tiel Releaſe ſon title eſt ale.

¶ Sed quære de hoc, car Fitz-Iames chiefe Juſtice de Engleterre tient le contrarie, pur ceo que entre ne poit properment eſtre dit demaunde, P.19.H.8.*

AND if a man hath title of entry into any Lands or Tenements by ſuch a Releaſe, his title is taken away.

¶ *Sed quare de hoc*, for *Fitz-Iames* chiefe Iuſtice of England holdeth the contrarie, becauſe an Entrie cannot be properly ſayd, a Demaund.

¶ *Title.*

¶ *Title.* Here Title is taken in the largeſt ſence, including Right alſo. 34.H.8.tit.Releaſe.B.9. Chaunceys caſe. Li.8.fo.153. Ed. Althams caſe.

¶ * Sed quære,&c. This is an addition, and no part of Littleton, and the opinion here cited clearely againſt Law.

Section 510.

¶ ET ſi home ad Rent ſeruice ou Rent charge, ou Common de Paſture,&c. per tiel releaſe de touts manners de demaunds fait al Tenaunts de la Terre, dont le ſeruice ou le rent eſt iſſuant, ou en que le Common eſt, le ſeruice, le Rent, et le Common eſt ale et extinct, &c.

AND if a man hath a Rent ſeruice or Rent charge, or Common of Paſture,&c. by ſuch a Releaſe of all manner of demaunds made to the Tenants of the Land out of which the ſeruice or the rent is iſſuing, or in which the Common is, the ſeruice, the Rent and the Common, is taken away and extinct.

This vpon that which hath beene ſayd, needeth no further explication.

Sect. 511.

¶ ITem ſi home releſſa a vn aut touts manners de quarrels, ou touts controuerſies ou debates enter eux, &c. Quære a quel matter et a quel effect tiels parols ſoy extendont, &c.

ALſo if a man releaſeth to another all manner of quarrels, or all controuerſies or debates betweene them, &c. *Quære* to what matter and to what effect ſuch words ſhall extend themſelues.

¶ *Quarrels.* Querela, à querendo, this properly concerneth Perſonall Actions, or mixt at the higheſt, for the Plaintife in them is called Querens, and in moſt of the writs it is ſaid Queritur. And yet if a man releaſe all Quereles (a mans deed being taken moſt ſtrongly againſt himſelf) it is as beneficiall as al actions, for by it al Actions reall and perſonal are releaſed. And by the releaſe of all quarrels, all cauſes of Actions are releaſed thereby, albeit no Action be then depending for the ſame. 40.E.3.47.b.Ed.Althams Caſe vbi ſupra. 35.H.8.Dier.57. 9.E.4.44. 39.H.6.9.

¶ *Quarels*, Controuerſies, and Debates, are Synonima, and of one ſignification. Litis nomen omnē Actionē ſignificat, ſiue in rem, ſiue in perſonā ſit If a man releaſe omnes loquelas, it is as large as omnes Actiones, for omnis Actio eſt loquela, and it extendeth as well to Actions in Courts of Record, as baſe Courts, for the writ of Error ſayth, In Recordo & Proceſſu, &c. loquelæ quæ fuit inter, &c. and ſo the writ of falſe Judgement ſaith, Recordari facias loquelam, where the iudgement was giuen in the Countie Court. Omnes exactiones, ſeem to be large words, for Exactio deriuantur ab exigendo, and Exigere ſignificth, to enquire or demand. *Lib.8.fol.153. Althams Caſe* 21.H.6.16.a.F.N.B.23.18. 50.Aſſ.6. 40.E.3.22. 13.E.2.Auowrie 89.

Sect. 512.

¶ ITem ſi home p ſon fait ſoit obligé a vn auter en

ALſo if a man by his Deed bee bound to another in a

¶ R *Releſſa al obligor touts Actions,&c.* The reaſon

of this caſe is, For that the debt is a thing conſiſting meerely in Action, and therefore albeit no Action lieth for the debt, becauſe it is debitum in præſenti, quamuis ſit ſoluendum in futuro, yet becauſe the right of Action is in him, the releaſe of all Actions is a diſcharge of the debt it ſelfe. (o) And ſo may an Executor before probate releaſe an Action, and yet before Probate he can haue no Action, becauſe the right of the Action is in him, and ſo it was adiudged. And ſome ſay, that an Ordinarie may releaſe an Action, and yet he can haue none. But if a man by Deed doth couenant to build an houſe or make an eſtate, and before the Couenant broken, the Couenantee releaſeth to him all Actions, Suits, and Querrels, this doth not diſcharge the Couenant it ſelfe, becauſe at the time of the Releaſe, nihil fuit debitum, there was no debt or dutie, or cauſe of Action in being. But in that caſe a Releaſe of all Couenants is a good diſcharge of the couenant before it be broken.

certaine ſumme de money a payer al Feaſt de S. Michael prochein enſuant, ſi l'obligee deuant le dit Feaſt releſſa al Obligor touts Actions il ſerra barre del dutie a touts temps, et vncore il ne puiſſoit auer Action al temps de Releaſe fait.

certaine ſumme of money, to pay at the Feaſt of Saint *Michael* next enſuing, if the Obligee before the ſayd Feaſt releaſe to the Obligor all Actions, hee ſhall be barred of the duty for euer, & yet he could not haue an Action at the time of the Releaſe made.

11.H.4.41.43.

(o) *Trin 2.Ia.io Cõi Banco. inter Middleton & Rinnet. 18.H.6.33.b.Pl.Com.277. 278. In Greibrokes Caſe per Weſton.*

5.*Eliz. Dier 217.*

Alibam Caſe vbi ſupra.

Sect. 513.

¶ *Releaſe touts Actions.* This releaſe ſhall not barre the Leſſor of his Rent becauſe it was neither debitum nor ſoluendum at the time of the releaſe made, for if the land be euicted from the Leſſee before the Rent become due the Rent is auoyded, for it is to bee paid out of the profits of the land, and it is a thing not meerely in action becauſe it may bee granted ouer. But the Leſſor before the day may acquite or releaſe the Rent. But if a man bee bound in a Bond or by Contract to another to pay a hundred pounds at fiue ſeuerall dayes, he ſhall not haue an Action of Debt before the laſt day be paſt, and ſo note a diuerſitie betweene duties which touch the realtie, and the meere perſonaltie. But if a man be bound in a Recognizance to pay a hundred pound at fiue ſeuerall dayes preſently after the firſt day of payment he ſhall haue execution vpon the Recognizance for that ſumme, and ſhall not tarrie till the laſt be paſt, for that it is in the nature of ſeuerall Iudgements. And ſo note a diuerſity betweene a debt due by Recognizance, and a debt due by Bond or Contract. And ſo it is of a couenant or promiſe, after the firſt default an Action of Couenant, or an Action vpon the Caſe doth lie, for they are ſeuerall in their nature. Laſtly, note a diuerſity betweene Debts and Couenants, or Promiſes.

¶ Mes ſi home leſſa terre a vn auter pur terme dun an, rendant a luy al feaſt d S. Mich. pchein enſuãt 40. ſ. & puis deuãt meſm̃ feaſt il releſſa al leſſee touts actions vnc apres meſme le feaſt il auera acc de Det pur non payment de les 40. ſ. nient obſtant le dit releas. Stude cauſam diuerſitatis enter les deux caſes.

BVt if a man letteth land to another for a yeare, to yeeld to him at the Feaſt of S. *Mich.* next inſuing 40. s. & afterwards before the ſame Feaſt hee releaſeth to the leſſee all actions, yet after the ſame Feaſt hee ſhall haue an action of debt for the non payment of the 40. s. notwithſtanding the ſaid Releaſe. *Stude cauſam diuerſitatis* between theſe two caſes.

7.H.7.5.a.

45.E.3.8.17.H.6.16. 13.H.4.Auowrie 240.

30.E.3.13.b. 47.E.3.24.

10.E.2.Executors 137. 16.E.2.ibid.238. 16.E 3. Scire Fac.4.E.N.B.267. 9.E.3.7.

5.Mar.Allienſur le caſe. Br.108. 3.Mar.Dier.113. Lib.4.fo.94.Sladcs caſe. Lib.5.fol.31.b. Fordeseaſe.

If a man hath an Annuity for tearme of yeares, or for life, or in fee, and he before it be behind doth releaſe all Actions, this ſhall not releaſe the Annuity, for it is not meerely in Action, becauſe it may be granted ouer.

39.H.6.28.b. 5.E.4.45. 2.R.2.13.22.R.2.Releaſe 29

Sect.

Section 514.

ITem ou home voile ſuer vziefe de Dzoit, il couient que il counta del ſeiſin de luy, ou de ſes anceſtozs, & auxy q̄ l' ſeiſin fuit en temps de meſme le Roy come il counta en ſon count: Car ceſt vn ancient ley vſe, come appiert per l' Repozt dun plee en le Eire de Nottingham, titulo Droit en Fitzherbert, cap.26. en tiel fozme q̄ enſuiſt. John Barre pozt ſon vziefe de Dzoit enuers Reynold de Aſſington, et demaunda certaine tenements, &c. ou le miſe eſt ioyne en le bank, et oziginall & le Pzoces fueront demandes deuant Juſtices errātz, ou les parties vienDzont, & les 12. Chiualers ſieront lour ſerement ſans challenge des parties deſtre allowes, pur ceo que election fuit fait per aſſent des parties, oue les quater Chiualers, & le ſerement fuit tiel, Que ieo verity dirr̄, &c. le quel R. de A. ad plus mere Dzoit a tener les tenements que John Barre demanda vers luy per ſon vziefe de Dzoit, ou John, de

ALſo where a man will ſue a Writ of Right, it behoueth that he counteth of the ſeiſin of himſelfe or of his anceſtors, and alſo that the ſeiſin was in the ſame Kings time, as hee pleadeth in his plea. For this is an ancient Law vſed, as appeareth by the report of a Plea in the Eire of *Nottingham*, *tit. droit in Fitzherbert*, *cap.26.* in this forme following. *John Barre* brought his Writ of Right againſt *Reynold* of *Aſſington*, and demanded certaine Lands, &c. where the miſe is ioyned in banke, and the originall and the Proceſſe were ſent before the Iuſtices errants, where the parties came, and the twelue Knights were ſworne without challenge of the parties, to bee allowed, becauſe that choiſe was made by aſſent of the parties, with the foure Knights, and the Oath was this. That I ſhall ſay the truth, &c. whither *R.* of *A.* hath more mere right to hold the tenements which *Iohn Barre* demandeth againſt him by his Writ of Right, or *Iohn* to haue

¶ *IL couient que il counta del ſeiſin de luy ou de ſes aunceſtors.* For if neither hee nor any of his Anceſtors were ſeiſed of the land, &c. within the time of limitation, hee cannot maintaine a Writ of Right, for the ſeiſin of him of whom the Demaundant himſelfe purchaſed the land, &c. auayleth not.

For the time of limitation. See the Statute of 32. H. 8. cap. Vide Sect. 170.

And ſo it is in a Writ of Right of Advowſon. *F. N. B. 30. a. 2. E. 3. 27. Litt. 110. 2.*

¶ *Auxy que le ſeiſin fuit en temps de meſme le roy come il counta.* Hereby it appeareth, that not only a ſeiſin (as hath bin ſaid) is requiſite, but alſo that the ſeiſin be hadin the time of the ſame king according to his Count.

¶ *Report* commeth of the Latin word reportare, à re, & porto, id eſt, referre, à re, & fero. And in the Common Law, it ſignifieth a publike relation, or a bringing againe to memory Caſes iudicially argued, debated, reſolued, or adiudged in any of the Kings Courts of Juſtice, together with ſuch cauſes and reaſons as were deliuered by the Iudges of the ſame, and in this ſence Littleton vſeth the word in this place.

¶ *En le Eire de Nottingham.* Eire, Iter. And it ſignifieth the Court of the Iuſtices in Eire, and thereupon they were called Iuſticiarij Itinerantes, in reſpect that the Juſtices reſiding at weſt-

(p) *Mirror cap.*2.§.3. & §.15. & *cap.*4. *le eſſoyne des Iuſtices in Eire. Glanuil. lib.*9. *cap.*10. *lib.*8. *cap. prim. Britton fol.*1. *b.*7.8. *&c. Bract. lib.*3. *fol.*115. *& Flet. lib.*1. *cap.*15. *&c.* 4. E.3.32. 6. E.3.35. 23. E.3.21.15. *H.*7.5. *Vide Sect.*442.233.234.

weſtminſter were called Iuſticiarij reſidentes, and were much like in this reſpect to the Iuſtices of Aſſiſe at this day, although for authoritie & manner of proceeding (whereof you ſhall read (p) in the ancient Authors of the Law) farre different. And as the power of the Iuſtices of Aſſiſes by many Acts of Parliament, and other Commiſſions increaſed, ſo theſe Iuſtices Itinerant by little and little vaniſhed away. And it is certaine, that the authority of Iuſtices of Aſſiſes Itinerant through the whole Realme, and the Inſtitution of Iuſtices of Peace in euery Countie being duly perfourmed, are the moſt excellent meanes for the preſeruation of the Kings peace and quiet of the Realme of any other in the Chriſtian World.

¶ *De Nottingham.* This ſhould bee Northampton according to the Originall.

This report whereof Littleton here maketh mention, you ſhall finde an Abſtract of it in 3. E. 3. ſince Littletons time put in print by Fitzherbert when he was Seriant in 11. H. 8. and is not in the Reports or Bookes at large. And yet here it appeareth, that they be of great authoritie, and vouched by Littleton himſelfe for the proofe of a mayne point in Law. And hereby it alſo appeareth how neceſſary it is to read Records and Pleas reported or recorded, though they were neuer printed. For thoſe and the like Records are Veritatis & Vetuſtatis veſtigia.

3. E. 3. Tit. Droit F. 26.

¶ *Tit. droit in* Fitzherbert 26. ig

auer eux, ſicome il demaund, & pur rien dirra que le verity ne dirra, ſicome moy ayde Dieu, &c. ſans dire a lour eſcient. Et tiel ſerement ſerra fait en attaint, et en Battaile, & en ley gager, car eux mittont cheſcun choſe a fine. Mes John Barre counta öl ſeiſin dun Rafe ſon anceſter, en temps le Roy Henry, & Reynolde ſur le miſe ioyne tendiſt demy mark pur le temps &c. Et ſur ceo Herle Iuſtice dit al grand aſſiſe, apres ceo que ils fueront charges ſur le mere Droit. Vous gentes, Reynold donaſt demy marke al Roy pur le temps, al entent que ſi vous troues q̄ launceſter John ne fuit pas ſeiſie en le temps que le demaundant ad count, vous nenquires plus auant del droit, et p̄ ceo vous nous dires, & quel laūceſter John, Rafe per noſme, fuit ſeiſie en temps le Roy Henry, come il ad count, ou non. Et ſi vous troues que il ne fuit ſeiſie en cel temps, vous nenquires nient pluis, & ſi vous troues que il fuit ſeiſie, donques enquires ouſter del briefe. Et puis le graund

them as he demandeth and for nothing to let, to ſay the truth, ſo helpe mee God, &c. without ſaying to their knowledge. And the like oath ſhall bee made in an Attaint and in battaile, and in wager of Law, for theſe doe bring euery thing to an end. But *Iohn Barre* counted of the ſeiſin of one *Ralfe* his Anceſtor in the time of K. *Henry*, and *Reynold* vpon the miſe ioyned tendred halfe a marke for the time, &c. And hereupon *Herle* Iuſtice ſaid to the grād aſſiſe after that they were charged vpon the meere right. You good men, *Reynold* gaue halfe a Marke to the King for the time, to the intent that if you find that the Anceſtor of *Iohn* was not ſeiſed in the time that the demādant hath pleaded, you ſhall enquire no further vpō the right, and for this, you ſhall tell vs whether the Anceſtor of *Iohn*, (*Ralfe* by name) were ſeiſed in K. *Henries* time as he hath pleaded, or not. And if you find that he was not ſeiſed in this time you ſhall enquire no more, and if you find that he was ſeiſed, then you ſhall enquire further of the writ. And after the grand Aſſiſe came in with their

graund Aſſiſe reuien-
droit one iour verdict,
& diſont, que Rafe ne
fuit pas ſeiſie ẽ temps
le Roy H. per que fuit
agard, que Reynold ti-
endroit les tenements
vers luy demandes, a
luy & ſes heires quites
de John Barre & ſes
heires a remnant. Et
John en le mercie, &c.
Et le cauſe pur que ieo
aye monſtre icy a toy
mon fits ceſt plee, eſt
pur prouer le matter
precedent q̃ eſt dit en
briefe de droit, &c. car
il ſemble per ceſt plee,
que ſi Reinold nauoit
pas tendue ỏmy mark
pur enquirer ỏl temps,
&c. donques le graund
Aſſiſe duiſſoit eſtre
charg̃ tantſolement ỏl
mere droit, & nemy del
poſſeſſion, &c. Et iſſint
q̃ touts foits en briefe
de droit, ſi le poſſeſſi-
on dont le demandant
counta ſoit en temps le
Roy, coñ il auoit coñt,
donques le charge del
grande aſſiſe ſerra tãt-
ſolement ſur le mere
droit, coment que le
poſſeſſion fuit encoun-
ter le ley, come il eſt dit
adeuant en ceſt Chap-
ter, &c.

verdict, and ſaid, that *Ralfe* was not ſeiſed in the time of King *Henrie*, whereby it was awarded that *Reynold* ſhould hold the Tenements demanded againſt him, to him and his heires quite of *Iohn Barre* and his heires to the remnant. And *Iohn* in mercie, &c. And the reaſon why I haue ſhewd to thee my Sonne this Plea, is, to proue the matter precedent which is ſaid in a Writ of right, for it ſeemeth by this Plea, that if *Reynold* had not tendred the halfe marke to enquire of the time, &c. then the grand Aſſiſe ought to be charged only to enquire of the meere right, and not of the poſſeſſion, &c. And ſo alwayes in a Writ of Right if the poſſeſſion whereof the demandant counteth bee in the Kings time as hee hath pleaded, then the charge of the grand Aſſiiſe ſhall be only vpon the meere right, although that the poſſeſſion were againſt the Law, as it is ſaid before in this Chapter. &c.

of a new addition, and therefore thongh it bee true, yet not to bee alowed.

¶ *Et le originall & le proces fuer' demande deuant Iuſtices Itinerants.* For it is to bee vnderſtood, that all Pleas either in the realtie or perſonaltie that were begunne and not determined before Iuſtices in Eire were adiourned by them into the Court of Comon Pleas. 4.E.3.41. Pecuals caſe. Mirror. Glanuil. Bracton. Britton. Fleta. vbi ſupra.

¶ *Les 12. chiualers fieront lour ſerement ſauns challenge, &c. pur ceo que le election fuit fait per aſſent des parties ouc les 4. chiualers.*

Here are foure things to be obſerued. 30.E.1.tit.challenge 172. 21.E.4 77. 39.E.3.1.44.E.3.6.11.H.6.13.

Firſt, That omnis conſenſus tollit errorẽ, and againſt his owne conſent hee cannot challenge the twelue.

Secondly, That the foure Knights Electors of the grand Aſſiſe are not to be challenged, for that in Law they bee Iudges to that purpoſe, and Iudges or Iuſtices cannot bee challenged. And that is the reaſon that Noblemen that in caſe of high Treaſon are to paſſe vpon a Peere of the Realme cannot be challenged, becauſe they are Iudges of the fact, and the Magna Charta ſaith, per iudicium parum ſuorum. 4.E.3.13. Magna Charta cap.29.

Thirdly, That the twelue before any aſſent may be challenged before the foure Knights Electors, but after aſſent or returne of the pannell before the Iuſtices there ſhall be no challenge to the pannell nor to the polles. 39.E.3.2.7.H.4.20. 7.H.4.20.

Fourthly, If there be not foure Knights for Electors in that Countie, the next to them in that Countie ſhall be taken. Ne curia Regis deficeret in iuſtitia exhibenda.

¶ *Sauns dire a lour eſcient.* And here it appeareth, that where the iudgement is finall, there the Oath of the grand Aſſiſe or Iury is abſolute and not to their knowledge,

knowledge, as here in the Writ of Right, in the Attaint, and in Wager of Law, for the iudgement in euery of theſe three is finall.

*Vid.Sect.*193. *Regiſtrum.*

¶ *Le miſe eſt ioyne.* Miſe **is a word of art appropriated only to a** Writ of Right, ſo called becauſe both parties haue put themſelues vpon the meere right to be tryed by grand Aſſiſe or by battle: ſo as that, which in all other Actions is called an Iſſue, in a Writ of Right in that caſe is called a Miſe. And in this ſence Littleton taketh it here. But in a Writ of Right if a Collaterall point is to be tryed, there it is called an Iſſue: and is deriued of this word (Miſſum) becauſe the whole cauſe is put vpon this point. It is alſo taken for expences, as Miſæ & Cuſtagia. And ſometime it ſignifieth a cuſtomary grant to the King or Lords Marchers of Wales by their Tenants at their firſt comming to their Lands.

33.*H.*8.*ca.*13. 3.*E.*6.*ca.*36.

10.*E.*3.20. 31.*E.*3.*droit* 11 22.*E.*3.17. 18.*H.*3.*droit.*62. 33.*E.*3.*ibid.*39. *Lamb.explicat.verborum verbo Mancuſa.*

¶ *Tender di marke al Roy.* **Maſter** Lambard **ſaith that** Mancuſa & Marca Saxonice Mancup.7. Mearc' Nummus 30. valens denarios. **And this** Mearc **now called a Marke being an old Saxon word is the cauſe that England moſt commonly reckoned by** Markes, Libra Saxonice **is a** pund, a pondo, **which is called ſo vntill this day.** Solidus qui apud nos eſt pars libræ viceſima, denarios per id temporis continebat quinque, nunc duodecim, and Scilling is a Saxon word, and with vs vſed to this day. Penny Saxonice pennig, Latyne Denarius, but the value of theſe haue not beene alwayes one.

*F.N.B.*31.*e.* 31.*E.*3.*droit.* 15. 6.*E.*3.*ibid.*34.

In a Writ of Right of Aduowſon brought by the King, the Tenant ſhall not tender the Di. marke, becauſe Nullum tempus occurrit Regi, and therefore the King ſhall alleage, that hee or his Progenitor was ſeiſed without ſhewing any time.

*Mirror,ca.*1.§.17.*ca.*3. *de Attaint.ca.*5.§.1. *Bracton.fo.*288.289.*&c.*292. *Britt.fo.*241.245.246.*&c.* *Fleta.lib.*5.*ca.*21.*&* 34. *Forteſcue,ca.*26.

¶ *En attaint.* Attincta, **is a Writ that lyeth where a falſe Verdict** in Court of Record vpon an iſſue ioyned by the parties is giuen. And of ancient writers it is called Breue de conuictione. And is deriued of the principle Tinctus, or Attinctus, for that if the petite Jury be attainted of a falſe oath, they are ſtayned with periurie, and become infamous for euer, for the iudgement at the Common Law in the Attaint importeth eight great and grieuous puniſhments. 1. Quod amittat liberam legem imperpetuum, that is, he ſhall bee ſo infamous as ſhall neuer be receiued to be a Witneſſe or of any Jury. 2. Quod forisfaciat omnia bona & catalla ſua. 3. Quod terræ & tenementa in manus Domini Regis capiantur. 4. Quod vxores & liberi extra domus ſuas cijcerentur. 5. Quod domus ſuæ proſtrentur. 6. Quod arbores ſuæ extirpentur. 7. Quod prata ſua arentur, &c 8. Quod corpora ſua carceri mancipentur. So odious is periury in this caſe in the eye of the Common Law, and the ſeuerity of this puniſhment is to this end, Vt pœna ad paucos, metus ad omnes perueniat, for there is Miſericordia puniens, and there is Crudelitas parcens. And ſeeing all trialls of reall, perſonall and mixt actions depend vpon the oath of 12. men, prudent Antiquity inflicted a ſtrange and ſeuere puniſhment vpon them if they were attainted of periury.

But ſince Littleton wrote a Statute hath beene made in mittigation of the ſeuerity of the Common Law in caſe when the petite Jurye is attainted, and therefore it is taken by equitye. For where the Statute ſaith, that the party grieued ſhall haue an Attaint againſt the party which ſhall haue iudgement vpon the Verdict, yet an Attaint ſhall be maintained vpon that Statute againſt the Executors of the partie, Et ſic de ſimilibus. (a) But for the Statute and Authorityes quoted in the Margent. Only I thought good to obſerue three things.

(a) 23.*H.*8.*ca.*3. 3.*Eliz.Dier.*201. 7.*E.*6.*ibidem.*81. 3.*Mar.ibid.*129. 7.*Eliz.ibid.*235. 24.*H.*8.*Br.Attaint* 96. 4.*Mar.ibid* 127. 30.*H.*7.5. 42.*E.*3.26.*F.N.B.*107.*D.*

First, that no Attaint can be maintained vpon this Statute but betweene party and party.

Secondly, that no Conuſance can be granted vpon any Attaint, becauſe all Attaints are to be taken eyther before the King in his bench, or before the Juſtices of the Common place, and in no other Courts, &c.

Thirdly, conſider what pleas may be pleaded in an Attaint by force of this Act, and what not.

*Mirror.ca.*1.§.3.*ca.* 3.§. *ca.*5 §.1. *Bracton,lib.*3. 141.*b.* *&fo.*320. 331. *Glanuil. lib.*2. *cap.*3.4.5. *Lib.*8 *ca.*9. *Lib* 4.*ca.*1. *Britt.fo.*40.42. 43.81. 175.190. *Fleta lib.*1.*ca.*32. *& lib.*2.*ca.*48.

¶ *En battaile.* Duellum, Monomachia, **And it ſignifieth in the** Common Law a tryall by ſingle fight, by battaile or combate, Monomachia. (b) And in the Writ of Right neither the Tenant or Demandant ſhall fight for themſelues, but finde a Champion to fight for them: becauſe if either the Demandant or Tenant ſhould be ſlayne, no iudgement could be giuen for the Lands or Tenements in queſtion. But in an Appeale the Defendant ſhall fight for himſelfe, & ſo ſhall the Plaintife alſo, for there if the Defendant be ſlayne, the Plaintife hath the effect of his ſuite, that is the death of the Defendant; the order and ſolemnity whereof you may reade in our ancient and latter Bookes. And this the Law did inſtitute, when the Tenant failed of his Witneſſes, or Euidences, or other proofes, and the preſumption of Law is, that God will giue victory to him that hath right.

(b) 4.*E.*3.41. 17.*E.*3. 19.*H.*6.35. 1.*H.*4.3. 30.*E.*3.20. 29.*E.*3.12. 13.*H.*4.4. *Stanf.*174.178. 17 *Eliz.Dier* 9.*E.*4.35. 1.*H.*6.6. 3.*H.*6.55. *Vid.lib.*9.*fo.*32.*b.&* 33.*b.*

*Mirror ca.*4. *Del office des Juſtices,&c.* *Glanuill lib.*1.*ca* 9.*lib.*8.*ca.*8.

¶ *Ley gager.* Vadiare legem, **And there is alſo** Facere legem, **by** making of his Law. That is to take an oath (for example) that he oweth not the debt demanded of him vpon a ſimple Contract, nor any penny thereof. And it is called Wager of Law,

Law, becauſe of ancient time he put in ſurety to make his Law at ſuch a day, and it is called making of his Law, becauſe the Law doth giue ſuch a ſpeciall benefit to the Defendant to barre the Plaintife for euer in that caſe. (r) But he ought to bring with him eleuen perſons of his neighbours that will anſwer vpon their oath, that in their conſciences he ſaith truth, ſo as he himſelfe muſt be ſworne De fidelitate, and the eleuen De credulitate.

*Lib.*10.*ca*5. *Bracton,lib.*3.*tract.*2.*ca.*37. *& lib.*5*fo.*410. *Britton,fo.*56. *Fleta lib.*2.*ca.*56.63. (r) *Magna Carta ca.*28 *Bracton.lib.*5*fo.*410. *Fleta,lib.*2.*ca.*63. *Diuerſities des Courts*, 33.*H.*6.8.

And wager of Law lyeth not when there is a ſpecialty, or Deed to charge the Defendant, but when it groweth by word, ſo as he may pay or ſatiſfie the party in ſecret, whereof the Defendant hauing no teſtimony of witneſſes may wage his Law, and thereby the Plaintife is perpetually barred, as Littleton here ſaith, for the Law preſumeth that no man will forſweare himſelfe for any worldly thing; but mens conſciences doe grow ſo large (ſpecially in this caſe paſſing without impunitie) as they chooſe rather to bring an Action vpon his caſe vpon his promiſe, wherein (becauſe it is Treſpaſſe ſur le caſe) he cannot wage his Law, then an Action of debt.

A man Outlawed or attainted in an Attaint, or vpon an inditement of conſpiracie, or of periury, or otherwiſe whereby he become infamous ſhall not wage his Law. 33.*H.*6.32.

A man vnder the age of 21. yeares ſhall not wage his Law, but a Feme couert together with her husband ſhall wage her Law. 11.*H.*6.40, 15.*E.*4.2.

When the ſuite is for the King, or for his benefit, as in a Quo minus, the Defendant ſhall not wage his Law. 32.*H.*6.24. 8.*H.*5. *Ley* 66. 35.*H.*8. *Ley.Br.*102.

If an Infant be Plaintife the defendant ſhall not wage his Law. An Alien ſhall wage his Law in that language he can ſpeake. 26.*E.*3.63.*b.* 21.*H.*6.42.

In no caſe where a Contempt, treſpaſſe, diſceite, or iniurie is ſuppoſed in the defendant, he ſhall wage his law, becauſe the law will not truſt him with an oath to diſcharge himſelfe in thoſe caſes, only in ſome caſes in Dett, Detinue, Accompt, the Defendant is allowed by law to wage his Law. 44.*E.*3.32. 18.*E.*3.4. 24.*E.*3.39.

In an Action of Account againſt a Receiuor vpon a receipt of money by the hand of another perſon for account render (vnleſſe it be by the hands of his wife, or of his Commoigne) the Defendant ſhall not wage his Law, becauſe the receipt is the ground of the Action which lyeth not in priuity betweene the Plaintife and Defendant, but in the notice of a third perſon, and ſuch a receipt is trauerſable. (d) But in an Action of debt vpon an Arbitrament, or in an Action of Detinue by the bailement of anothers hand, the Defendant ſhall wage his Law, becauſe the Debet and the Detinet is the ground of thoſe actions, and the Contract or Bailement though it be by another hand, is but the conueyance and not trauerſable. In an action of Account againſt a Bailife of a Mannor, the Defendant cannot wage his Law becauſe it foundeth in the realty. In an action of Debt which concernes the realty, as for Debt, Rent vpon a Leaſe for yeares, or an action of Detinue for detayning an Indowment of a Leaſe for yeares, the Defendant ſhall not wage his Law, much leſſe for Charters or Deeds which concerne inheritance. 15.*E.*4.16. 10.*E.*4.5.

(d) 33.*H.*6.24. 13.*H.*7. 3.*a.* 22.*H.*6.41. 1.*H.*6.1 *b.* 8.*H.*6.11. 18.*H.*8.3 3 *E.*3.28. 11.*H.*4.54. 5.*H.*5.13. 21.*H* 6.30. 24.*E.*3. *Ley* 63. 30 *E.*3.19. 9.*E.*4.1.

34.*H.*8. *Ley Gager Er.*97.

In an action of Debt for a Fine or Amerciament in a Leete, the Defendant ſhall not wage his Law, becauſe the Leete is a Court of Record, but in an action of Debt for an Amerciament in a Court Baron the Defendant ſhall wage his Lawe, for that it is no Court of Record. 10.*H.*6.7. 1.*H.*7.25. 6.*Eliz. Bendloes.*

In debt vpon an account before Auditors the Defendant ſhall not wage his Law, and this by conſtruction of the Statute of W.2.ca.11. which giueth them great authority and faith, Coram Auditoribus, and therefore of an account before one auditor the Law lyeth. So if the Lord before Auditors be found in ſurpluſage, in an action of Debt brought by the Accomptant, the Lord ſhall not wage his Law by conſtruction alſo vpon this Statute, as an incident riſing vpon the Accounts. 9.*H.*5.3 8.*H.*6.15. 22.*H.*6.35. 38.*H.*6.6. 14.*H.*6.62. 38.*H.*6.6.

In an action of Debt by a Gaoler againſt the Priſoner for his victuals the Defendant ſhall not wage his Law, for he cannot refuſe the Priſoner, and ought not to ſuffer him to dye for default of ſuſtenance, otherwiſe it is for tabling of a man at large. 28.*H.*6.4. 19.*H.*6.20. 22.*H.*6.13. 39.*H.*6.18.

In an action of Debt brought by an Attorney for his Fees the defendant ſhall not wage his Law. becauſe he is compellable to be his Attorney. And ſo if a ſeruant be retained according to the Statute of Labourers in an action of Debt for his Salary his maſter ſhall not wage his Law, becauſe he was compellable to ſerue, otherwiſe it is, if he be not retained according to the Statute. 21.*H.*6.4. 38.*H.*6.22. 39.*H.*6.18.

Whereſoeuer a man is charged as Executor or Adminiſtrator, he ſhall not wage his Law, for no man ſhall wage his Law of another mans Deed, but in caſe of a Succeſſor of an Abbot, for that the houſe neuer dyeth. 3.*H.*6.38. 1.*H.*7.25. 13.*H.*7.

In Debt vpon a penalty giuen by Statute, the Defendant ſhall not wage his Law. There is another kinde of wager of Law in a real action, of Non ſummons, but thereof Littleton ſpeaketh not. 10.*H.*7.18.

¶ *Et ſur ceo* Herle *Iuſtice dit, &c.* Hereby it appeareth that it is

the office of the Iudges to inſtruct the grand Aſſiſe or Iury in points of Law, for as the graund Aſſiſe or other Iurors are triers of the matters of fact, Ad queſtionem facti non reſpondent Iudices, ſo Ad queſtionem iuris non reſpondent Iuratores. And accordingly the Iudge in this caſe directed the grand Aſſiſe, viz. if they found that, &c.

¶ *Per que fuit agard.* **Here are two things to bee obſerued.** First the forme of a Iudgement finall. Secondly, that a Iudgement finall is to be giuen in this particular caſe. For the forme of the finall iudgement for the Tenant is here expreſſed, that the Tenant ſhall hold the Tenements demanded againſt him, to him & his heirs quite of the Demandant and his heires for euer, and the Demandant in the mercy. Quod tenens teneat terram illam ſibi & hæredibus ſuis in pace verſus petentem & hæredes ſuos in perpetuum.

Glanu.li.12.ca.1.& c. Bracton li. 5.fol.328

Lit.5fol.85.Termes caſe.

For the ſecond point ſeing the Aſſiſe is ioyned vpon the mære right, albeit the Verdict of the Grand Aſſiſe be giuen vpon another point, yet iudgement finall ſhall be giuen. And ſo it is if the Tenant after the Aſſiſe ioyned make default, or confeſſe the action, or if the Demandant be Non-ſuite, and yet in none of theſe caſes they of the grand Aſſiſe gaue their verdict vpon the mære right.

34.E.3.Iudgm.256.a Iudge accord 13.H.4 Iudgm. 245. 10.H.6.8.20.H.6.38.b. 21.H.6.34.b. 26.H.8.8.b. 1.Mar.Dy.98.Li.5.fo.85. Termes caſe.F.N.B.5.11.31.

¶ *Come eſt auantdit,* Vid. Sect. 478.

Chap.9. Of Confirmation. *Sect.515.*

Bract.li.2.fo.32.b.& 58,59. Brit.235.

¶ Here firſt our Authour ſhews what a Confirmation is:

¶ *Fait de Confirmation ẽ communement en tiel forme, ou a tiel effect,* Nouerint vniuerſi, &c. me A. de B. ratificaſſe, approbaſſe & confirmaſſe C. de D. ſtatum & poſſeſſionem, quos habeo, de, & in vno meſuagio, &c. cum pertiñ in F. &c.

A Deed of confirmation is commonly in this forme, or to this effect: *Know all Men &c. That I A. of B. haue ratified, approoued, and confirmed to C. of D. the eſtate and poſſeſſion which I haue of and in one Meſſuage, &c. with the Appurtenances in F. &c.*

Confirmation. Confirmatio commeth of the verbe * Confirmare, qđ eſt firmum facere, and therefore it is ſaid, That Confirmatio omnes ſupplet defectus, licet id quod actum eſt ab initio, non valuit. A Confirmation is a conueyance of an eſtate or right in eſſe, whereby a voidable eſtate is made ſure & vnauoydable, or whereby a particular eſtate is increaſed.

** Lit pag. ſequen.*

Bract.li.2.58.

A Confirmation doth not ſtrengthen a voyde eſtate.

Bract.li.2.fo.27.58.38.H.6. 34.37. Pl.Com.Count.de Leiceſters caſe.

Confirmatio eſt nulla vbi donum præcedens eſt inualidum, & vbi donatio nulla omnino nec valebit confirmatio: for a Confirmation may make a voidable or defeaſible eſtate good, but it cannot worke vpon an Eſtate that is voyd in Law. Non valet confirmatio niſi ille qui confirmat ſit in poſſeſſione rei vel iuris vnde fieri debet confirmatio, & eodem modo niſi ille cui confirmario fit, ſit in poſſeſſione. And another ſaith, (c) Confirmare eſt id quod prius infirmum fuit firmare. Et donationum alia incepta, & defectiua, & poſt tempus confirmata, confirmatio enim omnem ſupplet defectum, poterit enim eſſe in pendenti donec per ratihabitionem hæredis cum ad ætatem peruenerit roboretur.

10.E.2.Cõfirm.24.32.E.3.9.

(c) Flet.li.3.ca.14.& li.3.c.3

¶ Ratificaſſe. Ratificare eſt ratum facere, **and is** æquipollent **to** Confirmare, which as hath beene ſayd, is firmum facere.

44.Aſſ.3.

¶ Approbaſſe **commeth of** Ad **and** Probo, **which is to make perfect** and good.

¶ Confirmaſſe. **Here is to bee obſerued, That there bee two** kinds of Confirmations, viz Confirmations expreſſe or in Deed, whereof Littleton hath here put theſe three examples and Confirmations implied, or in Law, whereof Littleton hereafter ſpeaketh in this Chapter. Quælibet confirmatio, aut eſt perficiens, crescens, aut diminuens, and of all theſe Littleton putteth examples in this Chapter. And hereof Fleta ſaith, Carta autem de confirmatione eſt illa quæ alterius factum conſolidat & confirmat, & nihil noui attribuit, quandoque tamen confirmat & addit.

Li.9.fo.142. Beaumonds caſe. Flet.li.3.ca.14.

Sect.

Section 516.

CEen auſcũ caſe vn fait de Confirmation eſt bone et auailable, lou en tiel caſe vn Fait de Releaſe neſt paſſe bone, ne auailable. Sicõe ieo leſſa Terre a vn home pur terme de ſa vie, le quel leſſa meſm̃ la terre a vn auter p̃ terme de xl. ans, per force de quel il eſt en poſſeſſion. Si ieo p̃ mon Fait confirme leſtate del Tenant a terme dans, et puis le tenant a terme de vie mozuſt durant le terme des ans, ieo ne puis enter en la Terre durant le dit terme.

AND in ſome caſe a Deed of Confirmation is good and auailable, where in the ſame caſe a Deede of Releaſe is not good nor auaileable. As if I let land to a man for terme of his life, who letteth the ſame to another for terme of fortie yeares, by force of which he is in poſſeſſion: if I by my Deed confirme the Eſtate of the Tenant for yeares, and after the Tenant for life dieth during the terme of yeares, I cannot enter into the Land during the ſaid terme.

LLittleton in this chapter putteth eight Diuerſities betweene a Confirmation and a Releaſe, and thereof for illuſtration here he putteth two caſes in this and the next Section, which vpon that which hath beene ſayd in the precedent Chapters, is ſufficiently explained. Onely in both theſe caſes this is to bee obſerued, That where a Confirmation ſhall enlarge an eſtate, there priuitie is required, as well as in the caſe of the Releaſe, as by many examples which Littleton puts in this Chapter appeareth. And note here is the firſt caſe wherein a Releaſe and a Confirmation doe differ: *49.E.3.32.*

Leſſee for life made a Leaſe for thirtie yeares, and after the Leſſor and Leſſee for life made a Leaſe for ſixty yeares to another, which Leaſe for ſixtie yeares the Leſſor did firſt confirme, and after the Leſſor confirmed the leaſe for thirtie yeares, and after Tenant for life dyed within the thirtie yeares, and *9.H.6.22. Tit Releaſe 44*

it was adiudged, (d) That the Leaſe for thirtie yeares was determined by the death of Leſſee for life, and that the Leſſee for ſixtie yeares might enter, for that albeit the Leaſe for ſixty yeares was the latter in time, yet was it of greater force in Law, for that the Leſſor who had power to confirme which of them he would, did firſt confirme the ſecond Leaſe. (d) *Inter Vmwel & Lodge, temp. Reg. Eliz.*

In this Chapter is alſo to be obſerued eight Caſes, wherein a Releaſe and a Confirmation haue the like operation in Law.

Sect. 517.

CVncore ſi ieo per mon fait de Releaſe auoy releas al tenant a terme dans en la vie le tenant a terme de vie, cel Releaſe ſerra voyd, pur ceo que adonqs ne fuit aſcun priuity perent moy et le tenant a terme dans, car releaſe neſt auaileable al Tenant a terme dans mes lou eſt vn priuitie perent luy et celuy q̃ releaſaſt.

YEt if I by my Deed of Releaſe had releaſed to the Tenant for yeares in the life time of the tenant for life, this Releaſe ſhall be voyd, for that then there was not any priuitie betweene me and the Tenant for yeres: for a Releaſe is not auailable to the Tenant for yeares, but where there is a priuitie betweene him and him that releaſeth.

This belongeth to the firſt diuerſitie betweene a Releaſe and a Confirmation.

Sect.

Section 518.

¶ Here is the second diuersity betweene a Release and a Confirmation. But if the Disseisor make a Lease for yeares to begin at Michaelmasse, and the Disseisee confirm his estate, this is voyd, because he hath but interesse termini, and no estate in him, wherreupon a Confirmation may enure.

4.H.7.10.by Keal. 22.E.4.36.

¶ En meſme le maner eſt, ſi ieo ſoy diſſeiſie, et le Diſſeiſor fait vn Leaſe a vn auk pur terme dans, ſi ieo releſſa al termor, ceo eſt voyde, mes ſi ieo confirma leſtate le termor, ceo eſt bone & effectual.

IN the ſame manner it is if I be diſſeiſed, and the Diſſeiſor make a Leaſe to another for terme of yeares, if I releaſe to the Termor this is voyd: but if I confirme the Eſtate of the Termor, this is good and effectuall.

Sect. 519.

¶ Item ſi ieo ſoy diſſeiſie, & ieo confirma leſtate le Diſſeiſor, il ad bone et droiturel eſtate en Fee ſimple, coñt que en le fait de confirmation nul mention eſt fait de ſes heires, pur ceo que il auoit fee ſimple al temps de Confirmation. Car en tiel caſe ſi le diſſeiſee confirma leſtate le diſſeiſor, A auer et tener a luy et a ſes heires de ſon corps engendres, ou a auer et tener a luy pur le terme de ſa vie, vncore le diſſeiſor ad fee ſimple, et eſt ſeiſie en ſon demeſne come de fee, pur ẽ que quant ſon eſtate fuit cõfirm̃, donque il auoit fee ſimple, et tiel fait ne poit changer ſon eſtat̃ ſãs entry fait ſur luy, &c.

ALſo if I be diſſeiſed, and I confirme the eſtate of the Diſſeiſor, he hath a good and rightfull eſtate in Fee ſimple, albeit in the Deed of Confirmation no mention be made of his heires, becauſe he had Fee ſimple at the time of the Confirmation. For in ſuch caſe if the Diſſeiſee confirme the ſtate of the Diſſeiſor, To haue and to hold to him and his heires of his bodie engendred, or to haue and to hold to him for terme of his life, yet the Diſſeiſor hath a Fee ſimple, and is ſeiſed in his Demeſne as of Fee, becauſe when his eſtate was confirmed, hee had then a Fee ſimple, & ſuch Deed cannot change his eſtate, without entry made vpon him, &c.

19.H.6.22.6.E.3.Confirm.4.

¶ Here is the firſt caſe wherein the Releaſe and Confirmation doth agree, viz. a Confirmation to a Diſſeiſor in Taile, or for any particular eſtate, is of the like force as a Releaſe to a Diſſeiſor, during ſuch eſtate, which in both caſes is good for euer. In the ſame manner it is, if the Diſſeiſor make a gift in taile, and the Diſſeiſee confirme the eſtate of the donee for the life of the donee, this confirmation enures to the whole eſtate taile, for a confirmation can make no fraction of any eſtate, to extend but to part of the eſtate onely: Et ſic de cæteris.

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Section 520.

¶ Et Melme le maner eſt, ſi ſon eſtate ſoit confirme pur terme de vn iour ou pur terme dun heure, il ad bon eſtate en fee ſimple, pur ceo que ſon eſtate en fee ſimple fuit vn foits confirm̃. Quia confirmare idem eſt quod firmum facere, &c.

IN the ſame manner it is if his eſtate bee confirmed for tearme of a day, or for tearme of an houre, hee hath a good eſtate in fee ſimple, for this, that his eſtate in fee ſimple was once confirmed. *Quia confirmare idem eſt quod firmum facere, &c.*

¶ HEre is the ſecond caſe wherein the releaſe and Confirmation doe agree. The reaſon of this is for that the Diſſeiſor hath a fee ſimple, and therefore if his eſtate be confirmed but for an houre it is good for euer, becauſe (ſaith Littleton) Confirmare idem eſt quod firmum facere.

Nota, a diuerſitie betweene a bare aſſent without any right or intereſt, and an aſſent coupled with a right or intereſt; and therefore an Attornement cannot bee made for a time nor vpon Condition; *Lib.*5.*fol.*81. *Fordscaſt.*

but if the perſon make a Leaſe for a hundred yeares, the Patron and the Ordinary may confirme fiftie of the yeares, for they haue an intereſt, and may charge in time of vacation. And ſo if a Diſſeiſor make a Leaſe for a hundred yeares, the Diſſeiſee may confirme parcell of thoſe yeares but then it muſt be by apt words, for he muſt not confirme the Leaſe or demiſe or the eſtate of the Leſſee, for then the addition for parcell of the tearme ſhould be repugnant when the whole was confirmed before, but the Confirmation muſt be of the Land for part of the tearme, So may the Confirmation be of part of the land, as if it be of fortie, he may confirme twentie, &c. So if tenant for life make a Leaſe for a hundred yeares, the Leſſor may confirme either for part of the terme or for part of the Land. But an eſtate of Freehold cannot be confirmed for part of the eſtate, for that the eſtate is intire, and not ſeuerall as yeares be.

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ITem ſi mon Diſſeiſor fait vn leas a terme de vie, le remainder ouſter en fee, ſi ieo releas al tenant a terme de vie ceo vſera a celuy en le remainder. Mes ſi ieo confirm̃ leſtate d̃ le tenant a terme de vie, vncore apres ſon deceaſe ieo puis bien enter, pur ceo que rien eſt confirme forſque leſtate le tenant a terme de vie, iſſint que apres ſon deceaſe, ieo puis enter. Mes quant ieo releſſa

ALſo if my Diſſeiſor maketh a Leaſe for life, the remaynder ouer in fee, if I releaſe to the Tenant for life, this ſhall enure to him in the remaynder. But if I confirme the Eſtate of the Tenant for tearme of life, yet after his deceaſe I may well enter, becauſe nothing is confirmed but the Eſtate of the Tenant for

¶ HEre is the third Caſe wherein the releaſe, and confirmation differ, for the confirmation to the Tenant for life doth not enure to him in the remainder.

And ſo it is when the ſeuerall eſtates be in one perſon, as if the Diſſeiſor make a gift in taile the remaynder to the right heires of Tenant in taile, if the Diſſeiſee confirme the eſtate in tayle, it ſhall not extend to Fee ſimple, no more then if the Diſſeiſor had made a gift in taile, the remainder for life, the remainder to the right heires of tenant in taile, this extendeth only to the eſtate taile, and not

to the remaynder for life, nor to the remaynder in fee. But if the Disseisor make a lease for life to A. & B, and the Disseisee confirme the estate of A, B. shall take aduantage thereof, for the estate of A. which was confirmed was ioynt with B and in that case the Disseisee shall not enter into the Land, and deuest the moitie of B.

If the Disseisor infeoffe A and B, and the heires of B. if the Disseisee confirme the estate of B for his life, this shall not only extend to his Companion, as hath beene said, but to his whole fee simple, because to many purposes hee had the whole Fee simple in him, and the confirmation shall bee taken most strong against him that made it.

Tenant in tayle discontinueth in fee and dieth, the Discontinuee make a lease for life, and granteth the reuersion to the tiue, he shall haue a Formedon against tenant for life, for by his Formedon he must recouer estate of Inheritance, and the Lesse for life hath not the Inheritance, but the issue in taile himselfe hath it.

tout mon droit al tenant a terme de vie, ceo drera a celuy en le remainder, ou en le reuersion, pur ceo que tout mon droit est ale per tiel releas. Mes en cest cas, si le disseisie confirme lestate & le title celuy en le remainder sans ascun confirmation fait a tenant a terme de vie, le disseisie ne poit enter sur le tenant a term̃ de vie, pur ceo que le remainder est dependant sur lestate le tenant a terme de vie, & si son estate serroit defeate, le remainder serroit defeate, per lentrie le disseisie, & ceo ne serra reason que il per son entre defeateroit le remainder encounter son confirmation, &c.

life, so that after his decease I may enter. But when I release all my right to the Tenant for life, this shall enure to him in the remainder or in the reuersion, because all my right is gone by such release. But in this case if the Disseisee confirme the estate and title of him in the remainder without any confirmation made to Tenant for life, the Disseisee cannot enter vpon the Tenant for terme of life, for that the remaynder is depending vpon the state for life, and if his estate should bee defeated, the remainder should be defeated by the entry of the Disseisee, and it is no reason that he by his entry should defeat the remainder against his confirmation, &c.

If feoffee vpon condition make a Lease for life, or a gift in taile, and the feoffor release the Condition to the feoffee, he shall not enter vpon the Lesse or Donee, because he cannot regaine his ancient estate.

If the Feoffee vpon Condition make a Lease for life, the remaynder in fee, if the Feoffor release the Condition to the Lesse for life, it shall enure to him in the remaynder, aswell as in the case of the right, or of a Rent, &c.

If a Feme Disseisoresse make a feoffment in fee to the vse of A. for life, and after to the vse of herselfe in taile, and the remaynder to the vse of B. in fee, and then taketh husband the Disseisee, and he releaseth to A. all his right, this shall enure to B, and to his owne wife also, for by the rule of Littleton it must enure to all in the remaynder.

But if A. letteth to B. for life, and B. maketh a Lease to C. for his life, the remaynder to A. in fee. A. releaseth to C. all his right, this is good to perfect the estate of C. for his life. But when C. dieth A. shall bee in of his old estate for his release could not enure to himselfe to perfect his defeasible remaynder, but his ancient right remayneth. And note that in these two cases the fee is deuested, and vested all at one instant, in the same manner, as if tenant in taile make a Lease for life, at the same instant the estate taile is deuested out of the Donee, and the reuersion in fee out of the Donor, and a new fee vested in Tenant in taile. And so if the husband make a Lease for life of his wiues land, he deuesteth his owne estate, that he hath in her right, and the Inheritance of his wife, and at the same instant vesteth a new reuersion in fee in himselfe.

Vide 29. Ass. 17. 30. H.8. Recou en value Br. 30. 13. E.3 entr. cong. Br. 127.

¶ *Mes en cest case si le disseisee confirme lestate & title celuy en le remaynder.* Here is the third case wherein the Release and Confirmation

doe

doe agree for the Confirmation made to him in the remaynder shall anayle the Tenant for life, as much as the Release shall. *Pl. Com. Delamores case. Vid. Sect.* 374.

¶ *Pur ceo que le remaynder est dependant, &c.* **By this some haue** gathered that if a Disseisor make a Lease for life, reseruing the reuersion to himselfe, and the Disseisee confirmeth the state of the Disseisor, that he may enter vpon the Lessee, because the estate of him in the Reuersion dependeth not vpon the state for life as the Remainder, but all is one, for by the Confirmation made to him in the Reuersion, all the right of him that confirmeth is gone, as well as when he maketh it to him in remainder, and he cannot by his entrie auoide the estate of the Lessee for life, but he must auoide the state of the Lessor which against his owne confirmation, he cannot doe, and it hath beene adiudged, that if a Disseisor make a Lease for life, and after leuie a Fine of the reuersion with Proclamations, and the fiue yeares passe, so as the Disseisee is for the Reuersion barred, he shall not enter vpon the Lessee for life.

¶ *Le remainder serra defeat.* **It is regularly true, that when the** particular estate is defeated, that the remainder thereby shall be also defeated, but it faileth in diuers cases.

For where the particular estate and the remainder depend vpon one title, there the defeating of the particular estate is a defeating of the remainder. But where the particular estate is defeasible, and the remainder by good title, there though the particular estate be defeated the remainder is good. As if the Lessor disseise A. Lessee for life, and make a Lease to B. for the life of A. the remainder to C. in fee, albeit A. re-enter, and defeate the estate for life, yet the remainder to C. being once vested by good title shall not be auoyded, for it were against reason, that the Lessor should haue the remainder againe against his owne Liuery, and this is well warranted by the reason of Littleton in this case. So it is if a Lease be made to an infant for life, the remainder in fee, the Infant at his full age disagree to the estate for life, yet the remainder is good, for that it was once vested by good title, for in both these cases, there was a particular estate at the time of the remainder created. *Vid. Pl. Com. Colthirst case.*

If a Lease be made to A. for the life of B. the remainder to C. in fee, A. dyeth before an occupant entreth, here is a remainder without a particular estate, and yet the remainder continueth good. *17. E. 3. 48.*

If rent is granted to the Tenant of the land for life, the remainder in fee, this is a good remainder, albeit the particular estate continued not, for Eo instante, that he tooke the particular estate, Eo instante the remainder vested, and the suspencion in iudgement of Law grew after the taking of the particular estate. *3. E. 3. Ass. Ass.*

If a man grant a rent to B. for the life of Alice, the remainder to the heires of the body of Alice, this is a good remainder, and yet it must vest vpon an instant. *7. H. 4. 6.*

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¶ Item si sont deux disseisors, et le disseisee releassa a vn de eux, il tiendra son compagnion hors de la terre. Mes si le disseisee confirma lestate de lun, sans pluis dire en le fait, ascuns dient q̄ il ne tiendra son compagnion dehors. Mes tiendra ioyntm̄t ouesluy pur ceo que riens fuit confirme forsque

ALso if there bee two disseisors and the disseisee releaseth to one of them, hee shall hold his companion out of the land, but if the disseisee confirme the estate of the one without more saying in the Deed, some say that he shall not hold his companion out, but shall hold ioyntly with him for that nothing was con-

¶ This is the fourth case wherein the release and the confirmation seeme to differ, being made vnto one of the Disseisors.

¶ *Confirme forsque son estate, &c.* **Hereby** it appeareth that if the Disseisee confirme the estate of the one Disseisor in the lands, To haue and to hold the lands or tenements, or the right of the Disseisee, to him and his heires, hee shall hold out the other Disseisor, and that appeareth by Littleton, first vpon these words (Confirme the state of one) without more saying in the

Deed, viz. To haue and to hold the Lands, &c. Secondly, the reason of Littleton in expresse words is, for that nothing was confirmed but his estate which was ioynt. Thirdly, the next two Sections make it plaine where the Habendum is added.

Hereby also it appeareth, that a Release is more forcible in Law then a Confirmation. If the Disseisee and a stranger Disseise the heire of the Disseisor, and the disseisee confirme the estate of his companion, this shall not extinguish his right that was suspended: so as if the heire of the Disseisor re-enter the right of the disseisee is reuiued. And so it is, if the Grantee of a Rent-charge and an estranger disseise the Tenant of the land, and the Grantee confirme the estate of his Companion, the Tenant of the land re-enter, the Rent is reuiued, for the Confirmation extended not to the Rent suspended, otherwise it is of a Release in both cases.

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¶ Et pur ceo ascuns ont dit, que si deux iointenants sont, et lun confirme lestate lauter, que il nad forsque ioint estat, sicome il auoit deuant. Mes sil ad tiels parols en le fait de confirmation, a auer et tener a luy et a ses heires touts les tenements dont mention est fait en le confirmation, donques il ad estate sole en les tenements, &c. Et pur ceo il est bon et sure chose en chescun confirmation dauer ceux parols; A auer et tener les tenements, &c. en fee, ou en fee taile, ou pur terme de vie, ou pur terme dans, solonque ceo que le cas est, ou le matter gist.

AND for this some haue said that if two ioyntenants bee, and the one confirme the estate of the other, that he hath but a ioynt estate as he had before, but if hee hath such words in the Deed of confirmation, to haue and to hold to him and to his heires all the tenements wherof mention is made in the Confirmation, then he hath asole estate in the tenements, &c. And therefore it is a good and sure thing in euery confirmation to haue these words, To haue and to hold the tenements, &c. in fee, or in fee taile, or for terme of life, or for terme of yeares according as the case is or the matter lyeth.

¶ AND this Confirmation leaueth the state as it was, and doth not amount to any seuerance of the ioynture as some haue said,

34.E.3.tit. Confirm. ¶ *Mes sil ad tiels parols en le fait, &c.* This is plaine and euident enough.

¶ *Et pur ceo il est bone & sure chose, &c.* This is good counsell and worthy to be followed.

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¶ HEre the diuersity is apparant betweene a Confirmation of the estate for life in the land to haue and to hold the said state in the land to him and his heires, this cannot en-

¶ CAr al entent dascuns, si hõe lessa terre a vn auter pur terme de vie, et puis confirma son estate

FOr to the intent of some, if a man letteth land to another for life, and after confirme his estate which

ſtate que il ad en ñ la terre, a auer et tener ſon eſtate a luy et a ſes heires, ceſt confirmation quant a ſes heires eſt void, car ſes heires ne poient auer ſon eſtat que ne fuit forſque pur terme de ſon vie. Mes ſil confirma ſon eſtate p ceux parolx, a auer meſme la terre a luy et a ſes heirs, ceſt confirmation fait fee ſimple en ceſt caſe a luy en la terre, pur ceo que les parolx a auer et tener, &c. va a le terre & nemy al eſtate que il ad, &c.

hee hath in the ſame land, to haue and to hold his eſtate to him and to his heires, this confirmation as to his heires is voide, for his heires cannot haue his eſtate which was not but for terme of his life. But if he confirme his eſtate by theſe words, to haue the ſame land to him and to his heires, this confirmation maketh a fee ſimple in this caſe to him in the land, for that the words to haue and to hold, &c. goeth to the land and not to the eſtate which hee hath, &c.

large his eſtate, for his eſtate being but for life, that eſtate cannot bee extended to his heires. But in that caſe if he confirme the ſtate for life in the land in the premiſſes of the Deed and the Habendum is in this ſort, To haue and to hold the land to him and his heires, this ſhall enlarge his eſtate and create in him a fee ſimple. 18.E.3.40.

Wherein is to bee noted (c) that the Habendum and the premiſſes doe in ſubſtance well agree together, and that the Habendum may enlarge the premiſſes but not abridge the ſame. (c) Vid. Pl.Com. in Throgmortons caſe fo. Wroteſleyes caſe 197.

And ſeeing that in conueyances, limitations of remainders are vſuall and common aſſurances, it is dangerous by conceipts or nice diſtinctions to driue them in queſtion, as haue in latter time beene attempted.

¶ *Son eſtate, Vid. Sect.650.*

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¶ Item ſi ieo leſſa certaine terre a vn femme ſole pur terme de ſa vie, la quel prent baron, et puis ieo confirma leſtate le baron et ſa feme, a auer et tener pur terme de lour deux vies, en ceſt caſe le baron ne tient iointment oue ſa feme, mes tient en droit de ſa feme pur terme de ſa vie. Mes ceſt confirmation vera a le baron per voy de remainder p terme de ſa vie, ſil ſuruequiſt ſa feme.

ALſo if I let certaine land to a feme ſole for terme of her life, who taketh husband, & after I confirme the eſtate of the husband and wife, to haue and to hold for terme of their two liues. In this caſe the husband doth not hold ioyntly with his wife, but holdeth in right of his wife for term of her life. But this confirmation ſhall enure to the husband by way of remainder for terme of his life, if he ſuruiueth his wife.

¶ HEre is the fourth caſe wherein the Releaſe and confirmation doe agree, and in this caſe it is to be obſerued that the Baron hath ſuch an eſtate in the land in the right of his wife as hee is capable of a confirmation to enlarge his eſtate, and therefore if the confirmation had beene made of his eſtate to him alone to haue and to hold the land to him and to his heires, this had beene good to haue conueyed the fee ſimple to him after the deceaſe of his wife, for if in this caſe a Releaſe be made to the husband and his heires, this is ſufficient to conuey the inheritance of the land to the husband. *Vid.Sect 573.* 16.H.6.tit.Releaſe 45. 21.E.3,tit.Releaſe Statham.

¶ *Ne tient iointment oue ſa feme.* For two cauſes, Firſt becauſe the

the wife hath the whole for her life. Secondly, Joyntenants must (as hath beene before sayd in the Chapter of Joyntenants,) come in by one title. But in this case if the Confirmation had beene made to the husband and wife, To have and to hold the land to them two and to their heires, they had beene Joyntenants of the Fee simple, and the husband seised in the right of his wife for her life, for the husband and the wife cannot take by moities during the Coverture.

18.E.3.20.

If a man letteth land to the husband and wife, to have and to hold the one moitie to the husband for terme of his life, and the other moitie to the wife for her life, and the Lessor confirme the estate of them both in the land, To have and to hold to them and to their heires, by this Confirmation as to the moitie of the husband, it enureth onely to the husband & his heyres, for the wife had nothing in that moitie, but as to the moitie of the wife, they are joyntenants, as hath bin sayd, for the husband hath such an estate in his wives moitie, in her right, as is capable of a Confirmation. But if such a Lease for life be made to two men by severall moities, and the Lessor confirme their estates in the land, To have and to hold to them and to their heires, they are Tenants in Common of the Inheritance, for regularly the Confirmation shall enure according to the qualitie and nature of the Estate which it doth enlarge and increase.

18. Ass. p. 3. 18. E. 3. Confir. 17. 17. E. 3. 68. 28. E. 3. 94. 40. E. 3. 8. Ass. 20.

If a Lease for life be made to A. the remainder to B. for life, and the Lessor confirms their Estates in the land, To have and to hold to them and their heires, A. taketh one moitie to him and his heires, and therefore of the one moitie he is seised for life, the remainder to B. for life, and then to him and his heires: Of the other moitie A. is seised for life, the immediate Inheritance to B. and his heires, because as to the moitie which B. takes, the same is executed: as if the Reversion be granted to Tenant for life, and to a stranger, it is executed for one moytie (as hath beene sayd before) and therefore in this case they are Tenants in Common.

39 H. 6. 9.

If lands be given to two men, and to the heires of their two bodies begotten, and the Donor confirmeth their two estates in the land, To have and to hold the land to them two and to their heires: In this case some are of opinion, That they shall be Joyntenants of the Fee simple, because the Donees were joyntenants for life, & (say they) the Confirmation must enure according to the estate which they have in possession, and that was joynt. But others hold the contrarie; for first they say, That the Donees have to some purposes severall Inheritances executed, though betweene the Donees survivor shall hold for their lives. Secondly they say, That when the whole estate which comprehendeth severall Inheritances, is confirmed, the Confirmation must enure according to the severall Inheritances, which is the greater and most perdurable estate, and therefore that the Donees shall be Tenants in Common of the Inheritance in this case.

V. Sect. 573.

¶ *Per voy de remainder, &c.* **Here some question hath beene made** of this terme Remainder, without any cause at all, because in Law it is in nature of a Remainder. For in case of a fine, when a reversion expectant upon an estate for life in A is granted to B. Et quæ ad ipsum reverti debet post mortem A. præfato B. & hæredibus suis remaneant, &c. and a more colourable exception might be taken against this word Remaneant there, than in the case of Littleton.

Pl. Com. Colthirsts case. Doct. & Stud. ca. 21. * 16. H. 6. tit. Release 45. (o) 9. E. 4. 18. (p) 6. E. 3. 9. (q) 17. E. 3. 68. b.

It is true, That in * 16 H 6. it is called a Reversion: in (o) 9. E. 4. it is called a Remainder: in (p) 6. E. 3 it is sayd, That by the Confirmation an estate accrued to the husband for terme of his life. In (q) 17. E. 3. the husband, living the wife, shall have nothing but in abeyance after the death of his wife. But lest there should be pugna verborum, which learned and wise men ever avoyd, all doe resolve, That the estate of the husband is good, and that it doth enure by way of increase and inlargement of his estate. And albeit in this case of Littleton, the husband by the Confirmation gaineth an estate for life in remainder, (as Littleton termeth it) yet if the husband doth wast, an Action of wast shall lie against him and his wife, notwithstanding the meane remainder, because the husband himselfe committeth the wast, and doth the wrong: And therefore shall not excuse himselfe for his committing of wast, in respect he himselfe hath the remainder, no more than if a man letteth to A. during the life of B. the remainder to him during the life of C. if he commit wast, an Action of wast shall lie against him.

17. E. 3. 68. b. V. Sir Ed. Caryes case, li. 5.

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3. E. 3. 17. b. Pl. Com. 418. b. 38. H. 6. 23. 14. H. 4. 12. 18. E. 3. 35 Pl. Com. Dame Hales case. 50. Ass. p. 15. 4. H. 6. 5. 7. H. 6. 19. H. 6. 52. 37. Lib. Ass. 21. H. 7. 29. 21. E. 4. 40. 26. H. 8. 7.

¶ This is the fifth case wherein the Release and Confirmation doe agree: and it is to bee observed, That Chattels reals, as Leases for yeares, Ward-

¶ Mes si jeo lessa al Feme sole terre pur terme dans, le quel prent baron

But if I let land to a Feme sole for terme of yeares, who taketh husband, and af-

baron, et puis ieo confirma lestate le baron et sa feme, a auer et tener la terre pur terme d lour dux vies: en cest case ils ont iopnt estate en le Franketenement de la terre, pur ceo que la fem nauoit franktenement adeuāt, &c.

ter I confirm the estate of the husband and his wife, To haue and to hold the land for term of their two liues: In this case they haue a ioynt estate in the freehold of the Land, for that the wife had no Freehold before, &c.

ships, and the like, are not giuen to the husband absolutely, (as all Chattels personalls are) by the intermarriage, but conditionally if the husband happen to suruiue her, and he hath power to alien them at his pleasure: but in the mean time the husbād is possessed of the Chattels reall in her right.

Secondly, That the husband hath such a possession in her right of the Chattel, as is capable of a Confirmation, or of a Release.

Thirdly, That the Confirmation in this case to the husband and wife for their liues, maketh them Ioyntenants for life, because a Chattell of a Feme Couert may bee growned: and so note a diuersitie betweene a Lease for life, and a Lease for yeares, made to a Feme Couert; for her estate of Freehold cannot be altered by the Confirmation made to her husband and her, as the terme for yeares may, whereof her husband may make disposition at his pleasure.

Section 527.

¶ Item si mon disseisor granta a vn rent charge hors de la terre dont il moy disseisist, et ieo reherſant le dit grāt confirma meſme le grant, et tout ceo que est compriſe deins meſme le graunt, et puis ieo enter ſur le Diſſeiſor, Quære en cest case, ſi le Terre ſoit diſcharge de le rent ou nemy.

ALſo if my Diſſeiſor granteth to one a Rent charge out of the Land whereof he diſſeiſed me, and I rehearſing the ſayde Grant, confirme the ſame Grant, and al that which is compriſed within the ſame grant, and after I enter vpon the Diſſeiſor, *Quære* in this caſe, if the land be diſcharged of the Rent or no.

¶ This is the fifth case wherein the Release and Confirmation doe differ, for a Release to the Grantee in this case (a) were boyd. It is holden by some authoritie since Littlet. wrote, That the Diſſeiſee after his re-entrie ſhall not auoyd the Rent charge againſt his owne Confirmation: and there a generall rule is taken, that ſuch a thing as I may defeat by my entrie, I may make good by my Confirmation.

(a) 11.H.7.28. *Li.*1.*fo.*147. *Anne Mayowes caſe.*3.H.4.10

If the Feoffee vpon Condition grant a Rent Charge in fee, and the Feoffor confirmeth it, and after the Condition is broken, and the Feoffor enter, hee ſhall not auoyd the Rent charge. And ſo it is

*Li.*1.*fo.*147.148. *Anne Mayowes caſe.*

if the heire of the Diſſeiſor grant a Rent charge, and the Diſſeiſee confirmeth it, and after re-enter the land, he ſhall not auoyd the rent: and yet in neither of theſe caſes, his entrie was congeable at the time of the Confirmation.

Section 528.

¶ Item si vn parſon dun Eſglise charge le glebe de ſon Eſglise per ſon fait, a puis le patron et Ordinarie

ALſo if a Parſon of a Church charge the Glebe land of his Church by his Deed, and after the patron & Ordinary con-

¶ *Parſon.* Perſona in the legall ſignification it is taken for the Rector of a Church parochiall, and is called Perſona Eccleſiæ, becauſe hee aſſumeth and taketh vpon him the perſon of the Church, and is ſayd

*Glanv.li.*13 *ca.*23.24.25. *Bract.li.*4.*ca.*285, *&c. Brit.fo.*234.6, *&c. Flet.li.*4. *ca.*19.20. *& li.*6.*ca.*18. *Reg. F.N.B.*48.49.

ſayd to be ſeiſed in iure Eccleſiæ, and the Law had an excellent end herein, viz That in his perſon the Church might ſue for and defend her right; and alſo be ſued by any that had an elder and better right, and when the Church is full, it is ſayd to be plena & conſulta of ſuch a one Parſon thereof, that is full and prouided of a Parſon, that may vicem ſeu perſonã eius gerere.

Bract. lib. ſupr.

Perſona Impeiſonata, Parſon Imperſonee is the Rector that is in poſſeſſion of the Church Parochiall, be it preſentatiue, or impropriate, and of whom the Church is full.

8.E.3.26.43.38.E.3.4. 3.Mar.Dy.123.

Here are diuers things to bee noted: Firſt, That the Confirmation is of the grant, which in deed is but a mere aſſent by Deed to the Grant. And therefore it is holden, That if there be Parſon, Patron, and Ordinarie, and the Patron and Ordinarie giue licence by Deed to the Parſon to grant a Rent charge out of the glebe, and the Parſon granteth the Rent charge accordingly, this is good, and ſhall bind the Succeſſor, and yet heere is no confirmation ſubſequent, but a Licence precedent.

confirmont meſme le grant, & tout ceo que ẽ compriſe deins m̃ le grant, donques le grant eſtopera en ſa force, ſolonque le purport de meſme le graunt. Mes en tiel caſe couient que le Patron eit Fee ſimple en lauowſon, car ſil nad eſtate en Lauowſon forſque pur terme de vie, ou en le taile, donque le grant ne eſtopera forſque durant ſa vie, & la vie le Parſon que grantaſt, &c.

firme the ſame grant, and all that is compriſed in the ſame Grant, then the Grant ſhall ſtand in his force, according to the purport of the ſame Graunt. But in this caſe it behoueth, that the Patron hath a Fee ſimple in the Aduowſon, for if hee hath but an Eſtate for life or in taile in the aduowſon, then the Graunt ſhall not ſtand, but during his life, and the life of the Parſon which granted &c.

9.H.4.15.

Secondly, The Ordinarie alone, without the Deane and Chapter, may agree thereunto, either by Licence precedent, or Confirmation ſubſequent, for that the Deane and Chapter hath nothing to doe with that which the Biſhop doth as Ordinarie, in the life time of the Biſhop.

(b) 19.El.Dy.356.357. 11.H.6.9.33.H.8.in Charge Br.58.

Thirdly, (b) But if the Biſhop be Patron, there the Biſhop cannot confirme alone, but the Deane and Chapter muſt confirme alſo, for the Aduowſon or Patronage is parcell of the poſſeſſion of the Biſhoprick, and therefore the Biſhop without the Deane and Chapter, cannot make the Grant good but onely during his owne life, after the deceaſe of the Incumbent, either by Licence precedent, or Confirmation ſubſequent.

Two more of theſe kind of Confirmations in my Reports. Li.2.39.& 24.Li.1.153. Li.4.23.24.Li.5.fo.31.81. Li.10.6.li.11.19.li.6.34.

A. Parſon of D. to Patron of the Church of S. as belonging to his Church, and preſent B. Who by conſent of A and of the Ordinarie grant a Rent charge out of the Glebe, this is not good to make the Rent charge perpetuall, without the aſſent of the Patron of A. no more than the aſſent of the Biſhop who is Patron, without the Deane and Chapter, or no more than the aſſent of the Patron, being Tenant in Taile or for life as Littleton ſaith. And Littleton here ſaith, That the Patron that confirmes muſt haue a Fee ſimple, meaning to make the charge perpetuall. And Littleton after ſaith, That in the caſe of the Parſon the fee is in abeyance, and ſeeing the conſent of the Patron is in reſpect of his intereſt as heire, it appeareth by Littleton, he may conſent vpon Condition, otherwiſe it is of an Attornement becauſe that is a bare aſſent. Alſo if the eſtate of the Patron be conditionall, and he confirmeth, and after the Condition is broken, his Confirmation is voyd.

31.E.3.Grav.61.26.aff.38. 8.El.Dy.252.Vi.li. fo. Leaſe de Deane & Chapter de Norwich.

Fourthly, He that is Patron muſt be Patron in Fee ſimple, for if hee be Tenant in Taile, or Tenant for life, his Confirmation or Agreement is not good to bind any Succeſſor, but ſuch as come into the Church during his life. But if the Patron be Tenant in Taile, and diſcontinue the eſtate in taile, the Leaſe ſhall ſtand good during the Diſcontinuance, or if the eſtate taile be barred, it ſhall ſtand good for euer.

12.H.4.11. 19.E.3.7. 9.Eliz.Dyer, 238.11.H.6.9. 10.Eliz.Dyer, 6.E.3.10. 2.E.3.29. 9.E.4.6. 2.H. 4.11. 38.E.3.29.25.E.3.54

But here is to be obſerued a diuerſitie betweene a ſole Corporation, as Parſon, Prebend, Vicar, and the like, that haue not the abſolute Fee in them, for to their Grants the Patron muſt giue his conſent. But if there be a Corporation aggregate of many, as Dean and Chapter, Maſter, Fellowes, and Scholliers of a Colledge, Abbot or Prior, Couent, and the like, or any ſole Corporation that hath the abſolute Fee, as a Biſhop with conſent of the Deane and Chapter, they may by the Common Law make any grant of or out of their poſſeſſions, without their Founder or Patron, albeit the Abbot or Prior, &c. were preſentable: and ſo it is of a Biſhop, becauſe the whole eſtate and right of the Land was in them, and they may reſpectiuely maintaine a Writ of Right.

If a Biſhop hath two Chapters, and he maketh a grant, both Chapters muſt confirme it or elſe the Succeſſor ſhall auoid it. But if one of the Chapters be diſſolued, then the Confirmation of the other ſufficeth, but it needeth not the Confirmation of the King who is Founder and Patron of all Biſhoprickes. *Temps R.2.tit. grant 104. 50.E.3.tit. Aſſiſe Statham. 11. Eliz. Dier 282.*

And note a diuerſitie betweene a Confirmation of an Eſtate, and a Confirmation of a Deed, for if the Diſſeiſor make a Charter of feoffment to A. with a Letter of Attorney, and before Liuery the Diſſeiſee confirme the eſtate of A. or the Deed made to A, this is clearely void, though Liuery be made after. But if a Biſhop had made a Charter of feoffment with a Letter of Attorney, and the Deane and Chapter before Liuery Confirme the Deed, this is a good Confirmation and Liuery made afterwards is good. And ſo it hath beene adiudged.

The like Law is of a Confirmation of a Deed of grant of a Reuerſion before Attornement.

In the ſame manner it is if a Biſhop at the Common Law had granted lands to the King in fee by Deed, and the Deane and Chapter by their Deed confirme the Deed of the Biſhop, and after the Deed of the Biſhop is inrolled, this is good albeit the Confirmation of the Deane and Chapter bee not inrolled, for the aſſent vpon the matter is made to the Biſhop.

But this Confirmation that Littleton here ſpeaketh of muſt bee made in the life, and during the incumbencie of the perſon, and ſo in the life of the Biſhop, or of any other ſole Corporation. But it is to be knowne that Grants made by Parſons, Prebends, Vicars, Biſhops, Maſter and Fellowes of any Colledge, Deane and Chapter, Maſter or Gardeine of any Hoſpitall or any hauing any Spirituall or Eccleſiaſticall Liuing are reſtrained by (c) diuers Acts of Parliament, ſo as they cannot grant any rent charge, or to make any alienation, or to make any Leaſes other then ſuch as are mentioned in thoſe Acts which you may reade at large. And the expoſitions vpon the ſame in my (*) Commentaries. *33.E.3.Confirm.22. 31.E.3 Abbot 10.21.H.7.1. Vide Sect.393.& 643. (c) 13.Eliz.cap.10. 1.Eliz.cap. 18.Eliz.cap.11. 1.Iac.cap.3. Vid Sect.393.& 648. (*) Lib.2 fol.46.lib.4.76.& 120.lib.5.9.6.14.lib.6.37. lib.7.8.lib.11.67.*

Sect. 529.

¶ Item ſi home leſſa terre pur terme de vie, le quel tenant a term de vie charge la terre oue vn rent en fee, & celuy en le reuerſion confirma meſme le grant, le charge eſt aſſets bone & effectuall.

ALſo if a man letteth land for term of life, the which Tenant for life charge the land with a rent in fee, and hee in the reuerſion confirme the ſame grant, the charge is good enough and effectuall.

¶ HEre is a diuerſitie to bee obſerued where the determination of the Rent is expreſſed in the deed, and when it is implyed in Law. For when Tenant for life granteth a rent in fee this by Law is determined by his death, and yet a Confirmation of the grant by him in the reuerſion make that grant good forever, without words of inlargement, or clauſe of diſtreſſe which would amount to a new grant. And yet if the Tenant for life had granted a Rent to another and his heires by expreſſe words, during the life of the Grantor, and the Leſſor had confirmed that grant, that grant ſhould determine by the death of Tenant for life. *26.Aſſ.Pl.38.45.Aſſ.Pl.13 Lib.1 fol.147.Anne Mainwes caſe. 14.Aſſ.Pl.14.*

Tenant for life vpon a Condition grant a Rent in fee, the Leſſor confirme the grant, and after the Condition is broken, the Leſſor re-enter, he ſhall not auoid the grant.

Sect. 530.

¶ Item ſi ſoit vn perpetual chanterie, dont lordinarie nad rien a medler ne a faire, Quære ſi le patron del chaunte-

ALſo if there bee a perpetuall Chanterie wherewith the ordinary hath nothing to doe or meddle. *Quere* if the Patron of

¶ THis is meant of a Chauntery Donatiue wherewith the Ordinary hath not to deale, and by this grant, when Littleton wrote, the Chaunterie ſhould haue beene charged for euer, becauſe no other had any intereſt in this Chanterie ſaue *Vide Sect. 648.*

ſaue only the Patron and Chauntry Prieſt, and the grant is made Concurrentibus hijs quæ in iure requiruntur. But ſince Littleton wrote, all, and all manner of free Chappels and Chaunteries perpetuall, whereof Littleton here ſpeakes, are by (a) Acts of Parliament giuen to the Crowne, and the bodies Politike thereof diſſolued. See hereafter, Section 648. more at large of all this preſent Section.

ry, & le Chapleine de meſme le chauntery poient charg̃ l' chaũtery oue vn rent charge en perpetuitie.

the Chantery, and the Chapleine of the ſame Chantery may charge the Chantery with a Rent charge in perpetuitie.

(a) 37.H.8.cap.4. 1.E.6.cap.14.

Sect. 531.

Here Littleton proceedeth according to the former diuiſion to ſhew words that in Law doe amount to a Confirmation. And here is to bee obſerued, that ſome words are large and haue a generall extent, and ſome haue a proper and particular application. The former ſort may containe the latter, as Dedi, or Conceſſi may amount to a grant, a fooffment, a gift, a Leaſe, a Releaſe, a Confirmation, a Surrender, &c. and it is in the Election of the partie to vſe to which of theſe purpoſes he will.

Brack. lib.2.fol.59.b. 21.H.6. feoffments & faits 103. 22.H.6 42. 14.H.4.36. 19.H.6.44.7.H.7.16. 32.E.3. briefe 291. Brooke tit. Confirmation, 20.14.H.7.2 37.H.6.17. Dier.8.Eliz. 4.H.7.10. 22.E.4 36. 40.E.3.41.

Est autem confirmatio quaſi quædam ratihabitio, ſufficit tamen quandoque per ſe, ſi etiam in ſe contineat donationem; vt ſi dicat quis, dedi & confirmaui, licet iuuari poſſit ex aliqua donatione præcedente.

Bracton. lib.2.fol.59.b.

But a Releaſe, Confirmation, or Surrender, &c. cannot amount to a grant, &c. nor a Surrender to a Confirmation, or to a Releaſe, &c. becauſe theſe bee proper and peculiar manner of Conueyances, and are deſtined to a ſpeciall end.

¶ Item en aſcun cas ceſt verbe Dedi **ou ceſt verbe** Conceſſi, **ad meſme leffect en ſubſtance, & vzera a meſme lentent, come ceſt verbe** Confirmaui. **Sicome ieo ſue diſſeiſie dun carue de terre, & ieo face tiel fait**; Sciant præſentes, &c. quod dedi **a le diſſeiſor, &c.** vel quod conceſſi **a le dit diſſeiſor le dit carue, &c. & ieo deliuer tantſolement le fait a luy ſauns aſcun liuery de ſeiſin del terre, ceſt vn bone confirmation, & auxy fort en ley, ſicome il auoit en le fait ceſt verbe** confirmaui, &c.

ALſo in ſome caſe this verbe *Dedi*, or this Verbe *Conceſſi* hath the ſame effect in ſubſtance, and ſhall enure to the ſame intent, as this verbe *Confirmaui*. As if I bee diſſeiſed of a Carue of Land, and I make ſuch a Deed. *Sciant præſentes &c. quod dedi* to the Diſſeiſor &c. or *quod conceſſi* to the ſaid Diſſeiſor, the ſaid Carue, &c. and I deliuer only the Deed to him without any liuerie of ſeiſin of the land, this is a good cõfirmation, & as ſtrong in Law, as if there had beene in the Deed this verbe *Confirmaui, &c.*

¶ *Dedi & Conceſſi, &c.* **Here is implied that there be more words then** Dedi **and** Conceſſi, that will amount to a Confirmation, as dimiſi. (e) **In ancient Statutes and in originall Writs, as in the Writ of Entrie** in caſu prouiſo, in conſimili caſu ad Communem legem, **and many others, this word** dimiſi **is not applied only to a Leaſe for life but to a gift in taile, and to a State in fee.** (f) **Alſo if a man make a Leaſe to A. for yeares, and after by his Deed the Leſſor** Voluit quod haberet & teneret terram pro termino vitæ ſuæ. **This is adiudged by this verbe** (volo) **to be a good Confirmation for terme of his life,** Benigne enim faciendæ ſunt interpretationes cartarum propter ſimplicitatem laicorum vt res magis valeat quam pereat.

(e) 32.E.3.briefe 291. Brooke tit. Confirm. 20. Vide ſtatute de Glouc. cap.4. (f) 7.E.3.9.

Bracton.

14.H.4.36. Lib.5.fol.15. in Newcomens caſe.

And he to whom ſuch a Deed comprehending Dedi, &c. **is made, may plead it as a Grant, as a Releaſe, or as a Confirmation at his election.**

If a Parſon and Ordinary make a Leaſe for yeares of the Glebe to the Patron, and the Pa-

Patron by his Deed granteth it ouer, or if the Diſſeiſor granteth a Rent to the Diſſeiſee, and he by his Deed granteth it ouer, and after re-enter, in both theſe caſes one and the ſame words doe amount both to a Grant, and to a Confirmation in iudgement of Law of one and the ſame thing, neres pereat. And ſo it is if a Diſſeiſor make a Leaſe for life, or a gift in taile, the remaynder to the Diſſeiſee in fee, the Diſſeiſee by his Deed granteth ouer the remaynder, the particular Tenant attorneth, the Diſſeiſee ſhall not enter vpon the Tenant for life, or in taile, for then he ſhould auoyd his owne grant, which amounted to a grant of the eſtate, and a Confirmation alſo.

Sect. 532.

¶ Item ſi ieo leſſa terre a vn home pur terme dans, per force de quel il eſt en poſſeſſion, &c. Et puis ieo face vn fait a luy, &c. Quod dedi & conceſſi, &c. le dit terre a auer pur terme de ſa vie, & deliuera a luy le fait, &c. donq; maintenant il ad eſtate en le terre pur terme de ſa vie.

ALſo if I let land to a man for tearme of yeares, by force whereof hee is in poſſeſſion, &c. and after I make a Deed to him &c. *Quod dedi & conceſſi, &c.* the ſaid land to haue for tearme of his life, and I deliuer to him the Deed, &c. then preſently he hath an eſtate in the Land for tearme of his life.

¶ Here is the firſt Caſe wherein the Confirmation and the Releaſe doe agree. And is euident and needeth no explication.

Section 533.

¶ Et ſi ieo die en le fait, a auer & tener a luy & a ſes heires de ſon corps engendres il ad eſtate en fee taile, & ſi ieo die en le fait, a auer & tener a luy & a ſes heires, il ad eſtate en fee ſimple, car ceo vſera a luy per force de confirmation denlarger ſon eſtate.

AND if I ſay in the Deed, to haue and to hold to him and to his heires of his bodie ingendred, he hath an eſtate in fee taile. And if I ſay in the deed, to haue & to hold to him and to his heires, he hath an eſtate in fee ſimple. For this ſhall enure to him by force of the Confirmation to inlarge his eſtate.

¶ This alſo is euident and needeth no explication, ſauing that whenſoeuer a Confirmation doth inlarge and giue an eſtate of Inheritance, there ought to bee apt words (as Littleton here expreſſe them) vſed for the ſame.

Section 534.

¶ Item ſi home ſoit diſſeiſie, et le diſſeiſor deuie ſeiſie, et ſon heire eſt eins per

ALſo if a man be diſſeiſed, & the diſſeiſor die ſeiſed, & his heire is in by diſcent,

¶ *Quant al heire del diſſeiſor, &c. les tenements paſſont per voy de feoffmens.* For

the land ſhall euer paſſe from him that hath the ſtate of the land in him. As if Ceſty que vie and his Feoffees after the Statute of 1.R.3. and before the Statute of 27.H.8. cap. 10. had ioyned in a feoffment, it ſhall be the feoffment of the Feoffees, becauſe the ſtate of the land was in him.

21.H.7.34.b. Pl.Com.59.a. in Wimbiſhes caſe.

So it is if the Tenant for life, and he in the remainder or reuerſion in fee ioyne in a feoffment by Deede. The Liuery of the freehold ſhall moue from the Leſſee, and the inheritance from him in the reuerſion or remainder, from each of them according to his eſtate. For it cannot be adiudged by Law, that the feoffment of Tenant for life doth diſwe the reuerſion or remainder out of the Leſſor or him in remainder, or doth worke a wrong becauſe they ioyned together.

Pl.Com.59.a. Pl.Com.140.in Brownings caſe. 2.H.5.7. 13.H.7 14. 13.E.4.4.a. 27.H.8.13. M.16 & 17.Eliz.339.

If there bee Tenant for life, the remainder in tayle, the remainder in tayle, &c. and Tenant for life and he in the remainder in tayle leuy a Fine, this is no diſcontinuance or deueſting of any eſtate in remainder, but each of them paſſe that which they haue power and authority to paſſe.

Lib.1.fo.76. Broden. caſe.

A. Tenant for life the remainder to B. for life, the remainder in tayle, the remainder in tayle, the remainder to the right heires of B. A. and B ioyne in a Feoffment by Deed, albeit it may be ſaid that this is the feoffment of A. and the Confirmation of B and conſequently hee in the remainder in tayle cannot enter for the forfeiture during the life of B. But becauſe B ioyned in the Feoffment which was toxious to him in the remainder in tayle, and is Particeps criminis, therefore they forfeited both their eſtates, and he in the remainder in tayle might enter for the forfeiture. But if he in the reuerſion in fee and Tenant for life ioyne in a Feoffment by paroll, this ſhall be (as ſome hold) firſt a ſurrender of the eſtate of Tenant for life, and then the feoffment of him in the Reuerſion, for otherwiſe if the whole ſhould paſſe from the Leſſee then he in the reuerſion might enter for the forfeiture, and euery mans act (Vt res magis valeat) ſhall be conſtrued moſt ſtrongly againſt himſelfe.

17.Eliz.Dier.339.

And it is to be obſerued that Littleton here putteth a diſcent, ſo as the entrie of the Diſſeiſee is not lawfull, for if the Diſſeiſor and Diſſeiſee ioyne in a Charter of feoffment, and enter into the land, and make Liuery, it ſhall be accounted the feoffment of the Diſſeiſee, and the confirmation of the Diſſeiſor.

Quære

diſcent, et puis le diſſeiſee & heire le diſſeiſor font iointment vn fait a vn auter en fee et liuery de ſeiſin ſur ceo eſt fait (quant al heire le diſſeiſor, que enſealaſt le fait) les tenemẽts paſſont et vront per meſme le fait p voy de feoffment, et quant al diſſeiſee que enſealaſt meſme le fait, ceo ne vera ſinon p voy de confirmation. Mes ſi le diſſeiſee en ceſt cas port briefe dentree en l' Per et Cui enuers lalienee del heir le diſſeiſor. Quære cõmẽt il pledra cel fait enuers l' demandant per voy de confirmation, &c. Et ſacheſ mon fits, q̃ eſt vn des pluis honorables, laudables, et profitables choſes en noſtre ley, de auer le ſcience de bien pleder en actions reals et perſonals, et pur ceo ico toy counſaile eſpecialment de mitter ton courage et cure d' ceo apprender.

and after the diſſeiſee, and the heire of the diſſeiſor make ioyntly a Deed to another in fee, and liuery of ſeiſin is made vpon this, (As to the heire of the diſſeiſor that ſealed the deed) the tenemẽts doe paſſe and enure by the ſame deed by way of feoffment, and as to the diſſeiſee who ſealed the ſame Deed, this ſhall enure but by way of confirmation. But if the diſſeiſee in this caſe brings a writ of entrie in the *Per* and *Cui* againſt the alienee of the heire of the diſſeiſor. *Quare* how he ſhall plead this Deed againſt the demandant by way of confirmation, &c. And know my ſon that it is one of the moſt honorable, laudable & profitable things in our law to haue the ſcience of well pleading in actions reals & perſonals, and therefore I counſaile thee eſpecially to imply thy courage and care to learne this.

¶ *Quare coment il pledera ceſt fait, &c.* Hee may pleade the feoffment of the heire of the Diſſeiſor, and the Confirmation of the Diſſeiſee as it hath beene pleaded and allowed. *Lib.*1.*fo.*146.147. *Malowes caſe.*

¶ *Et ſaches mon fits, que eſt vn de pluis honorable, &c.* Here is to be obſerued the excellency of good pleading, and Littletons graue aduiſe, that the ſtudent ſhould imploy his courage and care for the attaining thereof: which hee ſhall attaine vnto by three meanes; Firſt by reading, Secondly by obſeruation, and thirdly by vſe and exerciſe. For in antient time the Seriants and Appzentices of Law did draw their owne pleadings, which made them good pleaders. And in this ſence Placitum may be derived A Placendo, quia omnibus Placet. *Seemy Preface to the 9. Booke of my Reports.*

Now ſeeing good pleading is ſo honourable and excellent, and that many a good cauſe is daily loſt for want of good and orderly pleading, it is neceſſary to ſet downe ſome few rules (amongſt many) of the ſame, to facilitate this learning, that is ſo highly commended to the ſtudious reader. For when I diligently conſider the courſe of our bookes of yeares and termes from the beginning of the raigne of E.3. I obſerue, that more tangling and queſtions growe vpon the manner of pleading, and exceptions to forme, then vpon the matter it ſelfe, and infinite Cauſes loſt or delayed for want of good pleading. Therefore it is a neceſſary part of a good common Lawyer to be a good Prothonotary. And now wee will performe our promiſe.

The order of good pleading is to be obſerued, which being inuerted great preiudice may growe to the partie tending to the ſubuerſion of Law. Ordine placitandi ſeruato, ſeruatur & jus, &c.

(a) *Bracton, lib.*5 *fo.*400. *Britton fo.*4..a & 122. *Fleta, lib* 6.*ca.*35.36. *&c.* 40.*E.*3.9.*b.* 17.*E.*3 74. 8.*E.*3 5.*&* 9. 35.*H.*6.13.

First in good order of pleading a man muſt pleade to the iuriſdiction of the Court. Secondly to the perſon, and therein firſt to the perſon of the Plaintife, and then to the perſon of the Defendant. Thirdly to the Count. Fourthly to the Writ. Fiftly to the Action, &c. (a) which order and forme of pleading you ſhall reade in the antient Authors agreeable to the Lawe at this day, and if the Defendant miſorder any of theſe, hee loſeth the benefit of the former.

(b) *Pl Com.fo.*121.122. 3.*E.*4.21. *Vid.lib.*5.*fo.*120.121.

The Count muſt be agreeable and conforme to the Writ, the barre to the Count, &c. and the iudgement to the Count, for none of them muſt be narrower or broader than the other.

(c) *Britton,lib.*2.*fo.*140.

A Count or Declaration, which anciently and yet is called Narratio ought to containe two things, (b) viz. Certainty and Verity, for that it is the foundation of the ſuite, whereunto the Aduerſe party muſt anſwer, and whereupon the Court is to giue his iudgement: (c) Certa debet eſſe intentio & narratio, & certum fundamentum, & certa res quæ deducitur in judicium. But it muſt be vnderſtood that there be three kinde of Certainties; Firſt to a common intent, and that is ſufficient in a barre which is to defend the party and to excuſe him. (d) Secondly a certaine intent in generall, as in Counts, Replications, and other pleadings of the Plaintife, that is to conuince the Defendant, and ſo in Inditements, &c. Thirdly, a certaine intent in euery particular, as in Eſtoppells.

(d) *Lib.*5.120.121. *Lowes caſe. Pl Com.*56. *Wimbiſhes caſe.*

(e) Hee pleadeth a plea in abatement of the Writ (which of ancient times was, and yet is called Breue) or a plea after the latter continuance ought to plead it certainly.

(f) The ancient formes of Counts are to be duly obſerued, as Cum dimiſit, or Cum dedit, and not to ſay, that he was ſeiſed, and demiſed, &c (And yet if he ſay ſo, it maketh not the Count vitious) (g) but in a barre replication or other kinde of pleading, the partie muſt alledge a ſeiſin in the Leſſor or Donor, and antient formes of pleading are alſo to be obſerued.

(e) 7.*H.*6.17. 32.*H.*6.12.15 *Pl Com.*33.*b.*

(f) 34.*H.*6.48. 8 *H.*5.4.*b.* 21.*E.*4.52 5 *E.*3.15. 39.*H.*6.3. 10.*H.*6.2. 21.*H* 7.26.

(g) 48.*E.*3.8. 2.*H.*4.15. 6 *H.*4.1.*b* 10.*E.*4.2. *F N B.* 156.*c.*

(h) Counts, or ſuch as be in nature of Counts (as an Auowrie wherein the Defendant is an Actor) need not to be averred, but all other pleas in the Affirmatiue ought to be averred, Et hoc paratũ eſt verificare, &c. but pleas meerely in the Negatiue ought not to be averred, becauſe a negatiue cannot be proued.

(h) *Pl Com.* Bretts caſe, 342. 27.*H.*8.27. 27 *H* 6 9.*H.*7. 11.*E.*3 *Aſſiſe* 32. 9.*H.*6.59. 10.*E.*4.4.

(i) Where there is but one Tenant or one Defendant, he cannot haue two ſuch pleas, as each of them doe goe to the whole, but where there are diuers, each of them may pleade ſeuerall pleas which extend to the whole.

(i) 40.*E.*3.31.32.33. 41 *E.*3.11. 9 *H.*6.46. 27.*E.*3.81. 44.*E.*3.23. 45 *E.*3. *Double plea*.39. 43.*E.*3.21. 36.*H.*6.29. 37.*H.*6 23. 33.*H.*6.51. 15 *E.*4.25. 7.*H.*4.12. 41.*E* 3. *Double plea*.78.

(k) That which is alledged by way of conueyance or inducement to the ſubſtance of the matter need not to be ſo certainly alledged, as that which is the ſubſtance it ſelfe.

(k) *Pl.Com* 81. 11.*H.*4.89 34.*H* 6.48. 19.*R.*2. *Abie ſr lo caſe* 52. 22.*E.*3.19. 30.*E* 3.9.

(l) Euery plea muſt be direct, and not by way of argument, or rehearſall.

(l) 5.*H* 7.8. 6.*E.*4.2. 21.*E.*4.44. 27.*H.*8.4. 22.*H.*6. 17.*E.*4.7. 22.*E.*4.8.

(m) Where a matter of Record is the foundation or ground of the ſuite of the Plaintife, or of the ſubſtance of the plea, there it ought to be certainly and truly alledged, otherwiſe it is, where it is but conueyance. But the proceedings and ſentences in the Eccleſiaſticall Courts may be alledged ſummarily as that a Diuorce was had betweene ſuch parties, for ſuch a cauſe, and before ſuch a Judge, and Concurrentibus hijs quæ in jure requiruntur, for the Judge muſt be alledged, to the intent the Court may write to him if it be denied.

(m) *Pl.Com* 65.*a.b &* 100.376.*&* 410. 22.*H.*6.38 19.*H.*6.49. 37.*H.*6.14. 36.*H.*6.5. 21.*E.*4.54. 11.*H.*6.15. 38.*H.*6.23. 42.*Aſſ.*3.48.*E.*3.11. 4.*E.*4.12. 9.*E.*3.46. 21.*E.*4.52. 35.*H* 6.35. 10.*H.*7.9.15. 11.*H.*7.8. 22.*E.*3.2. 34.*H.*6.27. 12.*H.*8.5.6.7.*E.*4.32. 9,*E.*4.24. 8.*E.*4.31. 8.*Aſſ.*29. 5.*E.*4.7. 3.*E.*4.1.

Good matter muſt be pleaded in good forme, in apt time, and in due order, or otherwiſe great aduantages may be loſt.

(n) Generall estates in Fee simple may be generally alledged, but the commencement of Estates taile, and other particular estates regularly must be shewed, unlesse in some cases where they are alledged by way of inducement, and the life of Tenant in Taile, or for life, ought to be auerred.

(o) When any speciall and substantiall matter is alledged by either partie, that ought to be especially answered, and not to be passed ouer by a generall pleading.

(p) The Plea of euerie man shall be construed strongly against him that pleadeth it, for euerie man is presumed to make the best of his owne case: Ambiguum placitum interpretari debet contra proferentem.

(q) Euerie Plea that a man pleadeth ought to be triable, for without triall the cause can receiue no end: Et expedit reipublicæ vt sit finis litium.

(r) The Tenant before his default saued, may plead all Pleas which proue the Writ abated, as death, &c. or matters apparant in the Writ, but no Plea, which proue it abateable, as taking of husband, &c.

(s) When a man is authorised to doe any thing by the Common Law, by Grant, Commission, Act of Parliament, or by Custome, he ought to pursue the substance and effect of the same accordingly.

(t) All necessarie circumstances implied by Law in the Plea need not to be expressed, as in the plea of a Feoffement of a Mannor Liuerie and Attornment are implied.

(u) When a Count, Barre, Replication, &c. is defectiue in respect of omission of some circumstance, as time, place, &c. there it may be made good by the plea of the aduerse party, but if it be insufficient in matter, it cannot be salued.

(w) Euerie man shall plead such pleas as are pertinent for him, according to the qualitie of his case, estate, or interest, as Disseisors, Tenants, Incumbents, Ordinaries, and the like.

(x) Surplusage shall neuer make the Plea vicious, but where it is contrariant to the matter before.

(y) That which is apparant to the Court by necessarie collection out of the Record neede not to be auerred.

(a) A man is bound to performe all the couenants in an Indenture: if all the couenants be in the Affirmatiue, he may generally plead performance of all, but if any be in the negatiue, so many he must plead specially (for a negatiue cannot be performed) and to the rest generally. (b) So if any be in the disiunctiue, he must shew which of them he hath performed. So if any are to be done of Record, he must shew that specially, and cannot inuolue that in generall pleading.

(c) In many cases the Law doth allow generall pleading, for auoyding of prolixitie and tediousnesse, and that the particular shall come on the other side.

(d) Pleadings which amount to the generall Issue are not to bee allowed, but the generall Issue is to be entred, Vi. Sect. 10. 485. 499.

(e) Euerie plea ought to haue his proper Conclusion, as a Plea to the Writ to conclude to the Writ, a Plea in Barre to conclude to the Action, an Estoppel to relie vpon the Estoppels, Et sic de similibus.

(f) When the Conclusion of a Plea, Et issint, Et sic, is the affirmatiue, it shall not waiue the speciall matter, for there the special matter is the substance & foundation of the conclusion, and affirmed by the same. But where the conclusion is in the negatiue, there the speciall matter regularly is waiued.

(g) Whensoeuer speciall matter is pleaded, and the Conclusion (Et sic) is to the poynt of the Writ or Action, the speciall matter is waiued.

The names of legall Records are, a Writ, a Count, a Barre, a Replication, a Reioynder, a Rebutter, a Surrebutter, &c.

(h) New and subtill deuices and inuentions of pleading ought not to alter any Principle of Law, whereof you haue heard plentifully before.

The Count or Declaration is an exposition of the Writ, and addeth time, place, and other necessarie circumstances, that the same may be triable, and any imperfection in the Count doth abate the Writ.

Pleadings are diuided into Barres, Replications, Reioynders, Surreioynders, Rebutters, and Surrebutters, &c. They are words of Art, and are called Barres, Barræ, so called because it barreth the Plaintife of his Action. Replicationes, à Replicando; Reiunctiones, à Reiungendo, Rebutter, of the French word Rebouter, i. à Repellendo, To put backe or auoyd, and so of Surrebutter.

But each partie must take heed of the ordering of the matter of his pleading, lest his Replication depart from his Count, or his Reioynder from his Barre, & sic de cæteris.

(i) In antient writers a Bar is called Exceptio peremptoria, a Replication was then called Replicatio, as now it is: a Reioynder, Triplicatio; a Surreioynder, Quadriplicatio, & sic vlterius in infinitum.

A

(n) 35. H. 6. 35. 21. E. 4. 51. 9. H. 4. 5. 19. H. 6. 73. 5. E. 4 12. 10. E. 4. 18. 13. H. 7. 18. 36. H. 8. Pleading. Br. 160.
(o) Vi. Sect. 193. 3. H. 6. 47 41. E. 3. 22. 9. Ass. 9. 22. Ass. 45. 2. E. 3. 42. 13. E. 3. Anc. Demesne 15. 20. E. 3. ib. 45. 7. H. 7. 8. li. 10 Fol. 91. Lib. 11. fol. 10.
(p) 3. H. 7. 3. 26. Ass. 10. 14. H 4. 4. b. 27. H. 6. 8. b. 21. H. 6. Debt 43. 7. H. 6. 24. 31. 35. H. 6. 48. 47. E. 3. 14. Pl. Com 46. a. Li 3. 58. 59. Linc. Col case.
(q) 22 E. 4. 40 2. 3. 20. E. 4. 10. 21. E. 4. 35. 22. H. 6. 50.
(r) 40. E. 3. 40. 43. 46. 41. E. 3. 2. 18. E. 3. 16. 26. E. 3. 68. 42. E. 3. 3. 10. 46 6. E. 3. 37. 8. E. 3. 20. 10. E. 3. 60. 14. H. 4. 15. 12. E. 4. 1. 38. E. 3. 28. 7. H. 7. 3.
(s) 10. E. 4. 3. 27. H. 6. 8. H. 7. 13. 9. H. 7. 26. 37. H. 6. 1. 27. H. 8. 13. 21. H. 7. 25. 11. H. 4. 33. Pl Com. 79. 16. E. 4. 10. 1. H. 7. 33. 20. H. 7. 1. 6. E. 4. 4. 5. 21. E. 4. 54. 22. H. 6. 47. 11. H. 6. 8. 25. E. 3. 50. b. 23. Ass. 7. 2. Eliz. Dier. 184.
(t) Pl. Com. 149 b. & 105 a 37. H. 6. 38.
(u) 18. E. 4. 16. b. 22. E. 4. 2. 76. 5. H. 7. 13. 38. H 6. 17. 18. 29. 18. E. 3. 34. Pl. Com. 229. b. Lib. 8. 133. Turners. case.
(w) 5. H. 7. 34. 5. E. 3. 26. 22. H. 6. 28.
(x) 19. H. 6. 30. 32. Pl. Com. 232. b. et fol. 502. per Dier & 503.
(y) 13. H 4. 17. 10. E. 4. 18. 33. H. 6. 54. 35 H. 6. 30. 21. H. 7. 32. Bract. li. 3 fo. 154 Pl. Com 87. b. 26. H. 6 Gard. 58
(a) 2. H. 7. 15. 4 H 7. 12 10. H 7. 12. 13. H. 7. 19. 26. H. 8. 5. b
(b) Li. 8. fo. 133. Turners case & fo. 120. Benbams case. Lib. 9. 25. 61. Li. 10. 100.
(c) 12. H. 8. 6. 7. 2. R. 3. 17. 14. E. 4. 7. 9. E. 4. 19.
(d) 44. E. 3. 2. 34. H. 6. 5. 10. H. 6. 6 & 17. 12. E. 4. 11. 14. 14. H. 8. 24. 7 E. 3. 12. 17. E. 3. 44.
(e) 18 H. 6. 33, 22. H. 6. 53. 36. H. 6. 17. 38. H. 6. 18. 25. 5. E. 3. 15. 16. 22. Ass. 33. 2. El.. Dy. 184.
(f) Pl. Com 14. 15. 2. E. 4. 18 39. E. 3. 14. 32. 33. 8. E. 3. 57. Quat. imp. 25. 18. H. 6. 30 7. 4. 18. 38. Ass. 14. 24. E. 3. 48 22. E. 3. 13. 38. H. 6. 25. 32. H 6. 14. 19. H. 8. 7. 27. H. 8 12. b.
(g) 7. E. 4. 26. 11. H. 7. 4. 12. H. 7. 6. 33. H. 6. 9. 37. 43.
(h) V. Sect. 485.
(i) Bract. li. 5. fo. 400. Flet. li. 6. ca. 37.

A departure in pleading is ſayd to be when the ſecond Plea containeth matter not purſuant to his former, and which fortifieth not the ſame, and thereupon it is called Deceſſus, becauſe he departeth from his former Plea, and therefore whenſoeuer the Reioynder (taking one example for all) containeth matter ſubſequent to the matter of the Barre, and not fortifying the ſame, this is regularly a departure, becauſe it leaueth the former, and goeth to another matter. As if in an Aſſiſe the tenant plead a diſcent from his father, & giueth a colour, the Demandant intituleth himſelfe by a Feoffement from the Tenant himſelfe, the Plaintife cannot ſay, That that Feoffement was vpon Condition, and to ſhew the Condition broken, for that ſhould bee a cleare departure from his Barre, becauſe it containeth matter ſubſequent. But in an Aſſiſe, if the Tenant pleadeth in Barre, That I.S. was ſeiſed and infeoffed him, &c. and the plaintife ſheweth, That he himſelfe was ſeiſed in Fee, vntill by I.S diſſeiſed, who infeoffed the Tenant, and he re-entred, the Defendant may plead a releaſe of the Plaintife to I.S. for this doth fortifie the Barre.

39.E.3.13.6.39.H.6.15. 6.H.7.8. 21.H.6.32. Pl.Com.105.1.Mar.Dier 95 28.H.8.ibidem.31.

6.H.7.8.3.H.6.Departure.2

If a man plead performance of Couenants, and the Plaintife replie, That hee did not ſuch an act according to his Couenant, the Defendant ſaith, That he offered to doe it, and the plaintife refuſed it, this is a departure becauſe the matter is not purſuant, for it is one thing, to do a thing, and another to offer to doe it, and the other refuſed to doe it: therefore that ſhould haue beene pleaded in the former Plea. Vide & caue in a Quare impedit, What Plea ſhall bee ſafely pleaded in primo placito.

8.El.Dy.253.23.El.Di.271 6.E.3.3.40.E.3.32.43.E.3. 11.1.E.4.4.18.E.4.24. 5.H.7.27.8 H.6.11.33.H.6 14.

When a man in his former Plea pleadeth an eſtate made by the Common Law, in the ſecond Plea regularly he ſhall not make it good by an Act of Parliament. So when in his former Plea he intituleth himſelfe generally by the Common Law, in his ſecond Plea hee ſhall not enable himſelfe by a Cuſtome, but ſhould haue pleaded it firſt.

Pl.Com.105.b.Fulwerſtons caſe. 21.H.7.25. 27.H 8.3. 21.H.7.17.37.H.6.5. 38.H.6.25.

If a man plead an eſtate generally, (as for example a Feoffement in Fee) hee in his ſecond Plea ſhall not maintain it by other matter tant amount in Law, as by a Diſſeiſin and Releaſe, or by a Leaſe and Releaſe, or a gift in Taile in Barre, and in the ſecond Plea a Recouerie in value, for this is a departure: but he in that caſe ſhall count of a gift, and maintaine it in his Replication by a Recouerie in value, becauſe he could haue no other Count.

21.H.7.25,1.E.4.4. 3.H.7.5.7.H.7.2.

See more of this matter, where the Plaintife varying from time or place alledged in the count of Actions tranſitorie, ſhall commit no departure.

V.Sect.485.

The Plea that containes duplicitie or multiplicitie of diſtinct matter to one & the ſame thing, whereunto ſeuerall anſwers (admitting each of them to be good) are required, is not allowable in Law. And this rule you ſee extendeth to Pleas perpetuall or peremptorie, and not to Pleas dilatorie, for in their time and place a man may vſe diuers of them, and hereof antient Writers *ſpeake notably; Sicut Actor vna Actione debet experiri ſaltem illa durante, ſic oportet tenentem vna exceptione, dum tamen peremptoria (quod de dilatorijs non eſt tenendum) quia ſi liceret pluribus vti exceptionibus peremptorijs ſimul & ſemel ſicut fieri poterit in dilatorijs ſic ſequeretur, quod ſi in probatione vnius defecerit ad aliam probandam poſſit habere recurſum quod non eſt permiſſibile, non magis quam aliquem ſe defendere duobus baculis in duello, cum vnus tantum ſufficiat.

Pl.Com.139.142.

** Flet.li.6.ca.35. Bract li.5.fo.400.*

But where the Tenant or Defendant may plead a generall Iſſue, there vpon the generall Iſſue pleaded, he may giue in euidence as many diſtinct matters to barre the Action or right of the Demandant or Plaintife, as he can.

A ſpeciall Verdict may containe double or treble matter, and therefore in thoſe caſes the Tenant or Defendant may either make choyce of one matter, and to plead it to barre the Demandant or Plaintife, or to plead the generall Iſſue, and to take aduantage of all, or hee may plead to part one of the Pleas in Barre, and to another part another Plea, and his concluſion of his Plea ſhall auoyd doubleneſſe, and hereby neither the Court nor the Iurie is ſo much inueigled, as if one Plea ſhould containe diuers diſtinct matters. And if the Tenant make choyce of one Plea in Barre, and that be found againſt him, yet he may reſort to an Action of an higher nature, and take aduantage of any other matter. And the Law in this poynt is by them that vnderſtand not the reaſon thereof miſliked, ſaying, Nemo prohibetur pluribus defenſionibus vti.

17.E.3.73.

39.H 6.27.

And it is worthie of obſeruation, That in the raignes of Edward the ſecond, Edward the firſt, and vpwards, the Pleadings were plain & ſenſible, but nothing curious, euermore hauing chiefe reſpect to matter, and not to formes of words, and were often holpen with a Queſitum eſt, and then the queſtions moued by the Court, and the anſwers by the parties were alſo entred into the Rolle. But euen in thoſe dayes the formes of the Regiſter of originall Writs were then punctually obſerued, and matters in Law excellently debated and reſolued, and where any great difficultie was, then it was reſolued by all the Iudges and Sages of the Law (who were for matters in Law called Concilium Regis) and their aſſemblie and reſolution was entred into the Rolle. As for example, In the great caſe in a Quare impedit, betweene the King and the Prior of Worceſter, concerning an Appropriation, whether it were a Mortmaine, the Record ſaith, Ad quem diem venit prædictus Prior per Attornatum ſuum, &c. Et examina-

Hil 32.E.1.Cor.Reg.in fine Rotul.

examinatis & intellectis recordo & proceſſu coram toto concilio tam theſaurario & Baronibus de Scaccario, quam Cancellario, ac etiam Iuſticiarijs de vtroque Banco inſpecta cauſa, pro qua, pro Domino Rege dicunt, quod ad ipſum Regem pertinet præſentare, &c. conſideratum eſt, &c. For in thoſe dayes, though the Chancellor and Treaſurer were for the moſt part men of the church, yet were they expert and learned in the Lawes of the Realme:

As for example, in the time of the Conqueror, Egelricus Epiſcopus Ciceſtrenſis vir antiquiſſimus, & in Legibus ſapientiſſimus, as elſewhere I haue ſayd.

(a) Ockam ſe. 17. (a) Nigellus Epiſcopus Elienſis Hen. 1. Theſaurarius in temporibus ſuis incomparabilem habuit Scaccarij Scientiam, & de eadem ſcripſit optime.

(b) Taſch. 5. R. 1. Cor. Rege. (b) Henricus Cant. Epiſcopus, H. Dunelm Epiſcopus, Willielmus Elienſis Epiſcopus. G. Roffenſ. Epiſcopus.

(c) 1. H. 3. Rot. pat. Bract. ſæpe. (c) Martinus de Pateſhul Clericus Decanus diui Pauli Londoñ conſtitutus fuit capitalis Iuſtic' de Banco, quia in legibus huius Regni peritiſſimus.

(d) Bract ſæpe. (d) Willus de Raleigh Clericus Iuſticiarius Domini Regis.

(e) 8. E. 3. 31. (e) Iohannes Epiſcopus Carlienſis tempore H. 3.

Robertus Paſſelewe Epus Ciciſtrenſis tempore H. 3.

(f) Rot. pat. 24. H. 3. (f) Robertus de Laxintonio Clericus conſtitutus capitalis Iuſtic' de Banco.

(g) Liber eius de Legibus extat ſcript. temp. E. 1. (g) Iohannes Britton Epiſcopus Hereford.

(h) Rot. Pat. 17. E. 2. (h) Henricus de Stanton clericus, conſtitutus fuit capitalis Iuſticiarius ad placita, with many others. And ſo were diuers and many of the Nobilitie, who when matters of great difficultie were brought into the vpper houſe of Parliament by Writ of Error, Adiornement, or other Parliamentarie courſe, did by the aſſiſtance of the reuerend Iudges, who euer attended in that Court, iudge and determine the ſame as by former and antient Records, and ſpecially by the ſayd Record of 5. R. 1. doe manifeſtly appeare, and therefore the Lords of Parliament were called for thoſe purpoſes, Concilium Regis, and like to the afore mentioned record there be verie many.

In the raigne of Edward the third, Pleadings grew to perfection both without lamenеſſe, and curioſitie, for then the Iudges and Profeſſors of the Law were excellently learned, and their knowledge of the law flouriſhed, the ſeriеants of the Law, &c. drew their owne pleadings, and therefore truly ſaid that reuerent juſtice Thirning, in the raigne of H. 4. that in the time of Ed. 3. the Law was in a higher degree than it had beene any time before; for (ſaith he) before that time the manner of Pleading was but feeble in compariſon of that it was afterward in the raigne of the ſame King. 12. H. 4. 3.

In the time of Henrie the firſt the Iudges gaue a quicker eare to Exceptions to Pleadings, than either their Predeceſſors did, or the Iudges in the raigne of Edward the fourth, when our Author flouriſhed, or ſince that time haue done, giuing no way to nice Exceptions, ſo long as the ſubſtance of the matter were ſufficiently ſhewed. And as in the raigne of King Edward the third, by an Act of Parliament * it is prouided, That Counts or Declarations ſhould not abate ſo long as the matter of the Action be fully ſhewed in the Declaration and Writ, ſo ſince our Author wrote, in the raigne of Queene Elizabeth prouiſion is made, That after Demurrer the Iudges ſhall giue iudgement according to the right of the cauſe and matter in Law, without regarding any imperfection, defect, or want of forme in any Writ, Returne, Plaint, Declaration, or other pleading or courſe of proceeding whatſoeuer, except ſuch as the partie demurring ſhall ſpecially ſhew. In which Act, Appeales and Indictments of Felony, Murder, or Treaſon concerning mans life, and the forfeiture of his lands and goods, are excepted. An excellent and a profitable Law concurring with the wiſedom and iudgment of antient and latter times, that haue diſallowed curious & nice exceptions tending to the ouerthrow or delay of juſtice, apices juris non ſunt jura: yet it is good for a learned Profeſſor to make all things plain & perfect, & not to truſt to the after aid or amendment, by force of any ſtat. leſt his Clients cauſe matcheth not therewith; and as it is in Phyſicke for the health of a mans bodie, ſo it is in remedies for the ſafetie of a mans cauſe. In Law, Præſtat cautela quam medela.

* 36. E. 3. ca. 15. 46. E. 3. 21. Dy. 299. Li 8. fo. 161. Li. 10. fo. 131.

Li. 10. fo. 88. Pl. Com. 421.

But now let vs returne to our Author.

Section 535. 536. 537.

¶ Item ſi ſoyent Seignior et Tenant, meſque le ſeignior confirma leſtate que le tenãt ad en les tenements, uncore le Seigniorie entierment demurt a le

Alſo if there be lord & tenant, albeit the Lord confirme the eſtate which the Tenaunt hath in the Tenements, yet the Seigniorie remaineth entire to the

a le Sir come il fuit adeuant. Lord as it was before.

Sect. 536.

CEn meſme le manner eſt, ſi home ad vn rent charge hors de certein terre, & il confirma leſtate que le tenant ad en la terre, vncore demurt a le confirmor le rent charge.

IN the ſame manner is it if a man hath a Rent charge out of certaine Land, and hee confirme the eſtate which the Tenant hath in the land, yet the Rent charge remayneth to the Confirmor.

Sect. 537.

CEn meſme le manner eſt, ſi vn home ad common de paſture en auter terre, ſil confirma eſtate de le tenant de la terre, rien departeſ de luy de ſon common, mes ceo nient obſtant le common demurt a luy come fuit adeuant.

IN the ſame manner it is if a man hath common of paſture in other land, if he confirme the eſtate of the Tenant of the Land nothing ſhall paſſe from him of his Common, but notwithſtanding this, the Common ſhall remayne to him as it was before.

CHere is the firſt Caſe wherein the Releaſe and Confirmation doe differ, for by the releaſe of the Seignior, Rent charge or Common are extinct. And ſo theſe three Sections be evident and need no explication, ſaving that ſome doe gather upon theſe two laſt Sections and the next enſuing, that a man cannot abridge a Rent charge or common Paſture by a Confirmation as he may doe a Rent Service in reſpect of the privity betweene the Lord and Tenant, ſo as (ſay they) a tenure may bee abridged by a Confirmation, but not a Rent charge or Common: and therefore Littleton beginneth the next Section with an Adverbe adverſative, viz. (mes but) &c. But a man may releaſe part of his Rent charge, or Common, &c.

Sect. 538.

CMes ſi ſoient Seignior & tenant, le quel tenãt tient de ſon Seignior per le ſeruice de fealtie & 20. s. d. rent, ſi le Seignior per ſon fait confirma leſtate le tenant, a tener per 12. d. ou per vn denier, ou per vn maile, en ceſt caſe le tenant eſt diſcharge

BVt if there be Lord and Tenant which Tenant holdeth of his Lord by the ſeruice of fealtie, and 20. ſhillings rent, if the Lord by his Deed confirme the eſtate of the Tenant to hold by 12. pence or by a penny, or by a halfe penny. In this caſe the Tenant is diſcharged of all the

CAnd the reaſon wherefore no ſeruice of another cannot be reſerued upon the Confirmation is, becauſe as long as the ſtate of the Land continueth it cannot by the Confirmation of the Lord bee charged with any new ſervice. So as it is evident that the Lord by his Confirmation may diminiſh and abridge the ſervices, but to reſerue upon the Confirmation new ſervices he cannot, ſo long as the former eſtate in the Tenances continueth. And as where a Confirmation doth

28.E.3.92.93 26.Aſſ.37. 6.Eliz.Dier 230.b.7.E.4. 25.a. 21.E.4.62. per Briam. 19.E.3.tit.ancient 100.

inlarge an eſtate in land, there ought to be priuitie, as hath beene ſaid, ſo regularly where a Confirmation doth abridge ſeruices there ought to be priuity alſo.

de touts les auters ſeruices, & ne rendra rien a le Seignior, forſque ceo q̄ eſt compriſe deins meſme le Confirmation.

other Seruices, and ſhall render nothing to the Lord, but that which is compriſed in the ſame Confirmation.

And therefore here Littleton putteth his caſe of Lord and Tenant betweene whom there is priuitie. And therfore if there be Lord, Meſne and Tenant the Lord cannot confirme the eſtate of the Tenant to hold of him by leſſer ſeruices, but this is void, for that there is no priuity betweene them, and a Confirmation cannot make ſuch an alteration of Tenures.

7.E.3.19. 20.E.3.18.6.

4.E.3.19.

And the caſe in 4.E.3. maketh nothing againſt this opinion, for there the caſe in ſubſtance is this, Iohn de Bonuile held certaine Lands of Ralfe Vernon, and before the Statute of Quia emptores terrarum, leuied a Fine of the ſame lands to the Abbot of Cogſall and his Succeſſors to hold of the chiefe Lord (which was Ralfe Vernon) by the ſeruices due and accuſtomed. Ralfe Vernon made a Charter to the ſaid Abbot in theſe words. Conceſſi etiam eidem Abbati & ſucceſſoribus ſuis relaxaui & quietum clamaui totum ius, &c. quod habeo, vel potero habere in omnibus tenementis quæ idem Abbas habet de dono Iohannis de Bonuile. Tenendum de me & hæredibus meis in puram & perpetuam Eleemoſinam. And adiudged that it was a good tenure in Frankalmoigne, which caſe proueth nothing that the Lord Paramount may by his Confirmation to the Tenant peraduenture extinct the Meſnaltie (as it is abridged by Maſter Fitzherbert in the title of Confirmation, Pl.21.) for the immediate Lord did there make the ſaid Charter, and not any Lord Paramount. (And therefore it is euer good to reſte vpon the Booke at large, for many times Compendia ſunt diſpendia, and Melius eſt petere fontes, quam ſectari riuolos.) And of this opinion was Maſter Plowden vpon good aduiſement and conſideration.

4.E.3.19. 9.E.3.1. 12.E.4. 21. 16.E.3. ſimel 4. 6.Eliz. Dier 230.

And here is the ſeuenth Caſe wherein the Releaſe and Confirmation doth agree, for if there be Lord and Tenant by Fealtie and twentie ſhillings rent, the Lord may releaſe all his right in the Seignior or in the Tenancie ſauing fealty and ten ſhillings rent, but he cannot ſaue a new kind of ſeruice, for he may as well abridge his ſeruices vpon a Releaſe as vpon a Confirmation. And as there is required priuitie when the Lord abridgeth the ſeruices of his Tenant by his Confirmation: ſo muſt there be alſo, when the Lord by his Releaſe abridgeth the ſeruices of his Tenant. And therefore the Lord Paramount cannot releaſe to the Tenant peraduenture ſauing to him part of his ſeruices, but the ſauing in that caſe is void.

Brittons fol.57.177.40.E.3. 21.47.48.18.E.3.26. 50.Aſſ.6.14.H.4.8.

¶ *Et rendra rien a ſon Seignior forſque ceo que eſt compriſe, &c.* which words are thus to be vnderſtood, that the Tenant ſhall not render any more Rent or annuall Seruice to the Lord then is contained in the Deed, but other things notwithſtanding the ſaid Confirmation the Tenant ſhall yeeld to the Lord, as reliefe, ayde pur file marier, and ayde pur faire fitz Chiualer, becauſe theſe are incidents to the tenure that remayne, and ſhall not be diſcharged without ſpeciall words, by the generall words of all other Actions, Seruices and Demands. And ſo if a man hold of me by Knights Seruice, Rent, Suite, &c. and I releaſe to him all my right in the Seignior, excepting the Tenure by Knights Seruice, or confirme his eſtate to hold of me by Knights Seruice only for all manner of Seruices, Exactions, and Demands. Yet ſhall the Lord haue Ward, Marriage, Reliefe, Ayde pur file marier, & pur faire fitz Chiualer, for theſe be incidents to the tenure that remayne. But it is holden that if a man make a gift in tayle by Deed reſeruing two ſhillings rent a luy & ſes heires pro omnibus & omnimodis ſeruitijs exactionibus ſecularibus & cunctis demandis, if the Donee die his heire of full age, the Donor ſhall haue no reliefe, becauſe in the originall Deed of the gift in tayle it is expreſſely limited, that by the Seruice of two ſhillings Rent he ſhall be quite of all Demands, (and Reliefe lieth in Demand) and by reaſon of thoſe words ſay they there cannot any Reliefe become due, but ſome doe hold the contrary in that caſe.

13.R.2.tit.auowrie 89. Note 6 Eliz. Fitzh.

Sect. 539.

¶ **Mes ſi le Seignior voile per fait de confirmation, que le tenant en ceſt cas doit render**

BVt if the Lord will by his Deed of Confirmation that the Tenant in this caſe ſhall yeeld

render a luy vn eſperuer, ou vn roſe annualment a tiel feaſt, &c. ceſt confirmation eſt voide, pur ceo que il reſerua a luy vn nouel choſe que ne fuit parcel de ſes ſeruices deuant la confirmation, et iſſint le ſeignior poit bien per tiel confirmation abridger les ſeruices, per queux le tenant tient de luy, mes il ne poit reſeruer a luy nouel ſeruices.

to him a Hawke or a Roſe yearely at ſuch a feaſt, &c. this confirmation is voyde, becauſe he reſerueth to him a new thing which was not parcell of his ſeruices before the confirmation, And ſo the Lord may well by ſuch confirmation abridge the ſeruices by which the tenant holdeth of him, but hee cannot reſerue to him new ſeruices.

¶ This vpon that which hath beene ſaid before in the next preceding Section is euident, and needeth no further explication.

Sect. 540.

¶ Item ſi ſoit ſeignior, meſne, et tenant, et le tenant eſt vn Abbe, que tient de meſne per certaine ſeruice annualment, le quel nad aſcun cauſe dauer acquitãce enuers ſon meſne, pur porter briefe de Meſne, &c. en ceſt cas, ſi le meſne confirma leſtate q̃ labbe ad en la terre, a auer et tener la terre a luy et a ſes ſucceſſors en frankalmoigne, &c. en ceſt cas le confirmation eſt bone, et adonques labbe tiendra de l'meſne en frankalmoigne. Et la cauſe eſt pur ceo que nul nouel ſeruice eſt reſerue car touts les ſeruices eſpecialment ſpecifies ſont extincts, et nul rent eſt reſerue al meſne forſque que labbe tient de luy la terre, et ceo fuſt il deuant la confirmation, car celuy que tient en frankalmoigne, ne doit faire aſcun corporall ſeruice, iſſint que per tiel confirmation il appiert, que le meſne ne reſerua a luy aſcun nouel ſeruice, mes que les tenements ſerront tenus de luy come ceo fuit deuant. Et en ceſt caſe

ALſo, if there be Lord, Meſne, and tenant, and the tenant is an Abbot that holdeth of the meſne by certaine ſeruices yearely, the which hath no cauſe to haue acquitance againſt his meſne for to bring a writ of Meſne, &c. in this caſe if the meſne confirme the eſtate that the Abbot hath in the land, to haue and to hold the land vnto him & his ſucceſſors in frankalmoigne, or free almes, &c. in this caſe this confirmation is good, and then the Abbot holdeth of the meſne in frankalmoigne: and the cauſe is for that no new ſeruice is reſerued, for all the ſeruices ſpecially ſpecified bee extinct, and no rent is reſerued to the meſne, but the Abbot ſhall hold the land of him as it was before the confirmation, for he that holdeth in frankalmoigne ought to doe no bodily ſeruice, ſo that by ſuch confirmation it appeareth the meſne ſhall not reſerue vnto him no new ſeruice, but that the lands ſhall bee holden of him as it was before, and in this

caſe labbe auera vn briefe de meſne, ſil ſoit diſtreins en ſon default per force de l' dit confirmation, lou per caſe il ne puiſſoit auer vn briefe adeuant, &c.

caſe the Abbot ſhall haue a writ of Meſne, if hee bee diſtrained in his default, by force of the ſaid confirmation, where percaſe hee might not haue ſuch a writ before.

4.E.3.19. 29.E.3.15.b. the Lord Wakes caſe. 50.E.3.5. 15.E.3. Confirmat.8. 4.E.3.19.20. F.N.B.136.h.& 9. 4.E.4.35 31.E.1. Meſne 55. 11.E.3. Auowrie 100. 22 E.3.18.b. 30.E.3.13. 16.H.3. Auowrie 243.

THere our Author hauing ſeene the former Bookes putteth his caſe that the meſne maketh the Confirmation to hold in Frankalmoigne and not the Lord paramount

¶ *Et en ceſt caſe labbe auera breife de meſne.* Here is to be noted, that vpon a Confirmation to hold in Frealmoigne there lyeth a Writ of Meſne, albeit the cauſe of acquitall begin after the Seignior. And ſo vpon ſuch a Confirmation the Tenant ſhall haue Contra formam feoffamenti.

Sect. 541.

45.E.3.10. 30.H.6. tit. barre 59. Regiſtrum 102. 1.H.6.cap.5.

THere is to bee obſerued a diuerſity betweene the cuſtody of the body of a ward within age, and a right of inheritance in the body of a villeine in groſſe, for a man may be put out of poſſeſſion of the cuſtodie of his Ward but not of his villeine in groſſe no more then a man can be of his priſoner which he hath taken in War.

Brooke tit. Property 28.

Alſo of things that are in grant, as Rents, Commons, and the like, it is at the election of the party whether hee will be diſſeiſed of them or no, as ſhall bee ſaid after in his proper place. But of a villeine in groſſe he cannot at all be diſſeiſed. (a) Non valet confirmatio niſi ille qui confirmat ſit in poſſeſſione rei vel iuris vnde fieri debet confirmatio, & eodem modo niſi ille cui confirmatio fit ſit in poſſeſſione.

(a) Bracton lib.2.59.b. 24.E.3.tit. diſcont.16. 42.E.3.18. 40.E.3.17. 43.E.3.4. 9.E.4.38. Dier 10.Eliz. Grenſhees caſe.

And materially doth Littleton put his caſe of a Villeine in groſſe, for of a villeine 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 principall, hee may likewiſe bee put out of poſſeſſion of the villeine regardant which is but acceſſory. And by the recouery of the Manor the villeine is recouered. But if another doth take away my villeine in groſſe or regardant he gaineth no poſſeſſion of him. And this doth well appeare by the Writ of Natiuo habendo, for that Writ is not brought againſt any perſon in certaine (becauſe no man can

¶ Item ſi ieo ſue ſeiſie dun villein come de villeine en gros, et vn auter luy prent hors de ma poſſeſſion, enclaimãt luy deſtre ſon villein la ou il nauoit alcun droit dauer luy come ſon villein, et puis ieo confirma a luy leſtate que il ad ẽ mon villeine, ceſt confirmation ſemble void, pur ceo que nul poit auer poſſeſſion de vn home come de villeiñ en groſſe, ſi non celuy que ad droit de luy auer come ſon villein en groſſe. Et iſſint entant que celuy a que le confirmation fuit fait, ne fuit ſeiſie de luy come de ſon villeine a le temps de confirmation fait, tiel confirmation eſt void.

Alſo if I be ſeiſed of a villeine as of a villeine in groſſe, and another taketh him out of my poſſeſſion, clayming him to bee his villein there where hee hath no right to haue him as his villeine, and after I confirme to him the eſtate which hee hath in my villeine, this confirmation ſeemeth to be voide, for that none may haue poſſeſſion of a man as of a villeine in groſſe, but he which hath right to haue him as his villeine in groſſe. And ſo in aſmuch as hee to whom the confirmation was made, was not ſeiſed of him as of his villeine at the time of the confirmation made, ſuch confirmation is voide.

can gaine the poſſeſſion of him. But the writ is to this effect; Rex vic' Salutem, præcipimus tibi quod iuſte & ſine dilatione habere facias A.B. natiuum & fugitiuum ſuum, &c. vbicunque inuentus fuerit, &c. & prohibemus ſuper forisfacturam noſtram ne quis eum iniuſte detineat, ſo as detaine him one may, but to poſſeſſe himſelfe of him, and to diſpoſſeſſe the Lord he cannot.

And if a man might haue beene diſpoſſeſſed of a Villeine in groſſe, or of a Villeine regardant (vnleſſe he be diſpoſſeſſed of the Mannor alſo, as hath beene ſaid) the Law would haue giuen a remedy againſt the wrong doer, as the Law doth in the caſe of a ward.

Now ſeeing it doth appeare by our Bookes (a) (and by Littleton himſelfe by implication ſpeaking only of a villeine in groſſe) that if a man be diſſeiſed of the Mannor whereunto the Villeine is regardant, he is out of poſſeſſion of his villeine, and ſo an Aduowſon appendant, and the like. Hereby (Littleton putting his caſe of a Villeine in groſſe) and by diuers Authorities a point controuerted in our bookes (*) is reſolued, viz. that by the grant of the Mannor without ſaying Cum pertinentiis, the Villeine Regardant, Aduowſon appendant and the like doe paſſe, for if the Diſſeiſor ſhall gaine them as incidents to the Mannor, whoſe eſtate is wrongfull, A multo fortiori the Feoffee, who commeth to his eſtate by lawfull conueyance, ſhall haue them as incidents. But where the entrie of the diſſeiſee is lawfull, he may ſeiſe the Villeine regardant, or preſent to the Aduowſon, &c. before he enter into the Mannor, otherwiſe it is where his entrie is not lawfull, and ſo are the ancient Authors (b) to be intended.

(a) *Bracton, fo.243. Britton, fo.126.*

(*) *9.E.4.38. 3.H.4.15. 18.E.3.44. 16.E.3. Quar.Imp 146 19.R.2.Iuriſp.255 19.H.6.33. 21.H.6 9. 33.H.6.33. 3.H 7.36. 38. 10.H.7.9.F N B.335 22.H.6.33.per Moyle. 30.E.3.31. 39.E.3.21. 43.E.3.22.*

(b) *Bracton, fo.242.243. Britton, fo.126. Fleta.&c.*

Sect. 542.

¶ Mes ẽ ceſt cas, ſi tiels parols fueront en le fait, &c. Sciatis me dediſſe & conceſſiſſe tali, &c. talem villanum meum, ceſt bone, mes ceo vera per force et voy de grant et nemy per voy de confirmation, &c.

BVt in this caſe if theſe words were in the deed, &c. *Sciatis me dediſſe & conceſſiſſe tali, &c. talem villanum meum*, this is good, but this ſhall enure by force and way of grant, and not by way of confirmation, &c.

¶ HEre it is to be obſerued that a man hath an inheritance in a Villeine, whereof the wife of the Lord ſhall be endowed as hath beene ſaid, for in him a man may haue an eſtate in Fee or fee taile for life or yeares. And therefore Littleton is here to bee vnderſtood, that in the Grant there were theſe words (his heires) or elſe nothing paſſed but for life, as of other things that lye in Grant.

2.H.6. F.N.B.77.a.b.

34.E.3.Diſcons.16.

Sect. 543.

¶ Et aſcun fotts ceux verbs Dedi & conceſſi, vyeront per voy dextinguiſhment del choſe done ou grant, ſicome vn tenant tient de ſon ſeignior per certeine rent, et le ſeignior granta per ſon fait a le tenant et a ſes heires le rent, &c, ceo vyera a le teſi per voy dextinguiſhment, car per cel grant le rent eſt extinct, &c.

ANd ſometimes theſe verbes, *Dedi & conceſſi*, ſhall enure by way of extinguiſhment of the thing giuen or granted, as if a tenãt hold of his Lord by certaine rent, & the Lord grant by his deed to the tenant and his heires the rent, &c. this ſhall enure to the tenant by way of extinguiſhment, for by this grant the rent is extinct, &c.

And this grant of the rent ſhall enure by way of releaſe. *3.E.18. Aſſ.7.*

Section 544.

¶ E ſi meſme le maner eſt, lou vn ad vn rent charge hors de certaine terre, et il graunta al tenant de la terre le Rent charge &c. Et la cauſe eſt, pur ceo que appiert per les parols del grant, que le volunt le donor eſt, que le tenant auera le rent, &c. et entant que il ne puit auer ne perceiuer aſcun rent hors de ſon terre demeſne, pur ceo le fait ſerra intendue et pris pur le pluis aduãtage et auaile pur le tenaunt que puit eſte pris, et ceo eſt per voy dextinguiſhment.

IN the ſame manner it is where one hath a Rent Charge out of certaine Land, and hee graunt to the Tenaunt of the Land the Rent Charge, &c. And the reaſon is, for that it appeareth by the words of the Grant, That the will of the Donor is, That the Tenaunt ſhall haue the rent, &c. and in as much as hee cannot haue or perceiue any rent out of his owne Land, therefore the Deed ſhal be intended and taken for the moſt aduantage, and auaile for the tenant, that it may be taken, and this is by way of extinguiſhment.

34.H.6. ¶ BVt if the Grantee of the Rent charge granteth it to the Tenaunt of the Land and a ſtranger, it ſhall be extinguiſhed but for the moitie: and ſo it is of a Seigniorie.

Sect. 545.

¶ I Tem ſi ieo leſſa Terre a vn home pur terme dans, & puis ieo confirma ſon eſtate ſans pluis porolx mitter en le fait, per cel il nad pluis greinder eſtate que pur terme dans, ſicome il auoit deuant.

ALſo if I let Land to a man for terme of yeares, and after I confirm his eſtate, without putting more words in the Deed, by this he hath no greater eſtate than for terme of yeares, as hee had before.

Sect. 546.

¶ MEs ſi ieo releſſa a luy mon droit que ieo aye en le terre ſans plus parols mitter en le fait, il ad eſtate de franketenement. Iſſint poyes entend mon fits diuers grands diuerſities perenter Releaſes & confirmations.

BVt If I releaſe to him all my right which I haue in the Land, without putting more words in the Deed, hee hath an eſtate of Freehold. So thou mayſt vnderſtand (my ſonne) diuers great diuerſities betweene Releaſes and Confirmations.

In theſe two Sections is the ſeuenth caſe wherein a Releaſe and Confirmation do differ.

Sect.

Sect. 547.

¶ Item ſi ieo eſteant deins agele ſſa terre a vn auk̄ pur terme de xx. ans, et puis il graunte l' terre a vn auter p̄ me de x. ans, iſſint il granta forſque parcel de ſon terme, en ceſt caſe quant ieo ſue de pleine age, ſi ieo releſſa al Grauntee de mon leſſee, &c. ceſt releaſe eſt voyd, pur ceo que il ny ad aſcun p̄iuitie perenter luy et moy, &c. Mes ſi ieo confirme ſon eſtate, donque ceſt confirmation eſt bone. Mes ſi mon Leſſee graunta tout ſon eſtat̄ a vn auk̄, donq̄s mō releaſe fait a l' grātee ē bone et effectual.

ALſo if I being within age, let land to another for terme of xx. yeres, and after he granteth the land to another for term of x. yeres, ſo hee graunteth but parcell of his terme: In this caſe when I am of full age, if I releaſe to the Grantee of my Leſſee, &c. this Releaſe is voyd, becauſe there is no priuitie betweene him and me, &c. but if I confirme his eſtate, then this confirmation is good. But if my leſſee grant all his eſtate to another, then my Releaſe made to the Grantee is good and effectuall.

¶ HEre are two things to be obſerued: Firſt, That the Leaſe of an Enfant in this caſe is not voyd but voydable. Secondly, this is the eighth caſe put by Littleton, wherein the Releaſe and Confirmation doe differ. 7.E.4.6.b.18.E.4.2. 9.H.7.24.

Sect. 548.

¶ Item ſi home granta vn rēt charge iſſuant hors de ſon terre a vn auter pur terme de ſon vie, et puis il confirma ſon eſtate en le dit rent, a auer et tener a luy en fee taile ou en fee ſimple, ceſt Confirmation eſt voyd, quant a enlarger ſon eſtate, pur ceo que celuy que confirme nauoit aſcun reuerſion en le rent.

ALſo if a man graunt a Rent-charge iſſuing out of his Land to another for terme of his life, and after hee confirmeth his eſtate in the ſayd rent, To haue and to hold to him in fee taile or in fee ſimple, this Confirmation is voyd as to inlarge his eſtate, becauſe hee that confirmeth hath not any reuerſion in the rent.

¶ HEre the Diuerſitie is apparant, betweene a rent newly created, and a Rent in eſſe: which needeth no explication. Only this is to be obſerued, That Littleton intendeth his Deed of Confirmation not to containe any clauſe of Diſtreſſe, for otherwiſe, as to the Confirmation the Deed is voyd, but the clauſe of Diſtreſſe doth amount to a new grant, as in the Chapter of Rents hath beene ſayd. 21.E.3.47.15.E.4.8.b. Pl.Com.35.8.H.4.19.

Section 549.

¶ Mes ſi home ſoit ſeiſie en fee de Rent ſeruice ou de Rent

BVt if a man be ſeiſed in fee of a Rent Seruice, or Rent Charge,

rent charge, et il grant le rent a vn auter pur terme de vie, et le tenant atturna, et puis il confirma lestate de le grantee en fee taile, ou en fee simple, ceste confirmation est bone, quant a enlarger son estate, solonq; les parols le confirmation, pur ceo q̄ celuy q̄ confirmast al tēps de cōfirmation, auoit vn reuersion del rent,

and he grant the rent to another for life, and the tenant attorneth, and after hee confirmeth the estate of the grantee in fee taile, or in fee simple, this confirmation is good, as to enlarge his estate according to the words of the confirmation, for that he which confirmed at the time of confirmation had a reuersion of the rent.

THere is the eight case wherein the Release and Confirmation doth agree, and it is here to be obserued that to the grant of the estate for life Littleton doth put an attornement, because it is requisite, but to the Confirmation to the Grantee of the rent to enlarge his estate, there is none necessary, and therefore he putteth none; but of this more shall be said in the chapter of Attornement, Sect.555.575.

Sect.550.

CMes en cas auantdit lou home graunt vn rent charge a vn auter pur terme de vie, sil voile q̄ le grantee auerot estate en le taile, ou en fee, il conuient que le fait de grant del rent charge pur terme d̄ vie, soit surrender ou cancell, & donques d̄ faire vn nouel fait dautiel rent charge. A auer & perceuer a le grantee en le taile, ou en fee, &c. Ex paucis plurima concipit ingenium.

BVt in the case aforesaid where a man grant a rent charge to another for terme of life, if he will that the Grantee should haue an estate in taile, or in fee, it behoueth that the deed of grant of the rent charge for terme of life be surrendred or cancelled, & then to make a new Deed of the like rent charge. To haue & perceiue to the Grantee in tayle or in fee, &c. *Ex paucis plurima concipit ingenium.*

Vide Sect.636.

CSVrrender ou cancell. Note by cancellation of the Deed the rent which lyeth only in grant ceaseth (as here it appeareth) aswell as by the Surrender. And the reason wherefore (if the Grantor make a new grant of the rent, and not enlarge it by way of Confirmation as Littleton must be intended) the Deed should be surrendred or cancelled, is least the Grantor should be doubly charged, viz. with the old grant for life, and with the new grant in fee, or as hath beene said, the Grantor may grant to the Grantee for life and his heires, that he and his heires shall distreine for the rent, &c. and this shall amount to a new grant, and yet amount to no double charge, whereof you may see before in the Chapter of Rents.

Chap.10. Of Attornement. *Sect.551.*

Attornement eſt, come ſi ſoit Sñr a tenant, a l' Sñr voile granter p̄ ſon fait les ſeruices d̄ ſa vn auk pur terme dans, ou per terme de vie, ou en taile, ou en fee, il couient que l' tenant atturna al grauntee en le vie le grantor, p̄ force & vertue del grant, ou autrement le grant eſt void. Et atturnement eſt nul auter en effect forſq̄ quant le tenant ad oye del grant fait p̄ Sñr, q̄ meſme le tenant agreea per parol a le dit grant, ſicome adire a le grauntee, ieo moy agree a le grant fait a vous, &c. ou ieo ſue bien content de le graunt fait a vous, mes le pluis common atturnemẽt eſt, adire, Sir, ieo atturna a vous per force del dit graunt, ou ieo deueigne vẽ tenant, &c. ou liuer al grantee vn denier, ou vn maile ou vn farthing per voy dattornement.

Attornemẽt is, as if there be Lord and tenant, and the Lord will grant by his Deed the ſeruices of his Tenant to another for terme of yeares, or for tearme of life, or in taile, or in fee, the tenant muſt attorne to the Grantee in the life of the Grantor by force and vertue of the grant or otherwiſe the grant is void. And Attornement is no other in effect, but when the Tenant hath heard of the grant made by his Lord that the ſame tenant do agree by word to the ſaid grant, as to ſay to the Grantee, I agree to the Grant made to you, &c. or I am well content with the grant made to you, but the moſt common Attornement is, to ſay, Sir, I attorne to you by force of the ſaid Grant, or I become your Tenant, &c. or to deliuer to the Grantee a pennie, or a halfe pennie, or a farthing by way of Attornement.

¶ *Attornemẽt is* an agreement of the Tenant to the grant of the Seigniory, or of a rent, or of the Donee in tayle or tenant for life or yeares, to a grant of a Reuerſion or Remaynder made to another. It is an ancient word of art, and in the Common Law ſignifieth a turning or attorning from one to another, wee vſe alſo Attornamentum as a Latine word, and attornare to attorne. And ſo Bracton (a) vſeth it, Item videndum eſt ſi Dominus attornare poſſit alicui homagium & ſeruitium tenentis ſui contra voluntatem ipſius tenentis, & videtur quod non.

Bracton lib.2.fol.81. Britton fo.105.b.176.& 177. Fleta lib.3.cap.6.

(a) *Bracton lib.2 fol.81.b. Fleta, Britton vbi ſupra.*

And the reaſon why an Attornement is requiſite is yealded in olde Bookes to bee, Si Dominus attornare poſſit ſeruitium tenentis contra voluntatem tenentis tale ſequeretur inconueniens quod poſſit eum ſubiugare capitali inimico ſuo, & per quod teneretur Sacramentum fidelitatis facere ei qui eum damnificare intenderet.

Bracton lib.2.fol.81.b. Britton vbi ſupra.

¶ *Il couient que le tenant attorna al grantee en la vie del grantor, &c.* And ſo muſt hee alſo in the life of the Grantee, and this is vnderſtood of a grant by Deed. And the reaſon hereof is for that euery grant muſt take effect as to the ſubſtance thereof in the life both of the Grantor and the Grantee. And in this caſe if the Grantor dieth before Attornement, the Seigniory, Rent, Reuerſion, or Remaynder diſcend to his heire, and therefore after his deceaſe

Vide Litt.fol.128. 11.H.7.19.

Lib.1.fol.104.105. Shelleys caſe.

40.Aſſ.19.34.H.6.7. 20.H.6.7.

deceaſe the Attornement commeth too late, ſo likewiſe if the Grantee dieth before Attornement, an Attornement to the heire is void, for nothing diſcended to him, and if hee ſhould take, hee ſhould take it as a Purchaſor, where the heires were added but as words of limitation of the eſtate, and not to take as Purchaſors.

But if the grant were by fine then albeit the Conuſor or Conuſee dyeth, yet the grant is good. For by fine leuied the ſtate doth paſſe to the Conuſee and his heires, and the Attornement to the Conuſee or his heires at any time to make priuitie to diſtraine is ſufficient. But all this is to be taken as Littleton vnderſtood it, viz. of ſuch grants as haue their operation by the Common Law. For ſince Littleton wrote if a fine be leuied of a Seignior, &c. to another to the vſe of a third perſon and his heires, he and his heires ſhall diſtraine without any Attornement, becauſe he is in by the Statute of 27.H.8.cap.10. by tranſferring of the ſtate to the vſe, and ſo he is in by act in Law

34 H.6 7. 20.H.6.7.

Bracton lib.2.fol.81.82. &c.

Lib.6.fol.68. Sir Moyles Finches Caſe.

And ſo it is and for the ſame cauſe, if a man at this day by Deed indented and inrolled according to the Statute bargaineth and ſelleth a Seignior, &c. to another, the Seignior ſhall paſſe to him without any Attornement, and ſo it is of a Rent, a Reuerſion, and a Remaynder. So as the Law is much changed, and the ancient priuiledge of Tenants, Donees, and Leſſees much altered concerning Attornement ſince Littleton wrote.

27.H.8.cap.16. Vide Sect. 584.

But if the Conuſee of a fine before any Attornement by Deed indented and inrolled, bargaineth and ſelleth the Seignior to another, the bargainee ſhall not diſtreine becauſe the bargainor could not diſtreine. Et ſic de ſimilibus, for nemo poteſt plus iuris ad alium transferre quam ipſe habet. Vide Sect. 149. Where vpon a recouery, the Recoueror ſhall diſtreine and auow without Attornement.

Lib.6.vbi ſupra. Vide Sect. 149.

A grant to the King or by the King to another is good without Attornement by his Prerogatiue.

49.E.3.4. 34.H.6.8. 6.E.4.13.

¶ *Attornement eſt nul auter en effect, &c.* **It is to be vnderſtood** that there be two kind of Attornements, viz. an Attornement in deed or expreſſe, and an Attornement in Law or implicite. Of Attornement expreſſe or indeed Littleton ſpeaketh here, and of Attornement in Law he ſpeaketh after in this Chapter. And to both theſe kinds of Attornements there is an incident inſeparable, that is, that the Tenant hath notice of the grant for an Attornement being (an agreement or conſent to the grant, &c.) he cannot agree or conſent to that which he knoweth not. And the vſuall pleading is, to which grant the Tenant attorned. And therefore if a Bayly of a Mannor who vſed to receiue the rents of the Tenants purchaſe the Mannor, and the Tenants hauing no notice of the purchaſe continue the payment of the Rents to him, this is no Attornement. So if the Lord leaſe a fine of the Seignior, and by fine take backe an eſtate in fee, the Tenant continueth the payment of the rent to the firſt Conuſor without notice of the fines, this is no Attornement. But it is to be knowne that there be two kind of notices, viz. a notice in deed or expreſſe, whereof Littleton here ſpeaketh, when he ſayth, that the Tenant agreeth to the grant, and a notice in Law or implyed, whereof Littleton hereafter ſpeaketh in this Chapter.

Lib.2.fol.67.b. Tookers caſe. 13.Eliz. Dier 302. Tookers caſe vbi ſupra.

Lib.3. Tookers caſe vbi ſupra.

¶ *Del grant fait per ſon Seignior.* **Here is to bee ſeene when the** thing granted is altered what becommeth of the Attornement.

If there be Lord, Meſne and Tenant, and the Meſne grant ouer his Meſnaltie by Deed, the Lord releaſeth to the Tenant whereby the Meſnalty is extinct, and there is a rent by ſurpluſage, an Attornement to the grant of this rent ſeeke is good, although the qualitie of that part of the rent is altered, becauſe it is altered by act in Law.

If a reuerſion of two Acres be granted by Deed, and the Leſſor before Attornement leuies a fine of one of them, and the Tenant attorne, this is good for the other Acre.

(a) 18.E.3.tit. variance 63. 22.E.3.18. Tookers caſe, vbi ſupra.

(a) If the Reuerſion be granted of three Acres, and the Leſſee agree to the ſaid grant for one Acre this is good for all three, and ſo it is of an Attornement in Law if the reuerſion of three Acres be granted, and the Leſſee ſurrender one of the Acres to the Grantee, this Attornement in a barre ſhall be good for the whole reuerſion of the three Acres according to the Grant.

¶ *Et le tenant agrea.* **Hereafter in this Chapter** Littleton **doth** teach what manner of Tenant ſhall attorne.

¶ *Agrea per parol, &c.* **And ſo hee may and more ſafely by his** Deed in writing.

39.H.6.3. Tookers caſe. Vbi ſupra.

¶ *Sicome adire a le grantee, &c.* **Here is to be ſeene to what man-**ner of Grantees the Attornement is good. Regularly the Attornement muſt bee according to the grant either expreſſely, or implyedly. Of the firſt Littleton hath here ſpoken.

Im-

Impliedly, as if a reuerſion be granted to two by Deed, and the Leſſee attorne to one of them according to the grant, this Attornement is good, but not to veſt the reuerſion only in him to whom Attornement is made, but it ſhall enure to both the Grantees, for that is according to the grant, and for that it cannot veſt the reuerſion only in him to whom the Attornement is made. And ſo it is if one Grantee dieth, the Attornement to the Surviuor is good. *Tookers caſe vbi ſupra. 11.H.7.12.*

If the Lord grant by Deed his Seigniory to A. for life, the remaynder to B. in fee, A. dyeth and then the Tenant attorne to B, this Attornement is void, becauſe it is not according to the grant, for then B ſhould haue a remainder without any particular eſtate. *20.H.6.7.*

If a reuerſion be granted to a man and a woman, they are to haue moities in Law, but if they entermarrie and then Attornement is had, they ſhall haue no moities, (and yet by the purport of the grant they are to haue moities.) becauſe it is by act in Law. *Tookers caſe vbi ſupra. Pl.Com.fo.7.483.*

If a Feme grant a reuerſion to a man in fee, and marry with the Grantee, this is a good Attornement in Law to the husband. *2.R.2.tit.Attornement 8.*

If a reuerſion be granted by Deed to the vſe of I. S. and the Leſſee hearing the Deed read, or hauing notice of the contents thereof attorne to Ceſty que vſe, this is an implyed Attornement to the Grantee.

If a reuerſion be granted for life, the remaynder in tayle, the remaynder in fee, the Attornement to the Grantee for life ſhall enure to them in the remaynder to veſt the remaynder in them. *Temps E.1.Attorn.12. 18.E.4.7.*

And in thoſe caſes if the Tenant ſhould ſay, that I doe attorne to the Grantee for life, but that it ſhall not benefit any of them in remaynder after his death, yet the Attornement is good to them all, for hauing attorned to the Tenant for life, the Law (which hee cannot controll) doth veſt all the remaynder. And of this more ſhall be ſaid hereafter in this Chapter.

Littleton here putteth fiue examples of an expreſſe Attornement, but of them the laſt is the beſt, becauſe the care is not only a Witneſſe of the words, but the eye of the deliuery of the penny, &c. and ſo there is dictum & factum. And any other words which import an agreement or aſſent to the grant doe amount to an Attornement And albeit theſe fiue expreſſe Attornements be all ſet downe by Littleton, to be made to the perſon of the Grantee, (b) yet an Attornement in the abſence of the Grantee is ſufficient, for if he doth agree to the grant eyther in his preſence or in his abſence, it is ſufficient. *(b) Lib.2.fol 68.69. Tookers caſe. 28 H 8.tit.Attornement Br.40.*

Sect. 552.

Item ſi le Seignior graunt ſ ſeruice de ſon tenant a vn home, & puis per vn fait portant vn darreine date, il granta meſmes les ſeruices a vn auter, & l' tenant attorne a le ſecond grantee, ore le dit grauntee ad les ſeruices, & cõt que apres le Tenant voile attorner a le primer grauntee ceſt clerment void, &c.

ALſo if the Lord grant the ſeruice of his Tenant to one man, and after by his Deed bearing a later date hee grant the ſame ſeruices to another, and the Tenant attorne to the ſecond Grantee, nõw the ſaid Grantee hath the ſeruices, and albeit afterwards the Tenant will attorne to the firſt Grantee, this is cleerely void, &c.

HEre it is to bee obſerued, that Littl. expreſſeth not what eſtate is granted, and very materially, for if the former grant were in fee, and the latter grant were for life, and the tenant doth firſt attorne to the ſecond Grantee he cannot after attorne to the firſt grantee to make the fee ſimple paſſe, for that ſhould not be according to the grãt, but in that caſe the Attornement to the firſt is countermanded. And ſo it is if a Reuerſion expectant vpon an eſtate for life be granted to another in fee, and after the Grantor before Attornement confirme the eſtate of the Leſſee in tayle, the Attornement to the Grantee for the fee ſimple is void.

In the ſame manner, if a Reuerſion vpon an eſtate for yeares be granted in fee, and the Leſſor confirme the eſtate of the Leſſee for life he cannot afterwards attorne,

If a Feme ſole maketh a Leaſe for life or yeares reſerving a rent, and granteth the Reuerſion in fee, and taketh husband, this is a Countermand of the Attornement.

11.H.7.19. 2.R.2 vbi ſupra.

Where our Author putteth his caſe of the whole reuerſion, if two Coperceners bee of a reuerſion, and one of them granteth her moity by Fine, the Conuſee ſhall haue a Quid iuris clamat for the moitie.

P.3.Eliz.Bendloes.

If in the caſe that our Author here putteth of ſeuerall grantees, if the Tenant Attorne to both of them, the Attornement is voide, becauſe it is not according to the Grant. If a reuerſion be granted for life, and after it is granted to the ſame Grantee for yeares and the Leſſee attorneth to both Grants it is voide for the incertaintie; A multo fortiori, if the Lord by one Deede grant his Seigniory to I. Biſhop of London and to his heires, and by another Deede to I. Biſhop of London and to his Succeſſors, and the Tenant attorne to both grants, the Attornement is voide, for albeit the Grantee be but one, yet he hath ſeuerall capacities, and the grants are ſeuerall, and the Attornement is not according to either of the Grants.

11.H.7.12.

But if A grant the reuerſion of Blacke acre or white acre, and the Leſſee attorne to the Grant, and after the Grantee maketh his election, this Attornement is good, for albeit the ſtate was incertaine, yet he attorned to the Grant in ſuch ſort, as it was made, and ſo note a diuerſitie betweene one grant and ſeuerall grants, and obſerue in this caſe an Attornement good in expectation, and yet nothing paſſed at the time of the Attornement but by the election ſubſequent.

Section 553.

Tenps.E.1.*Attornment.* 48.E.3.15.

HEre it is to bee obſerued that when a man maketh a feoffment of a Manor the ſeruices doe not paſſe but remaine in the Feoffor vntill the Freeholders doe attorne, and when they doe attorne the Attornment ſhall haue relation to ſome purpoſe and not to other. For albeit the Attornment be made many yeares after the feoffment, yet it ſhall haue relation to make it paſſe out of the Feoffor Ab initio euen by the Liuery vpon the feoffment, but not to charge the Tenants with any meane arrerages or for waſte in the meane time, or the like.

¶ Item ſi homẽ ſoit ſeiſie de vn manor, quel manor eſt parcel en demeſne, et parcel en ſeruice, ſil voile aliener cel manor a vn auter, il couient que per force del alienation, que touts les tenants q̃ teignont del alienor come de ſon manor, attornerent al alienee, ou autermẽt les ſeruices demurront continualment en la lienor, forprise tenants a volunt, car il ne beſoigne que tenants a volunt atturnent ſur tiel alienation, &c.

ALſo if a man bee ſeiſed of a manor, which mannor is parcell in demeſne, and parcell in ſeruice, if hee will alien this mannor to another, it behooueth that by force of the alienation, all the tenants which hold of the alienor as of his mannor doe attorne to the alienee, or otherwiſe the ſeruices remaine continually in the alienor, ſauing the tenants at will, for it needeth not that tenants at will doe attorne vpon ſuch alienation, &c.

If a reuerſion of Land be granted to an Alien by Deed, and before Attornement the Alien is made Denizen, and then the Attornment is made, the King vpon office found ſhall haue the land: for as to the eſtate betweene the parties it paſſeth by the Deede Ab initio.

Paſch.5.E.3.*Coram Rege.* *Suſſex in Theſaur.* 21.E.3.47. 34.E.3.*Double plea* 24. 42.*Aſſ p.* 6. 43.*Aſſ p.*22. 30.E.3.29.E.3. 26.E.3.*Per quaſeruicia* 21. 8.H.4.16. 12.H.4. 20.H.6.7. 35.H.6. 9.E.4.33. 13.H.7.14 a. 1.H.7.31. 4.&6.*Attornment*, Pl.30.

If a man plead a feoffment of a Manor hee needs not pleade an Attornment of the Tenants, but (if it be materiall) it muſt be denied or pleaded of the other ſide.

And vpon conſideration had of all the bookes touching this point whether the ſeruices of the Freeholders doe paſſe, wherein there haue beene three ſeuerall opinions, viz. ſome haue holden that the ſeruices doe paſſe in the right by the Liuery as parcell of the Manor, but not to anoy without Attornement as in the caſe of the Fine. And others haue holden, that they both paſſe in right and in poſſeſſion to diſtreine without Attornement. And the third opinion is, that in this caſe the ſaid ſeruices paſſe neither in poſſeſſion nor in right, but vntill Attornement

remaine

remaine continually in the Alienor as Littleton here holdeth. And so it was resolued Pasch. 15. Eliz. betweene Brasbitch and Barwell according to the opinion of our Author. And I neuer yet knew any of Littletons cases (albeit I haue knowne many of them) to bee brought in question, but in the end the Iudges concurred with our Author. *Vid. Hill. 14. Eliz. Rot. 508. in Comm. banco.*

And where our Author speaketh of the Attornement of the Freeholders, if the Lord make a Lease for yeares or for life of a Mannor, and the Freeholders attorne to the Lessee, if after the reuersion of the Mannor be granted, the Attornement of the Lessee for yeares or life shall binde the Freeholders, for by their former Attornement, they haue put the Attornement into the mouth of the Lessee. *9. E. 2. tit. Attornement 18. 19. E. 2. Iud. 19. 21. E. 3. 47. 5. H. 5. 12. b. Vid. Litt. Sect. 549. & 556.*

¶ *Forspris tenant a volunt, &c.* Here is implied Tenant at will or by coppy of Court Roll according to the custome of the Mannor, so as the Freehold and inheritance both of lands in the hands of Tenant at will by the Common Law or by Custome, shall passe both in right and in possession without any Attornement.

Sect. 554.

¶ Item si soient ſñr et tenant, et le tenant lessa la terre a vn auter pur terme de vie, ou dona la terre en le taile sauant le reuersion a luy, &c. si le Seignior en tiel cas granta son seigniory a vn auter, il couient q̃ celuy en le reuersion atturna al grauntee, et nemy le tenant a terme de vie, ou le tenant en l' taile, pur ceo que en cest cas celuy en le reuersion est tenant al Seignior, & nemy le tenant a terme de vie, ne le tenant en le tayle.

ALso if there bee Lord and tenant, & the tenant letteth the land to another for term of life, or giueth the land in taile sauing the reuersion to himselfe, &c. if the Lord in such case grant his Seigniory to another, it behoueth that hee in the reuersion attorne to the grantee, and not the tenant for terme of life, or the Tenant in taile, because that in this case he in the reuersion is tenant to the Lord, and not the tenant for terme of life, nor the tenant in taile.

¶ For it is a maxime in Law, that no man shall attorne to any grant of any Seigniory, Rent seruice, Reuersion or Remainder, but hee that is immediatly priuie to the Grantor, and because in this case there is no priuitie betweene the Lord and the Tenant for life, or Donee in taile, but only betweene the Lord and him in the reuersion, for in this case the Attornement of him in the Reuersion only is good.

¶ *Sauant le reuersion a luy, &c.* That is to say, without limitation of any remainder ouer, and this is but to make his opinion plaine, as to the point that he putteth it.

Section 555.

¶ En meſne le maner est, lou sont seignior, meſne, et tenant, si le Seignior voile granter les seruices del meſne, coment que il ne fait ascun mention en son grant del meſne, vncore il couient que le meſne atturna, &c. et nemy le tenant pera-

¶ IN the same manner is it where there are Lord, Meſne and Tenant, if the Lord will grant the seruices of the Meſne, albeit hee maketh no mention in his grant of the Meſne, yet the Meſne ought to attorne, &c. and not the Tenant perauaile, &c.

perauaile,&c. pur ceo q̄ le meſne eſt tenant a luy,&c. for that the Meſne is Tenaunt vnto him,&c.

This ſtandeth vpon the ſame reaſon that the next precedent caſe did.

Section 556.

THere is to be obſerued a diuerſitie betweene a Rent ſeruice and a Rent charge, or a Rent ſecke; for as to the Rent ſeruice, no man (as hath beene ſayd) can attorne, but he that is priuie, ſo in caſe of a Rent charge it behooueth that the Tenaunt of the Freehold doth attorne to the Grantee, without reſpect of any priuitie. And therefore the Diſſeiſor onely in the caſe of a grant of a Rent charge, ſhall attorne, becauſe he is, as Littleton ſaith) tenant of the Freehold, but in caſe of a grant of a Rent ſeruice, the Attornement of the Diſſeiſee ſufficeth.

If there be Lord and Tenant by homage, fealtie, and rent, the Tenant is diſſeiſed, the Lord granteth the rent to another, the Diſſeiſee attorneth, this is voyd: but if hee had graunted ouer his whole Seigniorie, the Attornement had beene good, and the reaſon of this diuerſitie is heere giuen by our Author, for that when the rent was graunted onely, it paſſed as a Rent ſecke, and conſequently the Diſſeiſor being Terre-Tenant, muſt attorne. But when the Seigniorie is granted, then the Diſſeiſee in reſpect of the priuitie may attorne.

28.H.6.9.b.

¶ MEs auterm̄t eſt, lou certaine terre eſt charge dun Rent charge, ou Rent ſeck, car en tiel caſe ſi celuy que add le rent charg̃ ceo grant a vn auter, il couient q̄ le tenant del franktenement atturna al Grantee, pur ceo que le franktenement eſt charg̃ oue le rent, &c. et en rent charge nul auowrie doit eſtre fait ſur alcun perſon pur le diſtreſſe priſe, &c. mes il auowera le priſe bone et droiturel, come en terres ou tenements iſſint charges a ſon diſtreſſe, &c.

BVt otherwiſe it is where certain lād is charged with a Rent charge or Rent ſecke, for in ſuch caſe if he which hath the Rent charge grant this to another, it behoueth that the Tenaunt of the freehold attorn to the Grātee, for that the Freehold is charged with the rent, &c. And in a Rent charge no Auowrie ought to be made vpon any perſon for the diſtreſſe taken, &c. but hee ſhall auow the priſel to bee good and rightfull, as in lands or Tenements ſo charged with his diſtreſſe, &c.

¶ *Couient que le Tenant del Franktenement, &c.* And therefore if the Tenant of the land charged with a Rent charge or a Rent ſecke, make a leaſe for life, and hee that hath the Rent charge or Rent ſecke granteth it ouer, the Tenant for life ſhall attorne, for he is Tenant of the Freehold, according to the expreſſe ſaying of our Author, and (as hath beene ſayd) there needeth no priuitie.

And it was holden by Dyer chiefe Iuſtice of the Court of Common Pleas, and Mounſon Iuſtice, in the argument of Bracebridges caſe aboueſayd, & not denied, that if he that hath a rent charge granteth it ouer for life, & the tenant of the Land attorn therunto, & after he granteth the reuerſion of the Rent charge, that the Grantee for life may attorne alone. And that theſe words of Littleton are to bee vnderſtood when a Rent charge or Rent ſecke is granted in poſſeſſion: And therewith agreeth 46.E.3. where it appeareth, That the Quid juris clamat in that caſe, did lie againſt the Grantee for life

46.E.3.27.2.H.6.9. Vi.Lit.Sect.547.& 553.

A man maketh a leaſe for life, and after grants to A. a Rent charge out of the reuerſion, A. granteth the rent ouer, hee in the reuerſion muſt attorne, and not the Tenant of the freehold, for that the Freehold is not charged with the rent, for a Releaſe made to him by the Grantee doth not extinguiſh the rent. And Littleton is to be vnderſtood, that the Tenant of the Free-

hold

hold muſt atturne when the Freehold is charged.

¶ *Et en Rent charge nul Auowrie doit eſte fait ſur aſcun perſon, &c.* This is the reaſon that Littleton giueth of the difference betweene the Rent ſeruice and the Rent charge. Now it may be ſayd, That this reaſon is taken away by the Statute of 21.H.8. for by that Statute the Lord needs not auow for any rent or ſeruice vpon any perſon in certaine, and then by Littletons reaſon there needeth no priuitie to the attornement of a ſeignioꝛie, for (ſay they) Ceſſante cauſa vel ratione legis ceſſat lex. As at the Common Law no aid was grantable of a ſtranger to an Auowrie: becauſe the Auowrie was made of a certaine perſon, but now the Auowrie being made by the ſayd Act of 21.H.8. vpon no perſon, therefore the reaſon of the Law being changed, the Law it ſelfe is alſo changed, and conſequently in an Auowrie, according to that Act, ayd ſhall be granted of any man, and the like in many other caſes, which caſe is granted to be good Law: but albeit the Lord (as hath beene ſayd) may take benefit of the Statute, yet may he auow ſtill at his election vpon the perſon of his Tenaunt. Alſo albeit the manner of the Auowrie be altered, yet the priuitie (which is the true cauſe of the ſayd difference) remaineth ſtill as to an Attornement.

21.H.8.cap.15. & vid.Sect.454.

27.H.8.4.b.

Rent charge, &c. It is to be obſerued, to what kind of Inheritances being granted, an Attornement is requiſite. And in this Chapter Littleton ſpeaketh of fiue: Firſt, of a Seignioꝛie, Rent ſeruice, &c. Secondly, of a Rent charge. Thirdly, of a Rent ſeeke. And hereafter in this Chapter of two moꝛe, viz. of a Reuerſion and Remainder of Lands; for the Tenant ſhall neuer need to attorne but where there is Tenure, attendance, remainder, oꝛ payment of a Rent out of land. And therefoꝛe if an Annuitie, Common of paſture, Common of Eſtoners, oꝛ the like, be granted for life oꝛ yeares, &c. the reuerſion may be granted without any Attornement, and albeit ſometimes in ſome of theſe caſes oꝛ the like, an Attornement be pleaded, yet it is ſurpluſage, and moꝛe than needeth, becauſe in none of them there is any Tenure, Attendance, Remainder, oꝛ payment out of land.

21.H.7.1.

1.H.5.1.37. *Aſſ.*14.36. *Aſſ.* pl.3. 31.H.8. tit. *Attorn.* *Br.*59.

Sect. 557.

¶ Item ſi ſoit Seignioꝛ et tenant, et le tenant leſſa ſon tenement a vn auter p̄ t̄me d̄ vie, le remainder a vn auſ en fee, et puis le Seignioꝛ granta les ſeruices a vn auter, &c. et le ten̄t a terme de vie attoꝛna, ceo eſt aſſets bone, pur ceo que le Tenant a terme de vie eſt tenaunt en ceſt caſe al ſeignioꝛ, &c. et celuy en le remainder ne poit eſtre dit tenāt al ſeignioꝛ, qāt a cel entēt foꝛſque ap̄s la moꝛt le tenant a t̄me de vie, vncoꝛe en ceſt caſe ſi celuy en le remainder moꝛuſt ſans hēe, le ſeignioꝛ auera le remainder p voy deſcheate, pur ceo que coīnt que le ſeignioꝛ en tiel cas conient dauower ſur le tenant a terme de vie, &c. vncoꝛe tout lentier tenement quant a touts les eſtates d̄ franktenement, ou d̄ fee ſimple, ou auterment, &c. en tiel cas ſont enſemble tenus d̄ le ſeignioꝛ, &c.

ALſo if there be Lord and Tenant, and the tenant letteth his tenement to another for term of life, the remainder to another in fee, and after the Lord grant the ſeruices to another, &c, and the Tenant for life attorne, this is good enough, for that the Tenaunt for life is Tenaunt in this caſe to the Lord, &c. and he in the remainder cannot be ſaid to be tenant to the Lord, as to this entent, vntill after the death of the tenant for life; yet in this caſe if hee in the remainder dieth without heire, the Lord ſhall haue the remainder by way of Eſcheat, becauſe that albeit the lord in ſuch caſe ought to auowe vpon the tenant for life, &c. yet the whole entire Tenement, as to all the eſtates of the Freehold or of Fee ſimple, or otherwiſe, &c. in ſuch caſe are together holden of the Lord, &c.

¶ Mes

¶ * Mes nemy de faire Auowrie sur eux touts ensemble. M.3.H.6.

¶ * But not to make Auowrie vpon them all together. *M.3.H.6.*

15.E.3.*Attorn.*10.12.E.4.4 18.H.6.2. 9.E.2.*tit. Attorn.*18.18.E.4.7. *Terms E.1 Attorn.*22 *Vi.Sect.*580.

¶ *ET le Tenant a terme de vie attorna,&c.* For he that is (as hath beene sayd) priuie and immediately Tenant to the Lord, must attorne: and that is in this case, The Tenant for life, and so of the other side if a Seigniorie be granted to one for life, the remainder to another in fee, the Attornment to the Tenant for life is an Attornment to the remainder also; vnlesse it be that they in the remainder ought to haue acquitall, or other priuiledge, (whereof they should be preiudiced) and then albeit an Attornement bee had to the Tenant for life, and he acknowledge the acquitall, &c. yet after his decease he in remainder shall not distreyne vntill he acknowledge the Acquitall, notwithstanding the Attornment of the Tenant for life.

3.H.6.1.*Old Tenures* 107. (a) 15.*E.*4.13 a.

¶ *Auera le remainder per voy deſcheat.* For the remainder is holden of the Lord, but not immediately holden, and in this case by the escheat of the remainder the Seigniorie is extinct, for the Fee simple of the Seigniorie being extinct, there cannot remain a particular estate for life thereof, in respect of the Tenure and attendance ouer, and of this opinion is Littleton (a) himselfe in our Bookes. But otherwise it is of a Rent charge, for if that be granted for life, and after he in the reuersion purchase the land, so as the reuersion of the Rent charge is extinct, yet the Grantee for life shall enioy the rent during his life, for there is no Tenure or attendance in this case.

M.3.H.6.1.

¶ * *Mes nemy de faire Auowrie,&c.* This is added to Littleton, but it is consonant to Law, and the authoritie truly cited.

Section 558.

¶ Item ſi ſoit Seignior et tenant, et le tenant leſſa les tenements a vn feme pur terme de vie, le remainder ouſter en fee, et la feme prent baron, et puis le ſeignior granta les ſeruices, &c. a le baron et ſes heires, en ceſt caſe le ſeruice eſt mis en ſuſpence durant le couerture. Mes ſi la feme deuie viuant le Baron, le baron et ſes heires aueront le rent de ceux en le remainder, &c. et en ceo caſe il ne beſoigne aſcun attornement per parol, &c. pur ceo que le baron que doit attorn̄ accepta le fait del graunt de les ſeruices, &c. le quel acceptance eſt vn attornment en la Ley.

ALſo if there bee Lord and Tenant, and the Tenant letteth the tenements to a woman for life, the remainder ouer in fee, and the woman taketh husband, and after the Lord grant the seruices, &c. to the husband and his heires, in this case the seruice is put in suspence during the Couerture, but if the wife die liuing the husband, the husband and his heires shall haue the rent of them in the remainder, &c. And in this case there needeth no Attornement by parol, &c. for that the husband which ought to attorne, accepted the deed of grant of the seruices, &c. the which acceptance is an attornment in the Law.

3.E.3.42. 15.E.3.*Attornment*, 11.

¶ *LE quel acceptance eſt vn attornement en la Ley,&c.* Littleton hauing spoken (as hath beene sayd) of Attornements in Deed or expresse, now commeth to speake of Attornements in Law, or implied, and hauing before set downe fiue expresse Attornments in Deed, doth in this Chapter enumerate 7. Attornments in Law. Heere it is to be vnderstood, That the expresse Attornement of the husband will binde the wife after the couerture,

couerture, and in as much as this acceptance of the grant is an Attornement in Law without a word of Attornement the Seigniorie shall passe. And this is the first example that Littleton putteth of an Attornement in Law, which amounteth to an expresse Attornement, for that it is an agreement to the grant. 44.E.3.tit.Fines 37. 12.E.4.4.

If the Lord grant his Seigniory to the Tenant of the Land, and to a stranger, and the Tenant accept the Deed, this acceptance is a good Attornement to extinguish the one moity, and to vest the other moity in the Grantee, as hath beene said.

Section 559.

¶ En m̄ l' manner est, si soyent Seignior & tenant & le tenant prent feme, & puis le Seignior granta les seruices a la feme & ses heirs, & le baron accepta le fait, en cest cas apres la mort le baron, la feme & ses hēes aueront les seruices, &c. car per le acceptance del fait per l' baron, ceo est bone attornement, &c. coment que durant la couerture les seruices sont mis ē suspence, &c.

¶ IN the same manner is it, if there be Lord and tenant, and the Tenant taketh wife, and after the Lord grant his seruices to the wife and his heires, & the husband accepteth the deed. In this case after the death of the husband the wife and her heires shall haue the seruices, &c. for by the acceptance of the deed by the husband, this is a good attornement, &c. albeit during the couerture the seruices shal be put in suspence, &c.

¶ HEre is the second example that Littleton putteth of an Attornement in Law and standeth vpon the former reason.

¶ *Sont mise en suspence.* Suspence commeth of suspendeo, and in Legall vnderstanding is taken when a Seignorie, Rent, Profit apprender, &c. by reason of vnitie of possession of the Seignorie, Rent, &c. and of the land out of which they issue are not in esse for a time, & tunc dormiunt but may be reuiued or awaked. And they are said to be extinguished when they are gone for euer & tunc moriuntur and can neuer be reuiued, that is when one man hath as high and perdurable an estate in the one as in the other.

Sect. 560.

¶ ITem si soyent Seignior & tenant, & l' tenāt granta les tenements a vn home pur terme d' sa vie, le remainder a vn auter en fee, si le Seignior granta les seruices a le tenant a terme de vie en fee, en cest cas le tenant a

ALso if there bee Lord and Tenant, and the Tenant grant the tenemēts to a man for tearme of his life the remaynder to another in fee, if the Lord grant the seruices to the Tenant for life in fee, in this case the tenant for tearme of life

¶ HEre is the third case that Littleton putteth of an Attornement in Law. And it is to bee obserued that albeit a grant, as hath beene said, may enure by way of release, and a release to the Tenant for life doth worke an absolute extinguishment, whereof hee in the remaynder shall take benefit, yet the Law shall neuer make any construction against the purport of the grant to the prejudice of any, or against the meaning of the parties as

here it should, for if by construction it should enure to a release, the heires of the Tenant for life should bee disherited of the rent, and therefore Littleton here sayth, that the heires of the Grantee shal haue the Seigniory after his death. And here is an Attornement in Law to a grant suspended that cannot take effect in the grantee so long as he liueth but shall take effect in his heires by discent for the Inheritance of the Seigniorie was in the tenant for life, and the suspension only during his life.

terme de vie ad fee en les seruices. Mes les seruices sont mis en suspence durant sa vie. Mes les hẽs le tenant a terme de vie aueront les seruices apres ſ̃ decease, &c. Et en cest cas il ne besoigne attornement, car per lacceptance del fait d celuy, q̃ doit attourner, &c. est ceo attournement de luy mesme.

hath a fee in the seruices; but the seruices are put in suspence during his life. But the heires of the Tenant for life shall haue the seruices after his decease, &c. And in this case there needeth no Attornement, for by the acceptance of the Deed by him which ought to attorne, &c. this is an Attornement of it selfe.

Section 561.

¶ Mes lou le tenant ad cy grand & haut estate en les tenements, sicome le Seignior ad en le Seigniory, en tiel case, si le Seignior graunta les seruices al tenant en fee, ceo vsera per voy dextinguishment, causa patet.

BVt where the Tenant hath as great and as high estate in the tenements, as the Lord hath in the Seigniory, in such case if the Lord grant the seruices to the Tenant in fee, this shall enure by way of extinguishment, *Causa patet.*

¶ HEre Littleton intendeth not only as great and high an Estate, but as perdurable also, as hath beene said, for a Disseisor or Tenant in fee vpon condition hath as high and great an Estate but not so perdurable an Estate, as shall make an extinguishment.

Sect. 562.

¶ HEre in this case hee in the Reuersion of the tenancy must attorn, because he is the Tenant to the Lord, and yet the Seigniorie shall bee suspended during the life of the Grantee, because hee hath an estate for life in the Tenancie, but his heires shall enioy the Seigniorie by Discent.

¶ *Vncore il ne*

¶ Item si soyent Seignior & tenant, & le tenant fait vn leas a vn home pur terme de sa vie, sauant le reuersion a luy, si le Seignior granta le Seigniorie a le tenant a terme de vie en fee, en cest case il conuient

ALso if there bee Lord and Tenant, and the Tenant maketh a Lease to a man for terme of his life, sauing the reuersiõ to himselfe, if the lord grãt the Seigniory to tenant for life in fee. In this case it behoueth that he in the reuer-

ent que celuy en le reuersion attorna al tenant a terme de vie per force d cel grant, en autrement le grãt est voide, pur ceo que celuy en le reuersion est tenãt al Sñr. &c.

¶* Et uncore il ne tiendra del tenant a terme de vie, durant sa vie, Causa patet.*¶

sion must attorne to the tenant for life by force of this grant, or otherwise the grant is voide, for that hee in the reuersion is tenant to the Lord, &c.

*¶ Yet hee shall not hold of the tenant for life during his life. *Causa patet, &c.*

tient, &c. This is added, and not in the originall and is against Lawe, and therefore to be reiected.

¶ *Tenant al Seignior, &c.* Here is to bee vnderstood a diuersitie when the whole estate in the Seigniory is suspended, and when but part of the estate in the Seigniory is suspended. And in this case the Seigniory is suspended but for terme of life, (a) and therefore as to all things concerning the right it hath his being, but as to the possession during the particular estate the Grantee shall take no benefit of it, therefore during that time he shall haue no Rent, Seruice, Wardship, Reliefe, Harriot, or the like, because these belong to the possession, but if the Tenant dieth without heire, the Tenancie shall escheate vnto the Grantee, for that is in the right, and yet when the Seigniory is reuiued by the death of the Tenant, there shall be Wardship, as if the Tenant marry with the Seignioresse and dieth, his heire within age, the wife shall haue the Wardship of the heire. Also in the case that Littleton here putteth, albeit the seigniory be suspended but for life, yet some hold that he cannot grant it ouer because the Grantee tooke it suspended, and it was neuer In esse in him, but if the Tenant make a Lease for yeares or for life to the Lord, there the Lord may grant it ouer because the Seigniory was In esse in him, and the fee simple of the Seigniory is not suspended, but if the Lord disseise the Tenant, or the Tenant enfeoffe the Lord vpon Condition there the whole estate in the Seigniory is suspended, and therefore he cannot during the suspension take benefit of any Escheat, or grant ouer his Seigniory.

(a) 34. Ass. p. 15.

16. E. 3. tit. Voucher. 88.

5. E. 3. Twugi case.

Sect. 563.

¶ Item si soient seignior et tenant, et le tenãt tient del Seignior per xx. maners des seruices, et le Seignior granta son seigniory a vn auter, si le tenant paya en fait ascun parcel dascun de les seruices al grauntee, ceo est bone attornment, de et pur touts les seruices, coũt que lentent de le teñ fuit dattourner forsque de cel parcel, pur ceo que le seigniory est entier, coment que ils sont di-

ALso if there bee Lord and tenant, and the tenant holdeth of the Lord by xx. maner of seruices, and the Lord grant his Seigniory to another, if the tenant pay in Deed any parcell of any of the seruices to the Grantee, this is a good Attornement, of and for all the seruices, albeit the entent of the tenant was ro attorne but for this parcell, for that the Seigniorie is intire, although there bee diuers man-

¶ HEre it appeareth that an Attornement being made for parcell is good for the whole, for seeing hee hath attorned for part, it cannot bee voide for that, and good it cannot be vnlesse it be for the whole; but of this sufficient hath beene said before in this chapter.

4 E. 3. 55. *Malmans case.* 21. E. 3. 23. 5 E. 4. 2. 22. Ass. 66. 7. H. 4. 10. 35. H. 6. 8. *Per Priset.*

¶ *Paya ascun parcell des seruices.* Here is the fourth example of an Attornement in Law, for payment of any parcell of the seruices, is an agreement in Law to the grant.

40. E. 3. 34.

¶ *Coment que lentent del tenant fuit dattorner, &c.* Quia

20.H.6.

Quia intentio inſeruire debet legibus, non leges intentioni. And yet as farre as it may ſtand with the rule of Law, it is honourable for all Iudges to iudge according to the intention of the parties, and ſo they ought to doe. And of this ſomewhat in this Chapter hath beene ſaid before.

uers maners des ſeruices que le tenant doit faire, &c.

ner of ſeruices which the tenant ought to doe, &c.

Sect. 564.

48.E.3.24. 3.E.3. *Quid mirabilius.* 4.E.3.28.29. 37.H.6.14. *per Moyle.* 17.E.3.29.

THere is to be obſerued that this iudgement in the Scire facias (which is no more but that the Demandant ſhall haue execution, &c.) is a good Attornemẽt, albeit it is preſumed that Iudicũ redditur in inuitum, & that an Attornement in Law of any part is good for the whole And this is the firſt example that Littleton putteth of an Attornement in Law.

Note that in caſe of a Deede nothing paſſeth before Attornement as hath beene ſaid; In the caſe of the Fine, the thing granted paſſeth as to the ſtate, but not to diſtraine, &c. without Attornement. In the caſe of the King the thing granted doth paſſe both in eſtate and in priuity to diſtraine, &c. without Attornement, vnleſſe it be of Lands or Tenements that are parcell of the Dutchy of Lancaſter, and lye out of the Countie Palatine.

¶ Item ſi ſoit Seignior et tenant, et le tenant tient del Sñr per pluſors maners des ſeruices, et l'Sñr granta les ſeruices a vn auter per fine, ſi le grantee ſua vn Scire facias hors del meſme le fine pur aſcun parcel de les ſeruices, et ad iudgement de recouer, cel iudgement eſt bone attornement en ley, pur touts les ſeruices.

ALſo if there bee Lord and tenant, and the tenant holdeth of the Lord by many kinde of ſeruices, and the Lord grant the ſeruices to another by fine, if the Grantee ſue a *Scire facias* out of the ſame fine for any parcell of the ſeruices, and hath iudgement to recouer, this iudgemẽt is a good attornement in Law for all the ſeruices.

Sect. 565.

¶ Item ſi le Seignior dun rent ſeruice grauntа les ſeruices a vn auter, et le tenant attorna per vn denier, et puis le grauntee diſtraine pur le rent arere, et le tenant a luy fait reſcous, en ceo cas le grauntee naura aſſiſe del rent, forſque briefe de reſcous, pur ceo que le doñ del denier per le tenant, ne fuit forſque per voy dattornement, &c. Mes ſi le tenant auoit done a le grauntee le dit denier, come parcel de le rent, ou vn maile, ou vn farthing per voy de ſeiſin

ALſo if the Lord of a Rent ſeruice grant the ſeruices to another, and the tenant attorne by a penny, and after the Grantee diſtraine for the rent behinde, & the tenant make reſcous, In this caſe the grantee ſhall not haue an Aſſiſe for the rent but a writ of reſcouſe becauſe the giuing of the penny by the tenant was not but by way of attornement, &c. but if the tenant had giuen to the grantee the ſaid penny as parcell of the rent, or a halfe penny or a farthing by way of ſeiſin of the rent then this

ſeiſin del rent, donque ceo eſt bone attornement, et auxy eſt bon ſeiſin al grauntee del rent, et donq̃ ſur tiel reſcous le grantee auera aſſiſe,&c.

is a good attornement, and alſo it is a good ſeiſin to the Grantee of the rent, and then vpon ſuch reſcous the Grantee ſhall haue an aſſiſe,&c.

THereupon is to be obſerued a diuerſity betweene money giuen by way of Attornement, and where it is giuen as parcell of the rent by way of ſeiſin of the rent. For albeit the rent be not due before the day, yet a payment of parcell of the rent before hand is an actuall ſeiſin of the rent to haue an Aſſiſe. And ſo it is if he giue an oxe, a horſe, a ſheepe, a Knife, or any other valuable thing in name of ſeiſin of the rent beforehand, this is good, And therefore a payment in name of ſeiſin is more beneficiall for the Grantee; becauſe that is both an actuall ſeiſin and an attornement in Law, and yet being giuen before the day in which the rent is due, it ſhall not be abated out of the rent. So, as to giue ſeiſin of the rent, it is taken for part of the rent, but as to the payment of the rent, it is accounted as no part of the rent, and the reaſon of the diuerſity is for that remedies to come to rights or duties are euer taken fauourably. Here alſo appeareth that there is an actuall ſeiſin, or a ſeiſin in Deede of a rent, whereof (as Littleton here ſpeaketh) an Aſſiſe doth lye; and a ſeiſin in Law which the Grantee hath by Attornement before actuall poſſeſſion.

39.H.6.3.26. 5.E.4.2.
*Vid.Sect.*235.
25.E.3.44. 49.E.3.15.
37.H.6.39. 49.*Aſſ.*p.6.
34.H.5.42.
15 E.3.*Execution*63.
40.E.3.22. 28.H.6.6 b.
7.H.4.2.*tit.Attorney Br.*57.

Sect. 566.

¶ Item ſi ſont pluſors Jointenãts que teignont p certaine ſeruices, et le Seignior graunta a vn auter les ſeruices, et vn d̃ les Jointenants attorna al grauntee, ceo eſt auxy bon, ſicõe touts vſſent attorne, pur ceo que le ſeignior eſt entier,&c.

ALſo if there bee many Iointenants which hold by certaine ſeruices, and the Lord grant to another the ſeruices, and one of the Ioyntenants attorne to the grantee, this is as good as if all had attorned, for that the ſeigniory is entire,&c.

THere is to be obſerued what manner of Tenants ſhall attorn to the Grant. And firſt (b) if there two or more Joyntenants and one of them attorne it is ſufficient, for as it hath beene often ſaid, there cannot bee an Attornement in part. And albeit there is great Authority againſt Littleton, yet the Law hath beene adiudged according to Littletons opinion, as it hath beene in other of his caſes when they haue come in queſtion, and as it is of an Attornement, ſo it is of a ſeiſin, a ſeiſin of a Rent by the hands of one Joyntenant is good for all, and a ſeiſin of part of the rent is a good ſeiſin of the whole.

(b) 39.H.6.3.26. *See Tooker's caſe vbi ſupra, and the Authorities there cited.*

(c) If either the Grantor or the Grantee die, the Attornement is Countermanded, but if the Tenant die he that hath his eſtate may attorne at any time. If the Tenant grant ouer his eſtate, his Aſſignee may attorne.

(c) *Vid lib.*4.*fol.*8. *lib.*6. *fol.*57. *lib*9.*fol.*34. *Vid.*4.H.6.29. 18.E.4.10.

(d) If an Infant hath lands by purchaſe or by diſcent he ſhall be compelled to attorne in a Per quæ ſeruitia, and no miſchiefe to the Infant, for when he commeth to full age hee may diſclaime to hold of him, or he may ſay that he hold by leſſer ſeruices, but there ſhould be a greater miſchiefe for the Lord if the Attornement of an Infant ſhould not be good, for hee ſhould loſe his ſeruices in the meane time.

If an Infant be a Leſſee he ſhall be compelled to attorne in a Quid iuris clamat. The Attornement of an Infant to a grant by Deede is good, and ſhall binde him, becauſe it is a lawfull act, albeit he be not vpon that grant by Deed compellable to attorne. Of Baron and Feme Littleton putteth many caſes in this chapter.

(d) 42.E.3.*Age* 33. 26.E.3.62. 37.H.8. *tit. Attorne: Br.* 26.E.3.62. 26.*Aſſ.*27. 32.E.3. *tit.per quæ ſeruic.*9. 2.E.2.*Autorn.*78. 2.E.2.*Ibid.*77. 18.H 6.2. *Lib.*9.*fo.*84.85 *Conyers caſe.* 4.*Mar. Dier* 137. 21.E.3.*Age*85. 7.E.2.*Age*140.

(e) A man that is deafe and dumbe, and yet hath vnderſtanding may attorne by ſignes, (f) but one that is not Compos mentis cannot attorne, for that he that hath no vnderſtanding cannot agree to the Grant.

(e) 26.E.3.63.
(f) 18.E.3.53.

What conueyances ſhall be good without Attornements more ſhall be ſaid in this Chapter in his proper place.

Sect. 567.

¶ Item ſi home leſſa tenemẽts a terme dans, per force de quel leaſe le Leſſee eſt ſeiſie, et puis le Leſſor per ſon fait granta le reuerſion a auter pur terme de vie, ou en taile, ou en fee, il couient en tiel caſe que le Tenãt a terme dans attorna, ou autrement rien paſſera a tiel grantee per tiel fait. Et ſi en ceſt caſe le tenant a terme dans atturna al Grantee, donque maintenant paſſera le Franketenement al Grauntee per tiel atturnement ſauns aſcun liuerie de ſeiſin, &c. pur ceo que ſi aſcun liuerie ou ſeiſin, &c. ſerra, ou beſoigne deſtre fait en cel caſe, donque le tenant a terme dans ſerroit al temps de liuerie de ſeiſin ouſte de ſon poſſeſſion, le quel ſerroit encounter reaſon, &c.

ALſo if a man letteth tenemẽts for terme of yeares, by force of which Leaſe the Leſſee is ſeiſed, and after the Leſſor by his Deed grant the reuerſion to another for terme of life, or in Taile, or in Fee, it behooueth in ſuch caſe that the Tenant for yeares attorne, or otherwiſe nothing ſhall paſſe to ſuch grantee by ſuch deed. And if in this caſe the Tenaunt for yeares attorne to the Grantee, then the Freehold ſhall preſently paſſe to the Grantee by ſuch attornment without any liuerie of ſeiſin, &c. becauſe if any liuerie of ſeiſin, &c. ſhould be or were needfull to bee made, then the Tenant for yeares ſhould be at the time of the Liuery of ſeiſin ouſted of his poſſeſſion, which ſhould bee againſt reaſon, &c.

¶ HEre Littleton hauing ſpoken of Graunts of Seigniories and Rent charges, and Rents ſecke iſſuing out of land, here treateth of a Grant of a Reuerſion of land vpon an eſtate for yeares, ſeeing this grant of the Reuerſion muſt be by Deed, and the agreement of the Leſſee for yeares requiſite thereunto, the Freehold and Inheritance do paſſe thereby, as well as by Liuerie of ſeiſin, if it were in poſſeſſion: and the grant of the reuerſion by Deed with the Attornement of the Leſſee, doe conteruaile in Law a Feoffement by Liuerie, as to the paſſing of the Freehold and Inheritance.

(g) 6.E.3.53. 25.E.3.53. Brook. Tit. Attorn. 48.

¶ *A terme dans.* (g) And yet a Tenant by Statute Merchant, or Tenant by Statute Staple, or by Elegit, muſt alſo attorne, for the Grantee may haue a Venue facias ad computandum, or tender the money, &c. and diſcharge the Land, and if the reuerſion be granted by fine, they ſhall be compelled to attorne in a Quid iuris clamat.

32 E.3. Scir. fac. 101. Dy. 1.a

And ſo the Executors that haue the land vntill the debts bee payd, muſt attorne vpon the grant of the Reuerſion, although they haue not any certaine terme for yeares.

Sect. 568.

¶ HEre Littleton, ſpeaketh of a Reuerſiõ expectant vpon an an eſtate for life, or a gift in Taile.

¶ *Il couient que le Tenaunt de la Terre at-*

¶ Item ſi Tenements ſoiẽt leſſes a vn home pur terme de vie, ou done en le taile ſauãt le

ALſo if Tenements be letten to a man for terme of life, or giuen in Taile, ſauing the reuerſion, &c. if hee in

le reuerſion, &c. ſi celuy en le reuerſion en tiel caſe granta le reuerſion a vn auter per ſon fait, il couient que le Tenaunt de la Terre attourna al Grantee en la vie le Grantor, ou autrement, le Graunt eſt voyd.

the reuerſion in ſuch caſe grant the reuerſion to another by his Deed, it behoueth that the Tenant of the Land attorne to the Grauntee in the life of the Grantor, or otherwiſe the Graunt is voyd.

torne al Grauntee, &c.

Let vs therefore ſpeake firſt of Tenaunt for life: and yet in ſome caſe albeit Tenaunt for life hath granted ouer his Eſtate, yet he ſhall atturne, (a) as if Tenant in Dower or by the Curteſie, grant ouer his or her eſtate, and the heire grant ouer the reuerſion, the Tenant in Dower or by the Curteſie may atturne, becauſe at the time of the Grant made they were atttendant to the heyre in reuerſion, and the Grantee cannot be Tenant in Dower, or Tenant by the Curteſie. And if the Reuerſion bee granted by Fine, the Fine muſt ſuppoſe that the Tenant in Dower or by the Courteſie, did hold the land, albeit they had formerly granted ouer their eſtate, and albeit the Reuerſion doth paſſe by the Fine, yet the Quid iuris clamat muſt be brought againſt him that was Tenant at the time of the note leuied. But yet after the reuerſion is granted ouer, the Grantee ſhall not haue any Action of Waſt againſt the Tenant in Dower or by the Curteſie, but the Action of waſt muſt be brought againſt their Aſſignee, and not againſt themſelues, for Tenant by the Curteſie or Tenant in Dower cannot hold of any but of the heire: and therefore in reſpect of the priuitie, they ſhall attorne and be ſubiect to an Action of Waſt, as long as the reuerſion remaineth in the heire, albeit they haue granted ouer their whole eſtate. And it is worthie of the obſeruation, that if the grantee of the reuerſion doth bring an action of Waſt againſt the aſſignee of the tenant by the curteſie, (b) the pl' muſt rehearſe the ſtat. which prouyeth that no prohibition of Waſt in that caſe lay at the common law, as it did if the heire had brought it againſt the tenant by the curteſie himſelfe: & therefore ſome doe hold, That if the heire do grant ouer the reuerſion, that the attornment of the Aſſignee of the Tenant by the Curteſie, or of Tenant in Dower is ſufficient, becauſe they afterward muſt bo attendant and ſubiect to the Action of Waſt.

(a) 10.*H.*4.*tit. Attorne.* 16 11.*H.*4.18.30.*E.*3.16. 38. *E.*3.13. 18.*E.*3.3. 10.*E.*3. *Quid iuris clam.* 41. 41.*E.*3. 18. *Temps E.*1.*tit. Waſt*, 112.

F.N.B. 55.*E. Regiſt. fo.*72. 4.*E.*3.26.

(b) *Regiſt.*72.

If the reuerſion of Leſſee for life be granted, and Leſſee for life aſſigne ouer his eſtate, the Leſſee cannot attorne, but the attornement of the Aſſignee is good, becauſe (as Littleton here ſaith) it behoueth that the Tenant of the Land doe attorne, and after the aſſignement there is no tenure or attendance, &c. betweene the Leſſee and him in reuerſion.

18.*E.*4.10.*b.* 26.*E.*3.62.

If Leſſee for life aſſigneth ouer his eſtate vpon Condition, he hauing nothing in him but a Condition ſhall not attorne, but the Aſſignee may attorne becauſe he is Tenant of the land.

5.*H.*5.10.

Section 569.

CE meſme maner eſt, ſi terre ſoit done en taile, ou leſſe a vn home p terme de vie, le remainder a vn auter en fee, ſi celuy en le remainder voile granter ceſt remaind a vn auter, &c. ſi le tenant de la terr attorna en la vie le Grantor, donques l grant de tiel rem eſt bon, ou autrement nemy.

IN the ſame manner is it if land be granted in taile, or let to a man for term of life, the remainder to another in fee, if he in the rem wil graunt this remainder to another, &c. if the tenant of the land attorne in the life of the Grantor, then the grāt of ſuch a remainder is good, or otherwiſe not.

CLittleton alſo ſpeaketh here of an Attornement by tenant in Taile, and true it is that he may attorne, but where the reuerſion is granted by fine, hee is not cōpellable to attorn, becauſe he hath an eſtate of Inheritance which may continue for euer. And ſo it is of a tenant in taile after poſſibilitie of Iſſue extinct, he ſhall not be compelled to attorne for the Inheritance which was once in him. (c) But if Tenaunt in taile after poſſibilitie of Iſſue extinct grant ouer his Eſtate, his Aſſignee ſhal be compelled to attorn, becauſe he neuer had but a bare ſtate for life

12.*E.*4.3.4. 3.*E.*4.12. 43.*E.*3.1.46.*E.*3.13.

5.*H.*5

20.*E.*3.*Quid iuris clam.* 50.

(c) *See the Chap. of Tenant in Taile after poſſibilitie of Iſſue extinct. And Ewins caſe there cited to be adiudged.*

But

But as to Tenant in Taile note a diuersitie betweene a Quid iuris clamat, and a Quem redditum reddit, or a Per quæ seruicia; for against a Tenant in Taile, no Quid iuris clamat lieth, as is aforesayd. But if a man make a gift in taile, the remainder in fee, and the Seignorie or Rent charge issuing out of the land be granted by Fine, the Conusee shall maintaine a Per quæ seruicia, or a Quem redditum, and compell him to attorne, for herein his estate of Inheritance is no priuiledge to him, for that a tenant in Fee simple (as his estate was at the Common law) is also compellable in these cases to attorne.

Section 570.

¶* P. 12. E. 4. Et la est ten⁹ per tout le Court, que Tenant en Taile ne serra arct datturner, mes sil atturna gratis, cest assets bone. *

P. 12. *Edw.* 4. It is there holden by the whole Court, that Tenant in Taile shall not be compelled to attorne, but if he will attorne *gratis*, it is good enough.

12. E. 4. 3. 4.

¶ This is added to Littleton, and therefore though it be good Law, and the Bookes truly cited, yet I passe it ouer.

Section 571.

¶ Item si terre soit lesse a vn home pur terme dans, le remainder a vn auter p̄ terme de vie, reseruant al Lessour vn certaine rent per an, et liuerie de seisin sur ceo est fait al tenant p̄ terme dans, si cestuy en le reuersion en cest case granta le reuersion a vn auter, &c. et le tenant que est en le remainder apres le terme dans sop attourna, ceo est bone Attournement, et celuy a que cest reuersion est graunt per force de tiel Attournement distreynera le Tenant a terme dans pur le Rent due aps tiel Attornment, coment que le ten̄t a terme dans ne vnques attournast a luy. Et la cause est, p̄ ceque lou le reñsion est dependant sur lestate del franktenemt, suffist que le t̄ del franktenemt attourna ꝑ tiel Grant del Reñsion, &c.

ALso if Land bee let to a man for yeares, the remainder to another for life, reseruing to the Lessor a certaine rent by the yeare, and Liuerie of Seisin vpon this is made to the Tenant for yeares, if hee in the Reuersion in this case grant the Reuersion to another, &c. and the Tenant which is in the Remainder after the terme of yeares attorne, this is a good Attornement, and hee to whome this Reuersion is granted, by force of such Attornement shall distreyne the Tenant for yeares for the Rent due after such Attornement, albeit that the Tenant for yeres did neuer attorne vnto him. And the cause is for that where the Reuersion is depending vpon an estate of Freehold it sufficeth that the Tenant of the Freehold doe attorne vpon such a Grant of the reuersion, &c.

¶ Suffist que le Tenant del Franktenement attorna. Note Littlet. saith not here, That the Tenant of the Franktenement ought in this case to attorne, but that

that it ſufficeth that he doth attorne. And I heard Sir Iames Dier Chiefe Iuſtice of the Common Pleas hold, that in this caſe if the tenant for yeares did attorn it would veſt the reuerſion, for ſeeing the eſtate for yeares is able to ſupport the eſtate for life, he ſhall binde him in the remaynder by his Attornement in reſpect of his eſtate and priuitie.

Paſch. 15. *Eliz. in Brabridges Caſe in Communi Banco.*

Sect. 572.

CEt eſt aſcauoir, que lou vn leas a terme dans, ou a terme de vie ou done en taile eſt fait a aſcun home, reſeruant a tiel leſſor, ou donor, vn certaine rent, &c. ſi tiel leſſor, ou donor, graunta ſon reuerſion a vn auter, & le tenant del terre attourna, le rent paſſa al grauntee, coment q̄ en le fait del grant de reuerſion nul mention ſoit fait de le rent, pur ceo que le rent eſt incident al reuerſion en tiel caſe, & nemy è conuerſo, &c. Car ſi home voile graunter le rent en tiel caſe a vn auter, reſeruant a luy le reuerſion del terre, coment que le tenant attorna a le grauntee, ceo ſerra forſque vn rent ſecke, &c.

AND it is to be vnderſtood, that where a leaſe for yeares or for life, or a gift in taile is made to any man reſeruing to ſuch Leſſor or Donor a certaine rent, &c. if ſuch Leſſor or Donor grant his Reuerſion to another, & the tenant of the land attorne, the rent paſſeth to the Grantee, although that in the deed of the grant of the Reuerſion no mention be made of the rent, for that the Rent is incident to the Reuerſion in ſuch caſe, and not *è conuerſo, &c.* For if a man will grant the rent in ſuch caſe to another, reſeruing to him the Reuerſion of the Land, albeit the Tenant attorne to the grantee, this ſhall bee but a Rent ſecke, &c.

Of this Littleton hath ſpoken before in the Chapter of Rents.

Section 573.

CItem ſi home leſſa terre a vn auter p̄ term̄ d̄ ſa vie & puis il confirma p̄ ſon fait leſtate d̄l tenant a term̄ d̄ vie, le remainder a vn auter en fee, & le tenant a terme d̄ vie accepta le fait, donques eſt le remainder en fait en celuy a que le remainder eſt done ou limitte per meſme le fait, car per lacceptance del tenant a term̄ de vie de le fait, ceo eſt vn agreement de luy, & iſſint vn attornement en ley. Mes vncore celuy en le remainder nauera aſcun action

ALſo if a man let land to another for his life, and after hee confirme by his Deed the eſtate of the Tenant for life, the remaynder to another in fee, and the Tenant for life accepteth the Deed, then is the remaynder in fait in him to whom the remaynder is giuen or limited by the ſame Deed. For by the acceptance of the Tenant for life of the deed, this is an agreement of him, and ſo an Attornement in Law. But yet hee in the remaynder ſhall not haue any acti-

tion de waſte, ne auter benefit per tiel remainder, ſi non que il auoit le dit fait en poigne, per que l'remainder fuit taile ou graunt a luy. Et pur ceo que en tiel cas l'tenant a termꝰ de vie voile p̄ cas reteigner le fait a luy, a cel entent que celuy en le remainder naueroit aſcun action ô waſte enuers luy, pur ceo que il ne poit bener dauer le fait ē ſa poſſeſſion, il ſerra bone & ſure choſe en tiel cas pur celuy en le remaynder, que vn fait endent ſoit fait per celuy que voile faire tiel confirmation, & le remaynder ouſter. &c. & que celuy que fait tiel confirmation deliuera vn part del Indenture al tenant a terme de vie, & le auter part a celuy que auera le remainder. Et donque il per monſtrance de le part del endenture, poit auer action de waſt enuers le tenant a terme de vie, & touts auters aduantages que celuy en le remainder poit auer en tiel caſe, &c.

on of Waſte nor otherbenefit by ſuch remaynder vnleſſe that hee hath the ſaid Deed in hand whereby the remaynder was entayled or granted to him. And becauſe that in ſuch caſe the Tenant for life peraduenture will retaine the Deed to him to this intent that he in the remaynder ſhould not haue any Action of Waſte againſt him for that hee cannot come to haue the Deed in his poſſeſſion it will bee a good and ſure thing in ſuch caſe for him in the remaynder, that a Deed indented bee made by him which will make ſuch Confirmation, and the remaynder ouer, &c. and that hee which maketh ſuch Confirmation deliuer one part of the Indenture to the Tenant for life, and the other part to him that ſhall haue the remaynder. And then he by ſhewing of that part of the Indenture may haue an Action of Waſte againſt the tenant for life and all other aduantages that he in the remainder may haue in ſuch a caſe, &c.

Vide Sect. 525. 575.
Vide Pl. Com. in Colthirſts Caſe. Dodr. & Stud. cap. 20. fol. 93. 94.
8. R. 2. in waſte in Linc. oſerie 17. E. 3. confirmat. 4.

35. H. 6. fol 8. 14. H. 8. *Pl. Com. 149. in Thorekmortons caſe. 45. E. 3. 14. 15. 22. H. 4. 39. 14. H. 4. 31.*

THere Littleton putteth a caſe of a remaynder whereunto an Attornement is requiſite. And this is the firſt example of an Attornement in Law.

¶ *Remaynder a vn auter, &c.* Of this ſufficient hath been ſaid in the Chapter of Confirmation. Sect. 525.

¶ *Si non que il auoit le fait en poigne.* And albeit he hath no remedie to come to the Deed during the life of Tenant for life, yet becauſe hee is priuy in eſtate hee ſhall not maintaine an Action of Waſte without ſhewing the Deed, but when the remaynder is once executed, he ſhall not need to ſhew the Deed.

¶ *Il ſerra bone & ſuer choſe, &c.* Hereby it appeareth how neceſſary it is to bee learned aduice in a mans Conueyance, for thereby ſhall bee preuented many queſtions, and not to follow the aduice of him that is experimented only. For as in Phiſicke, Nullum medicamentum eſt idem omnibus, ſo in Law one forme or preſident of Conueyance will not fit all caſes.

Sect. 574.

¶ Item ſi deux Joyntenants ſont, le queux leſſont lour terr̄ a vn auter pur terme de vie, rendant a eux & a lour heires certaine rent per an, en ceſt caſe ſi vn des Joyntenants en le reuerſion, releſſa a lauter Joyntenant ē meſme le reuerſion, ceſt releas eſt bone, & celuy a que le releas eſt fait, auera ſolem̄t le rent del tenant a terme de vie, & auera ſolement vn briefe de waſte enuers luy coment q̄ il ne vnques attorneroit per force de tiel releas, &c. Et la cauſe eſt pur le priuity que vn foits fuit perenter le tenant a terme de vie, & eux en le reuerſion.

ALſo if two Ioyntenants bee who let their Land to another for tearme of life rendring to them and to their heires a certaine yearely rent. In this caſe if one of the Ioyntenants in the reuerſion releaſe to the other Ioyntenant in the ſame reuerſion this releaſe is good, and he to whom the releaſe is made ſhall haue only the rent of the Tenant for life, and ſhall only haue a Writ of Waſte againſt him although hee neuer attorned by force of ſuch releaſe, &c. And the reaſon is for the priuitie which once was betweene the Tenant for life and them in the reuerſion.

¶ *Deux Iointenants.* And ſo it is (as it is here to be vnderſtood) albeit there bee three or more Joyntenants, and one of them releaſeth to one of the other.

It is true that there is a difference betweene theſe releaſes, for the Releaſe in the one caſe maketh no degree, but hee to whom the Releaſe is made is ſuppoſed in from the firſt Feoffor, and in the other it worketh a degree, and hee to whom the Releaſe is made is in the per by him, yet in neyther of theſe caſes there is requiſite any Attornement, for both of them are within Littletons reaſon (for the priuitie, &c.)

¶ *Pur le priuitie, &c.* For if one Joyntenant make a Leaſe for yeares reſeruing a Rent and dieth, the Surviuor ſhall not haue the Rent, and therefore Littleton here addeth materially for the priuity that was betweene the Tenant for life and them in the reuerſion. 2.Eliz.Dier.174.

And here it is good to bee ſeene what grantors or others that make Conueyances, &c. are ſuch as their Grants or Conueyances are either good without Attornement, or where the Tenant is no way compellable to attorn. Tenant for life ſhall not bee compelled to attorne in a quid iuris clamat vpon a grant of a reuerſion by fine holden of the King in Chiefe without licence, but the reaſon hereof is not becauſe the Tenant for life might be charged with the fine, for his eſtate was more ancient then the fine leuied, but becauſe the Court will not ſuffer a preiudice to the King, and the King may ſeiſe the reuerſion and rent, and ſo the Tenant ſhall be attendant to another. Alſo it is a generall rule that when the grant by fine is defeaſible, there the Tenant ſhall not bee compelled to attorne. 45.E.3.6.b. 13.Eliz.Dier 288. *Lib.3.fol.86.Iuſtice Windhams caſe.* 36.H.6.24.

As if an Infant leuie a fine, this is defeaſible by writ of Error during his minoritie, and therefore the Tenant ſhall not be compelled to attorne.

So if the Land be holden in ancient Demeſne, and hee in the reuerſion leuieth a fine of the reuerſion at the Common Law, the Tenant ſhall not be compellable to attorne, becauſe the eſtate that paſſed is reuerſible in a writ of Deceit. 5.E.3.25.31.E.3. *Ancient Demeſne* 16.

So if Tenant in taple had leuied a fine, the Tenant ſhould not be compelled to attorne, becauſe it was defeaſible by the iſſue in taple. 24.E.3.25.b.37.H.6.33, 48.E.3.23.

But now the Statutes of 4.H.7. and 32 H.8 having giuen a further ſtrength to fines to barre the iſſue in taple, the reaſon of the Common Law being taken away, the Tenant in this caſe ſhall be compelled to attorne, as it was adiudged (*) in Iuſtice Windhams Caſe. (*) *Lib.3.fol.86. Iuſtice Windhams caſe.*

If an alienation be in Mortmaine the Tenant ſhall not bee compelled to attorne becauſe the Lord Paramount may defeat it. 17.E.3.7.32.E.3.18.

Sect. 575.

CE mesme le maner, & pur mesme la cause est, lou hõe lessa terre a vn auter pur terme de vie, le remainder a vn auter pur terme de vie, reseruant le reuersion al lessour, en cest cas si celuy en le reuersion relessa a celuy en le remainder et a ses heires tout son droit, &c. donqs celuy en le remainder ad vn fee, &c. et il auera vn briefe de Wast enuers le tenant a terme de vie sans ascũ attornement de luy, &c.

IN the same manner, and for the same cause is it, where a man letteth land to another for life, the remainder to another for life, reseruing the reuersion to the lessor, in this case if hee in the reuersion releaseth to him in the remainder and to his heires all his right, &c. Then he in the remainder hath a fee, &c. and hee shall haue a writ of Waste against the tenant for life without any attornement of him, &c.

Vid. Sect. 549. 553. 556.

This needeth no explication.

Section 576.577.

CThere haue beene now in all seuen examples, that Littleton putteth of an Attornement in Law, And here he putteth two cases also of a notice in Law. And the reason of both these are here rendred by Littleton. First for the notice Littleton saith that the Lesse shall not by Law be misconusant of the Feoffments that were made of and vpon the same land. And the reason of the Attornement is because the whole fee simple passeth by the Feoffment, and the Lesse by his regresse leaueth the reuersion in the Feoffee which saith Littleton is a good Attornement. The same Law it is of a Tenant by Statute Merchant or Staple, or Elegit. And so it is of a Lease for life, as Littleton here saith, and so it was resolued (e) in Brasbritches case, and after in the Deane of Pauls his case in the

46. E. 3. 30. b. 2. H. 5. 4. 5. H. 5. 12. 34. H. 6. 6. 28. E. 3. 47. 9. H. 6. 10.

(e) *Brasbritches case* P. 15. *Eliz.* *Deane of Pauls case*, 20. *Eliz.*

CItem si home lessa terres ou tenements a vn auter pur terme des ans, et puis il ousta son termour, et ent enfeoffa vn auter en fee, et puis le tenant a terme dans enter sur le feoffee, enclaimant son terme, &c. et puis fait wast, en cest case le feoffee auera per la ley vn briefe de wast enuers luy, et vncore il nattornast pas a luy. Et la cause est, come ieo suppose, p̃ ceo que celuy que ad droit de auer terres ou tenements pur term̃ dans, ou auterment, ne serroit per la ley misconusant de les feoffments q̃ fueront faits de

ALso if a man lett lands or tenements to another for terme of yeares, and after he oust his termor, and thereof enfeoffe another in fee, and after the tenant for yeares enter vpon the feoffee, clayming his term, &c. and after doth waste, in this case the feoffee shall haue by law a writ of Waste against him, and yet hee did not attorne vnto him. And the cause is as I suppose, for that he which hath right to haue lands or tenements for yeares, or otherwise should not by lawe bee misconusãt of the feoffments which were made of and vpon the same

de et ſur meſmes les terres, &c. et entant que per tiel feoffment le tenant a terme dans fuit mis hors de ſon poſſeſſiõ, et p ſon entre il cauſaſt le reuerſion deſtre a celuy a que le feoffment fuit fait, ceo eſt bon attornement, car celuy a que le feoffment fuit fait, auoit nul reuerſion deuaunt que le tenant a terme dans auoit enter ſur luy, pur ceo que il fuit en poſſeſſion en ſon demeſne come de fee, et per lentr̃ del tenant a term̃ dans il y ad forſque vn reuerſion, quel eſt p le fait l'teñ a term dãs, ſ. p ſon entrie, &c.

lands, &c. and inaſmuch as by ſuch feoffment the tenant for yeares was put out of his poſſeſſion, and by his entrie he cauſed the reuerſion to bee to him to whom the feoffment was made, this is a good attornement, for hee to whom the feoffment was made had no reuerſion before the tenant for yeares had entred vpon him for that he was in poſſeſſion in his demeſne as of fee, and by the entrie of the tenant for yeares, hee hath but a reuerſion, which is by the act of the tenant for yeares, s. by his entrie, &c.

*Sect.*577.

CMeſme la ley eſt, come il ſemble, lou vn Leas eſt fait pur terme d vie, ſauant le reuerſion al Leſſour, ſi le Leſſour diſſeiſt le Leſſee, & fait feoffment en fee, ſi le tenant a terme de vie enter et fait waſt, le feoffee auera briefe de waſte ſans aſcun auter attournement, Cauſa qua ſupra, &c.

THe ſame Law is, as it ſeemeth where a Leaſe is made for life, ſauing the reuerſion to the Leſſor if the Leſſor diſſeiſe the Leſſee, and make a feoffment in fee, if the tenant for life enter and make waſte the Feoffee ſhall haue a writ of waſte without any other attornement, *Cauſa qua ſupra, &c.*

Common place. But ſhall the Leſſee in this caſe whether hee will or no doe an act that amount to an Attornement, viz. by his regreſſe or elſe loſe the profit of his land? And ſome doe hold that in that caſe if the Leſſee for life doo recouer in an Aſſiſe, this is no Attornement, becauſe hee come to it by courſe of Law, and not by his voluntary act. And yet in that caſe as in the caſe of the fine the ſtate of the reuerſion is in the Feoffee. (f) But others doe hold it all one in caſe of a recouery, and a regreſſe. 34.H.6.7.

(f) 18.E.3.48 b. Lib.6.fo.60.b. Sir Moyle Finches caſe.

(g) If the Leſſor diſſeiſe Tenant for life or ouſte Tenant for years, and maketh a feoffment in fee, by this the rent reſerued vpon the Leaſe for life or yeares is not extinguiſhed, but by the regreſſe of the Leſſee the rent is reuiued, becauſe it is incident to the reuerſion: and ſo hath it beene adiudged. But if a man be ſeiſed of a rent in fee, and diſſeiſe the Tenant of the land, and make a feoffment in fee, the Tenant re-entreth, this rent is not reuiued. And ſo note a diuerſity betweene a rent incident to a reuerſion, and a rent not incidẽt to a reuerſiõ.

(g) 9 H.6.16. Deane of Pauls caſe, Vbi ſupra.

If two ioynt Leſſees for yeares or for life bee ouſted or diſſeiſed by the Leſſor, and he enfeffe another, if one of the Leſſees re-enter this is a good Attornement, and ſhall binde both, for an Attornement in law is as ſtrong as an Attornment in Deed.

If a man make a Leaſe for life, and then grant the reuerſion for life and the Leſſee attorne, and after the Leſſor diſſeiſe the Leſſee for life, and make a feoffment in fee, & the Leſſee re-enter, this ſhall leaue a reuerſion in the Grantee for life, and another reuerſion in the Feoffee, and yet this is no Attornement in Law of the Grantee for life, becauſe he doth no act, nor aſſent to any which might amount to an Attornement in Law. Et res inter alios acta alteri nocere non debet. Neither hath the Grantee for life the land in poſſeſſion, ſo as he may well be miſconuſant of the feoffment made vpon the Land, and ſo out of the reaſon of Littleton, But yet the reuerſion in fee doth paſſe to the Feoffee.

Section 578.

THere it appeareth, that where the Ancestor taketh an Estate of Frœhold, and after a Remainder is limited to his right Heires, that the Fee simple vesteth in himselfe, as well as if it had bene limited to him and his heires, for his right heires are in this case words of limitation of estate, and not of purchase. Otherwise it is where the Auncestor taketh but an estate for yeares: As if a Lease for yeares be made to A. the remainder to B. in Taile, the remainder to the right heires of A. there the remainder vesteth not in A. but the right heires shall take by purchase if A. die during the estate Taile, for as the Auncestor and the Heyre are Correlatiua of Inheritances, so are the Testator and Executor, or the Intestate and Administratour of Chattels. And so it is if A. make a Feoffement in Fœ to the vse of B. for life, and after to the vse of C. for life or in Taile, and after to the vse of the right heirs of B. B. hath the Fee simple in him as well when it is by way of limitation of vse, as when it is by Act executed.

¶ Item si leas soit fait pur terme de vie, le remainder a vn auter en le Taile, le remaind̄ ouster a les droit heires le tenant a terme de vie. En ceſt case si le tenant a terme de vie granta son remainder en fee a auter per son Fait, cel remainder maintenant passa per le fait sans ascun Attournment, &c. Car si ascun doit attorne en ceſt case, ceo serroit le tenant a terme de vie, et en vain serroit que il atturneroit sur s̄ grant demesne, &c.

ALso if a Lease be made for life, the remainder to another in Taile, the remainder ouer to the right heirs of the Tenant for life: In this case if the Tenant for life grant his Remainder in fee to another by his Deede, this Remainder maintenant passeth by the Deede without any Attournement, &c. for that if any ought to attourne in this case, it should be the Tenaunt for life, and in vaine it were that he should attorne vpon his owne Grant, &c.

Vi Sect. 194. 273.

¶ *En vaine serroit, &c.* Quod vanum & inutile est Lex non requirit. Lex est ratio summa, quæ iubet quæ sunt vtilia & necessaria, & contraria prohibet; and arguments drawne from hence are forcible in Law.

Sect. 579.

¶ Item si soit Seignior et tenant, et le Tenant tient del Seignior per certaine rent, et ſ̄uice de chiualer, si le Sr̄ granta les seruices de son teñt p̄ fine, les seruices sont maintenant en le grantee per force del fine, mes vncore le Sr̄ ne poet pas distreyne p̄ ascun parcel de les seruices sans attournment: Mes si le tenant deuia (son heire deins age) le Sr̄ auera le gard del corps

ALso if there be Lord and Tenant, and the Tenant holdeth of the Lord by certaine Rent and Knights seruice, if the Lord grant the seruices of his Tenant by fine, the seruices are presently in the Grantee by force of the Fine: but yet the Lord may not distreine for any parcell of the seruices, without Attornement. But if the Tenant dieth, his heire within age, the Lord shall haue the Wardship

corps del heire, et de ses terres, &c. coment que il ne vnq̃ attur-nast, pur ceo que le Seigniorie fuit en le grantee maintenant p force d̃l fine. Et auxy en tiel cas, si le tenant morust sans heire, le Seignior auera les tenemẽts p voy descheat.

of the bodie of the heire, and of his lands, &c. albeit he neuer attorned, becauſe that the Seigniorie was in the Grauntee preſently by force of the Fine. And alſo in ſuch caſe if the Tenaunt die without Heire, the Lord ſhall haue the Tenancie by way of Eſcheat.

¶ HEere Littleton beginneth to ſhew what aduantages the Conuſee of a Fine may take before Attornement, and what not.

(h) First, he cannot diſtreyne becauſe an Auowrie is in lieu of an Action, and thereunto priuitie is requiſite. So likewiſe, and for the ſame cauſe hee can haue no Action of Waſt, nor Writ of Entrie, ad Communem legem, or in Conſimili caſu, or in caſu prouiſo, Writ of Cuſtomes and Seruices, nor Writ of Ward, &c.

But if a man make a Leaſe for yeares, and grant the reuerſion by fine, if the Leſſee bee ouſted, and the Conuſee diſſeiſed, the Conuſee without Attornement ſhall maintaine an Aſſiſe, for this Writ is maintained againſt a ſtranger, where there needeth no priuitie. And ſuch things as the Lord may ſeiſe or enter into without ſuing any Action, there the Conuſee before any Attornment may take benefit thereof, as to ſeiſe a Ward or Heriot, or to enter into the lands or tenements of a Ward, or eſcheated to him, or to enter for an alienation of Tenant for life or yeares, or of Tenant by Statute Merchant, Staple, or Elegit, to his diſheriſon.

(h) 8.*E.*3.44. 26.*E.*3.63. 10.*H.*6 16.34.*H.*6.7. 12.*E.*4.4. 40.*E.*3.7. 5.*H.*5.12 48.*E.*3.15.6. 3.*E.*2.*Droit* 33.

Sect. 580.581.582.

¶ EN meſme le manner eſt, ſi hõe granta le reuerſion de ſon tenaunt a terme de vie a vn auẽ per fine, le reuerſion paſſa maintenant al Grantee per force d̃l fine, mes le grantee iammes naũa Actiõ d̃ waſt ſans attornment, &c.

IN the ſame manner it is, if a man graunt the reuerſion of his Tenant for life, to another by fine, the reuerſion maintenant paſſeth to the Grantee by force of the fine, but the Grauntee ſhall neuer haue an Action of Waſt without Attornment, &c.

Sect. 581.

¶ MEs vncore ſi le Tenant a terme de vie alienaſt en fee, le grantee poet enter, &c. pur ceo que l'reuerſion fuit en luy per force del Fine, et tiel alienation fuit a ſon diſheritance.

BVt yet if the tenant for life alieneth in fee, the Grantee may enter, &c. becauſe the Reuerſion was in him by force of the fine, and ſuch Alienation was to his diſheritance.

¶ IT is ſayd in our bookes, That if Tenaunt for life haue a priuiledge not to be impeachable of Waſt, or any other priuiledge, if hee doth attorne without ſauing his priuiledge, that hee hath loſt it; which is ſo to bee vnderſtood, where he attornes in a Quid iuris clamat brought by the Conuſee of a fine, that if he claimeth not his Priuiledge, but attorne generally, his priuiledge is loſt, for that the Writ ſuppoſeth him to bee but a bare Tenant for life, and by his generall Attornement according to the Writ he is barred for euer to claime any priuiledge but a bare Eſtate for life. But if vpon a grant of the reuerſion by deed, the Tenaunt for life doth attorne, hee loſeth no priuiledge, for there can be no concluſion or barre by the Attornement in paiis: and ſo it is of an Attornement in Law. As if the Leſſor diſſeiſe the Leſſee for life, and make a Feoffement in Fee, and the Leſſee re-enter, this is an attornment in law, which ſhall not preiudice him

40.*E.*3.7.43.*E.*3.5. 48.*E.*3.32.45.*E.*3.6. 21.*E.*3.48. 24.*E.*3.32. 39.*H.*6.25.*F.N.B.*136.*b.*

Sect.

of any priuiledge: ſo it is if the Leſſor leaue a Fine of the reuerſion, and the Conuſee die without heire, whereby the Reuerſion eſcheateth, in this caſe the Law doth ſupply an Attornment, and therefore the Leſſee ſhall loſe no priuiledge. But in the Quid iuris clamat, if the Leſſee ſhew his eſtate and his priuiledge, and is readie, ſauing to him his priuiledge, &c. to attorne, hereby either his priuiledge ſhall bee alloWed and entred of record, or he ſhall not be compelled to attorne: (b) and if the plaintife bee within age, ſo as hee cannot acknoWledge the priuiledge, the tenant ſhal not bee compelled to attorne vntil his full age, When hee may acknoWledge it. But otherWiſe it is, (as ſome hold) if a Quid iuris clamat bee brought by Baron and Feme, the priuiledge ſhall be entred into the Rolle notWithſtanding ſhe is a Feme Couert. And in a Per quæ ſeruicia brought by the Conuſee of the Meſne, the Tenant may ſhew that he held by homage Aunceſtrell, and ſauing to him his warrantie and acquitall, he is readie to attorne. In the ſame manner, if the Tenaunt hath any other acquitall, and the Meſne leaue a Fine to one for life, the remainder to another in Fee, the Tenant for life bringeth a Per quæ ſeruicia, and the Tenant is readie to attorne ſauing his acquitall, and the Plaintif acknoWledgeth it, and thereupon the tenant attorne, tenant for life dieth; in this caſe albeit regularly the Attornement to the Tenant for life is an Attornement to him in the Remainder, yet in this caſe hee in the remainder ſhall not diſtreyn, till he hath acknoWledged the acquitall, Which muſt be in a Per quæ ſeruicia brought by him againſt the Tenant.

(b) 43.E.3.5.

25.E.3.11.a. *Vet.N.B.in Per quæ ſeruicia.* 5.E.3. *Meſne* 56. & *Per quæ ſeruicia* 16. 37.H.6.33.39.H.6. 25.18.E.4.7.

Vi. Sect. 557.

Sect. 582.

¶ MEs en cē cas lou le Sñr granta les ſeruices ō ſon Tenant per fine, ſi Tenant deuie (ſon heire eſteant de plein age) le Grantee per le fine nauera reliefe, ne vnques diſtreyneera pur reliefe, ſinon que il auoit lattornement del Tenaunt que morust, car ō tiel choſe que giſt en diſtreſſe, ſur que le Bē ō Repleuin eſt ſue, &c. home doit & couient dauower l' priſel boñ et droiturel, &c. et la couient eſtre attornment ōl Tenant, coment que le graunt de tiel choſe ſoit per fine, mes dauer le gard de les terres ou tenements iſſint ten? durant le nonage heire, ou de eux auer per voy deſcheat, la ne beſoigne aſcun diſtreſſe, &c. mes vn entrie en la terre per force de le droit del ſeigniory que l' grantee ad per force del Fine, &c. Sic vide diuerſitatem.

BVt in this caſe where the Lord granteth the ſeruices of his Tenant by fine, if the Tenant die (his heire being of ful age) the grantee by the fine ſhall not haue reliefe, nor ſhall euer diſtreine for reliefe, vnleſſe that hee hath the Attornement of the Tenaunt that dieth: for of ſuch a thing which lieth in Diſtreſſe, whereupon the Writ of Repleuin is ſued, &c. a man muſt and ought to auow the taking good & rightful, &c. and there there ought to be an attornment of the tenant, although the graunt of ſuch a thing be by fine. But to haue the wardſhip of the lāds or tēts ſo holdē during the nonage of the heire, or to haue them by way of eſcheat, there needs no diſtreſſe, &c. but an entrie into the land by force of the right of the Seigniorie, which the Grauntee hath by force of the fine, &c. *Sic vide diuerſitatē, &c.*

¶ *Alien enfee, &c.* Of this ſufficient hath been ſayd in the next precedent Section.

¶ *Nauera reliefe, &c.* Of this ſufficient hath been ſaid in the next precedent Section.

Sect.

Sect. 583.

CItem ſi ſoit Seignior, meſne & tenant, & le meſne graunta per fine les ſeruices de ſon tenãt a vn auter en fee, & puis le grantee morust ſans heire, ore les ſeruices del meſnaltie deuiendront & eſcheate al Seignior Paramont per voy deſcheat, & ſi apres les ſeruices del meſnaltie ſont aderere, en ceſt cas celuy que fuit Seignior Paramont poit diſtreiner le tenant nient obſtant que le tenant ne vnques atturnaſt, et le cauſe eſt, pur ceo que le meſnaltie fuit en fait en le grantee per force de le dit fine, & le Seignior Paramont puiſſoit auower ſur le grauntee, pur ceo que il fuit ſon tenant en fait, coment que il ne ſerroit a ceo compelle, &c. Mes ſi le grantor en ceſt caſe deuiaſt ſans heire en la vie le grantee, donque il ſerroit compelle dauower ſur le grantee, et auxy entant que le Seigniour Paramont ne claime le meſnaltie per force del graunt fait per fine leuie per le meſne, mes per vertue de ſon Seigniorie Paramont, ſ. per voy deſcheat, il auowa ſur le tenant pur les ſeruices que le meſne auoit, &c. coment que le tenant ne vnques atturna pas.

ALſo if there be Lord, Meſne and Tenant, and the Meſne grant by fine the ſeruices of his Tenant to another in fee, and after the grantee die without heire, now the ſeruices of the meſnaltie ſhall come and eſcheate to the Lord Paramont by way of eſcheate. And if afterwards the ſeruices of the Meſnaltie bee behind. In this caſe hee which was Lord Paramont may diſtreine the Tenant, notwithſtanding that the Tenant did neuer attorne, and the cauſe is, for that the Meſnaltie was in deed in the Grantee by force of the ſaid fine, and the Lord Paramont may auow vpon the Grantee becauſe in deed hee was his Tenant, albeit hee ſhall not be compelled to this, &c. But if the Grantor in this caſe had died without heire in the life of the Grantee, then he ſhould bee compelled to auow vpon the Grantee and alſo in as much the Lord Paramont doth not claime the Meſnaltie by force of the grant made by fine leuied by the Meſne but by vertue of his Seigniorie Paramount, *viz.* by way of eſcheat he ſhall auow vpon the Tenant for the ſeruices which the meſne had, &c. albeit that the Tenant did neuer attorne.

CHere Littleton putteth a Caſe where one that claymeth vnder a Conuſee by fine may diſtraine or maintaine any Action, albeit there was neuer any Attornement made to the Conuſee or to him that hath his eſtate. *45.E.3.2.34.H.6.5. 37.H.6.38. 39.H.6.32. 5.H.7.18. per Curiam.*

And here is a diuerſitie betweene an act in Law that giueth one Inheritance in lieu of another, and an Act in Law that conueyeth the eſtate of the Conuſee only. Of the former Littleton here putteth an example of the eſcheat of the Meſnaltie which drowneth the Seigniory Paramont, and therefore reaſon would that the Lord by this act in Law ſhould haue as much benefit of the Meſnaltie eſcheated, as he had of the Seigniory that is drowned, and the rather for that the Law caſteth it vpon him, and hee hath no remedie to compell the Tenant to *Lib.6.fol.68. Sir Moyle Finches caſe.*

attorne. Another reason hereof Littleton here yeelds, because the Lord commeth to the Mesnalty by a Seigniorie Paramount, and therefore there needeth no Attornment (c) As if Lesse for life be of a Mannor, and he surrender his estate to the Lessor there needeth no Attornement of the Tenants because the Lessor is in by a title Paramount. But if the Conusee dieth, and the Law casteth his Seigniory upon his heire by discent, he shall not be in any better estate, then his Ancestor was, because he claymeth as heire meerely by the Conusee.

(c) *Temps E.2. Attorn. 18. 39.H 6.38. per Prisot.*

Sir Moyle Finches case, vbi supra.

So it is (as hath beene said) if the Conusee of a fine before Attornement bargaineth and selleth the Seigniory by Deed indented and inrolled, the Bargaine shall not distraine because the Bargainor, from whom the Seigniory moueth, had neuer actuall possession.

So and for the same reason if a Reuersion be granted by fine, and the Conusee before Attornement disseise the Tenant for life and make a feoffment in fee, and the Lessee re-enter, the feoffee shall not distraine.

Sect. 584.

¶ Here Littleton expresseth two diuersities, first betweene an act in law, and the grant of the partie. This case is put of an (d) escheate, which is a meere act in Law, but so it is, when it is partly by Act in Law, and partly by the Act of the partie, as if the Conusee of a Statute Merchant extendeth a Seigniory or Rent, hee shall distreine without any Attornement. If a man make a Lease for life or yeares, and after leene a fine to A. to the vse of B. and his heires. B. shall distraine and haue an Action of waste albeit the Conusee neuer had any Attornement because the reuersion is vested in him by force of the Statute, and hath no remedie to compell the Lessee to attorne.

(d) *45.E.3.2.34.H.6.7. 5.H.7.18. per Curiam.*

13 H.4 auowrie 237.

Lib.6.fol.68. in Sir Moyle Finches case.

27.H.8.cap.10.

And so it is of a bargaine and sale by Deed indented and inrolled, but this is by force of a Statute since Littleton wrote.

¶ En meisme le maner est, lou le reuersion dun tenant a terme de vie soit grant per fine a vn auter en fee, & le grantee apres morust sans heire, ore le Seignior ad le reuersion p voy descheat. Et si apres le tenant fait waste, le Seignior auera briefe de waste enuers luy, nient contrestant que il ne vnques atturna, Causa qua supra. **Mes lou vn home claime per force del graunt fait per le fine, s. come heire, ou com assignee, &c. la il ne distreinera ne auowera, ne auera action de waste, &c. sans Attornement.**

IN the same manner it is where the reuersion of a Tenant for life is granted by fine to another in fee, and the grantee afterwards dieth without heire, now the Lord hath the reuersion by way of escheate, and if after the Tenant maketh waste, the Lord shall haue a Writ of Waste against him, notwithstanding that he neuer attorned, *Causa qua supra.* But where a man claimeth by force of the grant made by the fine .s. as heire or as assignee, &c. there hee shall not distraine nor auowe, nor haue an action of waste, &c. without Attornement.

Secondly, where he that commeth in by Act in Law is in the per, as the heire of the Conusee, who setteth in his Ancestors seat, Tanquam pars antecessoris de sanguine, and the Lord by escheate, which is an estranger, and commeth in meerely in the Post.

Section 585.

¶ Item en ancient Boroughs & Cities, lou terres & tenements

ALso in ancient Boroughes and Cities, where Lands and Te-

ments deins meſmes les boroughes et Cities ſont deuiſable per teſtament per cuſtome et vſe &c. ſi en tiel borough ou citie hõe ſoit ſeiſie de rent ſeruice, ou de rent charge, et deuiſa cel rent ou ſeruice a vn auter per ſon teſtament et mozuſt, en ceſt cas celuy a que tiel deuiſe eſt fait, poit diſtreiner le tenant pur le rent ou ſeruice aderere, coment que le tenant nattozna pas.

nements within the ſame Boroughes and Cities are deuiſable by teſtament by cuſtome and vſe, &c. if in ſuch Borough or Citie a man be ſeiſed of a rent ſeruice, or of a rent charge, and deuiſeth ſuch rent or ſeruice to another by his teſtament and dieth, In this caſe he to whom ſuch deuiſe is made may diſtreine the tenant for the rent or ſeruice arere, although the tenant did neuer attorne.

¶ Here doth Littleton put a caſe where a man may haue a Seignioꝛy, Rent, Reuerſion, oꝛ Remainder mærely by the act of the party and may diſtraine, and haue any action without any Attoꝛnement, and that is by deuiſe of lands deuiſable by cuſtome when Littleton wꝛote by the laſt will and Teſtament of the owner.

34.H.6.6. 5.H.7.18. 19.H.6.14. 21.H.6.38.c. F.N.B.121.a.

Sect. 586.

¶ Eſ meſme le maner eſt lou home leſſa tiels tenemẽts deuiſables a vn auter pur terme de vie, ou pur terme dans, et deuiſa le reuerſion per ſon teſtamẽt a vn auter en fee, ou en fee taile et mozuſt, et puis le tenant fait waſt, celuy a que le deuiſe fuit fait auera bꝛiefe de waſt, coment que le tenant ne vnque attozna. Et la cauſe eſt pur ceo, que la volunt le deuiſour fait per ſon teſtament ſerra perfoꝛme ſolonque lentent del deuiſour, et ſi leffect de ceo girroit ſur lattournement del tenant, donques per caſe le tenant ne voyle vnques atturner, et donques le volunt del deuiſoꝛ ne ſerroit vnque perfoꝛme, &c. et pur ceo le deuiſee diſtreinera, &c. ou auera action de waſt, &c. ſans attournment. Car ſi home deuiſa tiels tenements a vn auter per ſon teſtament, Habend' ſibi imperpetuum, & mozuſt, et le deuiſee enter, il ad fee ſimple,

IN the ſame manner is it, where a man letteth ſuch tenements deuiſable to another for life, or for yeares, and deuiſeth the reuerſion by his Teſtament to another in fee, or in fee taile, and dyeth, and after the Tenant commits waſte, he to whom the deuiſe was made ſhall haue a writ of waſte, although the Tenant doth neuer attorne. And the reaſon is for that the will of the Deuiſor made by his Teſtament ſhall bee performed according to the intent of the Deuiſor, and if the effect of this ſhould lye vpon the Attornement of the Tenant, then perchance the Tenant would neuer attorne, and then the will of the deuiſor ſhould neuer bee performed, &c. and for this the deuiſee ſhall diſtraine, &c. or he ſhall haue an action of waſte, &c. without attornement. For if a man deuiſeth ſuch tenements to another by his teſtament, *Habend' ſibi imperpetuum*, & dieth, and the deuiſee

ple, Cauſa qua ſupra, **vncore ſi fait de feoffment vſt eſte fait a luy per le deuiſor en ſa vie de meſmes les tenements,** Habend' ſibi imperpetuum, **et liuery de ſeiſin ſur ceo fuit fait, il naueroit eſtate forſque pur terme de ſa vie.**

uiſee enter, hee hath a fee ſimple, *Cauſa qua ſupra*, yet if a deed of feoffment had beene made to him by the deuiſor of the ſame tenements, *Habend' ſibi imperpetuum*, & liuery of ſeiſin were made vpon this hee ſhould haue an eſtate but for terme of his life.

¶ BOth this and the precedent caſe ſtand vpon one and the ſame reaſon which Littleton here prædeth, viz. becauſe that the will of the Deuiſor expreſſed by his Teſtament ſhall be performed according to the intent of the Deuiſor, and it ſhall not lye in the power of the Tenant or Leſſee to fruſtrate the will of the Deuiſor by denying his Attornement, Here Littleton mentioneth a maxime of the Common Law, viz. Quod vltima voluntas teſtatoris eſt perimplenda ſecundum veram intentionem ſuam, and reipublicæ intereſt ſuprema hominum teſtamenta rata haberi.

*Vid.Sect.*167. *Bracton.lib.*2.*fol.*11.*& fo.*60 *Fleta.lib.*2.*ca.*15. *Britton, fol.*78.*& fo.*212.*b.*

¶ *Teſtament.* Teſtamentum .i. teſtatio mentis, **which is made** nullo preſentis metu periculi ſed ſola cogitatione mortalitatis. Omne teſtamentũ morte conſummatũ.

¶ *Car ſi home deuiſa tiels tenements a vn auter, &c.* **Here** Littleton putteth a caſe where the entent of the Teſtator ſhall be taken, viz. where a man by deuiſe ſhall haue a fee ſimple without theſe words heires, and here Littleton putteth the diuerſity betweene a will and a feoffment.

*Fol.*2.*E.*3.*16.* 34.*H.*6.7. 15.*E.*4.7.12.19.*H.*8.4.

*Vid.Sect.*167. Now by the Statutes of 32. and 34.H.8.(as hath beene ſaid in the chapter of Mortgage) Lands, Tenements and Hereditaments are deuiſable, as by the ſaid Acts doe appeare.

Sect. 587.

¶ **Item ſi home ſeiſie dun mannor quel eſt parcel en demeſn̄ et parcel en ſeruice, et ent ſoit diſſeiſie, mes les tenants que teignont del mannor ne vnqs attournant a le Diſſeiſor, en ceſt cas coment que le Diſſeiſor morust ſeiſie et ſon heire ſoit eins per diſcent, &c. vncore poit le Diſſeiſee diſtreine pur le rent arere, et auer les ſeruices, &c. Mes ſi les tenants viendront al Diſſeiſor, et diont, nous deveignomus voſtre tenants, &c. ou auter attournement a luy feſoyent, &c. et puis le Diſſeiſor morust ſeiſie, donque le Diſſeiſee ne poit diſtreine pur le rent, &c. pur ceo que tout l'manor diſcendiſt al heire le Diſſeiſor, &c.**

ALſo if a man bee ſeiſed of a mannor which is parcell in demeſne and parcell in ſeruice, and is thereof diſſeiſed, but the tenants which hold of the mannor doe neuer attorne to the Diſſeiſor. In this caſe albeit the Diſſeiſor dieth ſeiſed, and his heire is in by diſcent, &c. yet may the Diſſeiſee diſtreine for the rent behinde, and haue the ſeruices, &c. but if the tenants come to the Diſſeiſor and ſay, We become your tenants, &c. or make to him ſome other attornement, &c. and after the Diſſeiſor dieth ſeiſed, then the Diſſeiſee cannot diſtraine for the rent, &c. for that all the Mannor diſcendeth to the heire of the Diſſeiſor, &c.

¶ LIttleton hauing ſpoken of eſtates gained by lawfull conueyances doth now ſpeake of eſtates gained by wrong. And here putteth a caſe of a diſſeiſin of a Mannor where it appeareth, that the Diſſeiſor cannot diſſeiſe the Lord of the rents or ſeruices without the

the Attornement of the Tenants to the Diſſeiſor, for ſeeing an Attornement is requiſite to a feoffment and other lawfull conueyances, A fortiori, a Diſſeiſor or other wrong doer ſhall not gaine them without Attornement. The like law is of an Abator and an Intrudor. But albeit the Diſſeiſor hath once gotten the Attornement of the Tenants and payment of their rents, yet may they refuſe afterwards, for auoyding of their double charge. And here the Attornement of the Tenant of a Mannor to a Diſſeiſor of the demeanes ſhall diſpoſſeſſe the Lord of the rents and ſeruices parcell of the Mannor, becauſe both demeanes, rents and ſeruices make but one entier Mannor, and the demeanes are the principall: but otherwiſe it is of rents and ſeruices in groſſe, as in this next Section our Author teacheth vs. *6.H.7.14. 11.H.7.28. 11.H.4.14.4.b.*

Sect. 588.589.

¶ Mes ſi vn tient de moy per rent ſeruice, le quel eſt vn ſeruice en groſſe, et nient p reaſon de mon mannor, et vn auter que nul droit ad, claima le rent, et reſceiue et prent meſme le rent de mon tenant per coherſon de diſtres, ou per auter forme, et diſſeiſiſt moy per tiel prender de rent, coment q̄ tiel diſſeiſor moruſt iſſint ſeiſie ē pernant ō rent, vncore apres ſa mort ieo puiſſoy bien diſtreiner le tenant pur le rent que fuit aderere deuant le deceaſe del diſſeiſor. et auxy apres ſon deceaſe. Et la cauſe eſt, pur ceo que tiel diſſeiſor neſt pas mon diſſeiſor forſque a ma election et ma volunt. Car coment que il prent l'rent de mon tenant &c. vncore ieo puiſſoy a touts foits diſtreiner mon tenant pur le rent arere, iſſint q̄ il eſt a moy forſque ſi come ieo voile ſufferer le tenant eſtre per tant de temps arere p̄ paier a moy m̄ le rent, &c.

BVt if one holdeth of mee by rent ſeruice, which is a ſeruice in groſſe, and not by reaſon of my Mannor, and another that hath no right, claimeth the rent, & receiues & taketh the ſame rent of my tenāt by coertion of diſtreſſe, or by other forme, and diſſeiſeth mee by ſuch taking of the rent. Albeit ſuch Diſſeiſor dieth ſo ſeiſed in taking of the rent, yet after his death I may well diſtreine the tenant for the rent which was behinde before the deceaſe of the Diſſeiſor, and alſo after his deceaſe. And the cauſe is, for that ſuch Diſſeiſor is not my diſſeiſor but at my election and will. For albeit he taketh the rent of my tenant, &c. yet I may at all times diſtreine my tenant for the rent behinde, ſo as it is to mee but as if I will ſuffer the tenant to bee ſo long time behinde in payment of the ſame rent vnto me, &c.

Sect. 589.

¶ Car le payment de mon tenant a vn auter, a que il ne doit pas payer, neſt pas diſſeiſin a moy, ne ouſta moy pas de mon rent ſans ma volunt et ma election, &c. Car coment que ieo puiſſoy auer Aſſiſe enuers tiel Pernor,

FOr the payment of my Tenaunt to another to whom hee ought not to pay, is no diſſeiſin to me, nor ſhall ouſt me of my Rent, without my will and election, &c. For although I may haue an Aſſiſe againſt ſuch Pernor, yet this is at my elec-

noꝛ, vncoꝛe ceo eſt a mon election, ſi ieo voile prender luy come mon diſſeiſoꝛ ou non. Iſſint tiels diſcents de rents en groſs, ne ouſterount pas le ſeignioꝛ d diſtreyner, mes a cheſcun temps ils poyent bien diſtreyner pur l' rent arere, &c. Et en ceſt caſe ſi apꝛs le diſtreſſe de luy que iſſint toꝛciouſment prift le rent, ieo graunt per mon fait le ſeruice a vn auť, et le tenant attourna, ceo eſt aſſets bone, et les ſeruices per tiel grant et attournement maintenant ſont en l' Grantee, &c. Mes auterment eſt, lou le rent eſt parcel del Manoꝛ, et le diſſeiſoꝛ moruſt ſeiſie del Manoꝛ entier, cõe come en le caſe pꝛocheine auaunt eſt dit, &c.

ction, whether I will take him as my Diſſeiſor, or no. So ſuch diſcents of Rents in groſſe ſhall not ouſt the Lord of his Diſtreſſe, but at any time he may well diſtreyne for the Rent behinde, &c. And in this caſe if after the diſtreſſe of him which ſo wrongfully tooke the Rent, I graunt by my Deede the Seruice to another, and the Tenaunt attourne, this is good enough, and the ſeruices by ſuch Grant and Attornement are preſently in the Grantee, &c. But otherwiſe it is where the Rent is parcell of a Mannor, and the Diſſeiſour dieth ſeiſed of the whole Mannor, as in the caſe next before is ſayd, &c.

¶ HEre Littleton putteth a diuerſitie betweene a Rent ſeruice parcell of a Mannor, whereof hee had ſpoken before, and a Rent ſeruice in Groſſe. For a man cannot be diſſeiſed of a Rent ſeruice in Groſſe, Rent charge, or Rent ſeeke by Attornement or payment of the Rent to a ſtranger, but at his Election; for the rule of Law is, Nemo reddituum alterius inuito Domino percipere aut poſſidere poteſt; and our Author hath before* taught vs, what be Diſſeiſins of Rents ſeruices, Rents Charges, and Rent ſeekes, and payment to a ſtranger is none of them, but at the Lords election, as our Author here ſaith.

*Vi. Sect. 237. 238. 239. 240.

24.E.3.4.1.E.5.5. See the Authorities there following in the next Treaſſe.

¶ *Pernor*, i. The taker of my rent. But if the diſſeiſee bring an Aſſiſe againſt ſuch a Pernor, then he doth admit himſelfe out of poſſeſſion.

5.E.4.1.23.H.3.tit.aſſ 439. 24.E.3.40 34.16.Aſſ.p.15. 16.E.3.Releaſe 56. 1 E.5.5. F.N.B.179.E. 15.E.4.8. Fleta.li.4.ca.12.

¶ *Diſcents*. A diſcent of a Rent in groſſe bindeth not the right owner but that he may diſtreyne, albeit he admitted himſelfe out of poſſeſſion, and determined his election, as by bringing of an Aſſiſe, &c.

If the Tenant of the land pay the Rent to a ſtranger which hath no right thereunto, and the right owner releaſe to him, this Releaſe is good, becauſe hee thereby admitted himſelfe to be out of poſſeſſion. But if the Tenant had giuen him any thing in name of Attornement, and the right owner had releaſed to him, this Releaſe had beene voyd, becauſe an Attornement only can be no diſſeiſin of the Rent.

¶ *Ieo grant per mon fait, &c.* This alſo prooueth, That the right owner is not out of poſſeſſion, and that this grant ouer is a demonſtration of his election that he is in poſſeſſion.

Section 590.

¶ ITem ſi ieo ſue ſeiſie dun manoꝛ parcel en demeſn, et parcel en ſeruice, et ieo done certaine acres del terre, parcel de demeſne de meſme le manoꝛ a vn auter

ALſo if I be ſeiſed of a Mannor, parcell in Demeſne, and parcell in Seruice, and I giue certaine acres of the land, parcell of the Demeſne of the ſame Mannour, to

auter en le taile, rendant a moy et a mes heires vn certaine rent, &c. Si en ceſt caſe ieo ſue diſſeiſie de la Manoz, et touts les tenants atturnont et payont lour rents al diſſeiſoz, et auxy le dit tenant en le taile paya le rent per moy reſerue al Diſſeiſoz, et puz le Diſſeiſoz mozuſt ſeiſie, &c. et ſon heire entra, et eſt eins p diſcent, vncoze en ceſt caſe ieo puiſſe bien diſtreigner le Tenant en le taile, et ſes heires, pur le rent p moy reſerue ſur le done, ſ̃, auxy bien pur le rent eſteant aderere deuant le diſcent al heire le Diſſeiſoz, et auxy pur le rẽt que happa deſtre aderere apzes meſme le diſcent, nient obſtant tiel mozãt ſeiſi ỏl diſſeiſoz, &c. Et la cauſe ẽ, pur ceo que quant home dona tenements en le taile, ſauant le reuerſion a luy, et il ſur le dit done reſerua a luy vn Rent ou auters ſeruices, tout le rent et les ſeruices ſont incidents a la reuerſion, et quant vn home ad vn reuerſion, il ne puiſſoit eſtre ouſte ỏ ſon reuerſion per le fait dun eſtrange home, ſinon que l tenant ſoit ouſte de ſon eſtate et poſſeſſion, &c. car cy longement que le Tenant en le Taile ꝛ ſes heirs continuont lour poſſeſſion p foz̃ de mon done, cy longement eſt le reuerſion en moy et en mes hr̃s, et entant que l rent et les ſuices reſerues ſur tiel done ſont incidents et dependants al reuerſiõ, quecunque que ad le reuerſion, auera meſme le Rent et Seruices, &c.

another in Taile, yeelding to mee and to my Heires a certaine Rent, &c. if in this caſe I be diſſeiſed of the Mannour, and all the Tenaunts attorne and pay their rents to the Diſſeiſor, and alſo the ſayd Tenant in Taile pay the Rent by me reſerued, to the Diſſeiſor, and after the Diſſeiſor dieth ſeiſed, &c. and his heire enter and is in by Diſcent, yet in this caſe I may wel diſtreyne the Tenant in Taile and his heires, for the rent by me reſerued vpon the Gift, *ſcz.* as well for the Rent being behind before the diſcent to the heire of the Diſſeiſor, as alſo for the rent which happeth to be behind after the ſame diſcent, notwithſtanding ſuch dying ſeiſed of the Diſſeiſor, &c. And the reaſon is, for that when a man giueth lands in Taile, ſauing the reuerſion to himſelfe, and hee vpon the ſayd gift reſerueth to himſelfe a Rent or other Seruices, all the rent and Seruices are incident to the Reuerſion, and when a man hath a Reuerſion, he cannot be ouſted of his Reuerſion by the Act of a Stranger, vnleſſe that the Tenaunt be ouſted of his eſtate and poſſeſſion, &c. For as long as the Tenant in Taile and his Heires continue their poſſeſſion by force of my gift, ſo long is the reuerſion in me and in my Heires: and in as much as the rent and ſeruices reſerued vpon ſuch gift, be incident and depending vpon the reuerſion, whoſoeuer hath the Reuerſion, ſhall haue the ſame Rent and Seruices, &c.

Sect.

Sect. 591.

¶ En meſme le maner eſt, lou ieo leſſa parcel del demeſn̄ del manoꝛ a vn auter pur terme de vie, ou p̄ terme dans, rendant a moy certaine rent, &c. coment q̄ ieo ſoy diſſeiſie del manoꝛ, &c. et le diſſeiſoꝛ moꝛuſt ſeiſie, &c. et ſon heiꝛ eſteant eins per diſcent, vncoꝛe ieo diſtreiner pur le rent arere vt ſupra, nient obſtant tiel diſcent. ¶ Car quant home ad fait tiel done en taile, ou tiel leas pur terme de vie, ou pur terme dans del parcel de le demeſne de vn manoꝛ, &c. ſauant le reuerſion a tiel donour ou leſſour, &c. et puis il ſoit diſſeiſie de le manoꝛ, &c. tiel reuerſion apꝛes tiel diſſeiſin eſt ſeuer del manoꝛ en fait, coment que ne ſoit ſeuer en dꝛoit. Et iſſint poyes veier (mon fits) diuerſitie, lou il y ad vn Manoꝛ parcel en demeſne & parcel en ſeruices, les queux ſeruices ſont parcel de meſme le Manoꝛ nient incidents a alcun reuerſion, &c. & lou ils ſont incidents al reuerſion, &c.

IN the ſame manner is it, where I let parcell of the demeſnes of the Mannor to another for terme of life or for terme of yeares, rendering to mee a certaine rent, &c. albeit I be diſſeiſed of the mannor, &c. and the diſſeiſor die ſeiſed, &c. and his heire bee in by diſcent, yet I may diſtreine for the rent arere *vt ſupra*, notwithſtanding ſuch diſcent, for when a man hath made ſuch a gift in taile, or ſuch a leaſe for life or for yeares of parcell of the demeſnes of a mannor, &c. ſauing the reuerſion to ſuch donor or leſſor, &c. And after he is diſſeiſed of the mannor, &c. ſuch reuerſion after ſuch diſſeiſin is ſeuered from the mannor in deed, though it be not ſeuered in right. And ſo thou mayeſt ſee (my ſonne) a diuerſitie, where there is a Mannor parcell in Demeſne and parcell in Seruices, which Seruices are parcell of the ſame Mannor not incident to any Reuerſion, &c. And where they are incident to the Reuerſion, &c.

¶ HEre Littleton putteth a diuerſitie betweene Rents and Seruices parcell of a Mannoꝛ (whereof hee had ſpoken beforꝛe) and Rents and Seruices incident to a Reuerſion parcell of a Mannoꝛ.

And the reaſon of this diuerſitie is foꝛ that as long as the Donee in taile, Leſſee foꝛ life, oꝛ Leſſee foꝛ yeares are in poſſeſſion, they pꝛeſerue the Reuerſion in the Donoꝛ oꝛ Leſſoꝛ, and ſo long as the Reuerſion continue in the Donoꝛ oꝛ Leſſoꝛ, ſo long doe the Rents and Seruices which are incident to the Reuerſion belong to the Donoꝛ oꝛ Leſſoꝛ. Neither can the Donoꝛ oꝛ Leſſoꝛ be put out of his Reuerſion vnleſſe the Donee oꝛ Leſſee bee put out of their poſſeſſion, and if the Donee oꝛ Leſſee be put out of their poſſeſſion, then conſequently is the Donoꝛ oꝛ Leſſoꝛ put out of their Reuerſion. But if the Donee oꝛ Leſſee, make a regreſſe and regaine their eſtate and poſſeſſion, thereby doe they ipſo facto, reneſt the Reuerſion in the Donoꝛ oꝛ Leſſoꝛ.

(a) 18. Aſſ. p. 2. 38. H. 6. 33. Fl. Com. Fulmerſtons caſe 103 Lib. 5. fol. 11. 12 25. 19. E. 2. Briefe 845. 4. E. 3. Briefe 713.

And here is to be obſerued that when a man is ſeiſed of a Mannoꝛ, and maketh a gift in tayle, oꝛ leaſe foꝛ life, &c. of parcell of the Demeſne of the Mannoꝛ (a) the Reuerſion is part of the Mannoꝛ and by the grant of the Mannoꝛ the Reuerſion ſhall paſſe with the Attoꝛnement of the Donee oꝛ Leſſee. But if the Loꝛd make a gift in taile, oꝛ a leaſe foꝛ life of the whole Mannoꝛ, excepting blacke Acre parcell of the Demeſnes of the Mannoꝛ, and after hee graunteth away his Mannoꝛ, blacke Acre ſhall not paſſe, becauſe during the eſtate taile oꝛ leaſe foꝛ life

like it is severed from the Mannor. And so note a diversitie, that a Reversion of part may be parcell of a Mannor in possession, but a part in possession cannot be parcell of the Reversion of a Mannor expectant upon any estate of Freehold. But if a man make a lease for yeares of a Mannor excepting blacke Acre, and after granteth away the Mannor, blacke Acre shall passe, because the Freehold being entire it remaynеth parcell of the Mannor, and one Præcipe of the whole Mannor shall serve. But otherwise it is in case of the gift in taile or lease for life excepting any part, there must be severall Writs of Præcipe, because the Freehold is severall.

Chap. 11. Of Discontinuance. *Sect.*592.

¶ Discontinuance est vn ancient parol en la ley, & ad diuers significatiõs, &c. Mes quant a vn entent, il ad tiel signification, s. lou vn home ad alien a vn auter certaine terres ou tenements & morust, et vn auter ad droit de auer meſmes les terres ou tenements, mes il ne poit entrer en eux per cause de tiel alienation, &c.

Discontinuance is an anciẽt word in the Law, & hath diuers significations, &c. But as to one intent it hath this signification, *viz.* where a man hath aliened to another certaine lands or Tenements and dieth, and another hath right to haue the same Lands or Tenements, but hee may not enter into them because of such an alienation, &c.

¶ *Discontinuance*, is a word compoũded of de and continuo, for continuare is to continue without intermission. Now by addition of de (Euphoniæ gratia dis to it) which is priuatiue, it signifieth an intermission. Discontinuare nihil aliud significat quam intermittere, desuescere, interrumpere. And as our Author saith, (a) it is a very ancient word in Law. *Vide Sect.*637. (a) 8.H.4.8.b.11.H.4.85.b.

A discontinuance of estates in Lands or Tenements is properly (in legall vnderstanding) an alienation made or suffered by Tenant in tayle, or by any that is seised in auter droit, whereby the issue in tayle, or the heire or successor or those in Reversion or Remaynder are driuen to their Action, and cannot enter.

All which is implyed by the discription of our Author, and by the (&c.) in the end of this Section.

I haue added (properly) by good warrant of our Author himselfe, for Sectione 470 he vseth Discontinuance for a deuesting or displacing of a Reuersion, though the entrie bee not taken away.

This Discontinuance consisteth in doing or suffering an Act to bee done, as hereafter shall appeare. And where our Author saith, that it hath diuers significations, there is also a Discontinuance of Processe consisting in not doing, where the Processe is not continued, concerning which there is an excellent Statute made in furtherance of Justice in (b) 1.E.6. and is well expounded in my Reports, and therefore need not here to be inserted.

(b) *Vide, the Statutes of* 1.E.6.ca.7.& 31.Eliz.ca.1 *Lib.*7.*fol.*30.31.*&c. le case de discontinuance de proces.*

There is another erroneous proceeding and that consisteth in misdoing, as when one Processe is awarded in stead of another, or when a day is giuen which is not legall, this is called a miscontinuance & if the Tenant or Defendant make default it is error, but if he appeare, then the miscontinuance is saued, otherwise it is of a Discontinuance. But let vs returne to the Discontinuance of Estates in Lands whereof Littleton doth entreate in this Chapter.

39.E.3.7.4.46.E.3.30. 37.H.6.25.26. 9.E.4.18.12.E.4.

¶ *Significations.* Here (as in many other places) it appeareth how necessary it is to know the signification of words. *Vide Sect.*74.174.194. 441.520.

And in this Chapter it appeareth, that when Littleton wrote, the Estate in Lands and tenements might haue beene discontinued fiue manner of wayes, viz. by Feoffment, by Fine, by Release with Warrantie, Confirmation with Warrantie, and by suffering of a Recouc-

rie in a Precipe quod reddat. And this was to the prꝛiudice of fiue kinds of perſons, viz. of Wiues, of Heires, of Succeſſors, of thoſe in Reuerſion, and of thoſe in Remaynder. But foꝛ Wiues, and their Heires, and foꝛ Succeſſoꝛs the Law is altered by Acts of Parliament ſince Littleton wꝛote, as in this Chapter in their pꝛoper places ſhall appeare.

Section 593.

HEre Littleton putteth an example of a diſcõtinuance made by one ſeiſed in auter droit, as by an Abbot who had a fee ſimple in the right of his Monaſtery, and therefoꝛe his Alienation without the aſſent of his Conent had bene a Diſcontinuance at the Common Law, and had dꝛiuen his Succeſſoꝛ to a wꝛit De Ingreſſu ſine aſſenſu capituli.

Regiſt. Orig. fol. 230. *F. N. B.* 195. *Bracton lib.* 4. *fol.* 323. *Fleta lib.* 5. *cap.* 34.

¶ De Ingreſſu ſine aſſenſu capituli, &c. It is called ſo becauſe the Alienation was ſine aſſenſu capituli, foꝛ if it had bene cum aſſenſu capituli, it ſhould haue beene a barre to the ſucceſſoꝛ. And becauſe the ſucceſſoꝛ could not enter, the Common Law gaue him this wꝛit, and is ſo called of theſe wꝛoꝛds contained in the wꝛit, which wꝛit you may reade in the Regiſter & Fitzherberts N.B.

¶ **Si come vn Abbe ſeiſie de certaine terres ou tenements en fee, & alienaſt meſmes les terres ou tenements a vn auter en fee, ou en fee taile, ou pur terme de vie, & puis labbe moꝛuſt, ſon ſucceſſoꝛ ne poit enter en les dits terres ou tenemẽts, coment que il ad dꝛoit eux auer come en dꝛoit de ſon meaſon, mes il eſt mis a ſon action de recouerer meſmes l's terres ou tenemẽts, quel eſt appelle** Breue de ingreſſu ſine aſſenſu capituli, &c.

AS if an Abbot be ſeiſed of certaine Lands or Tenements in fee, and alieneth the ſame Lands or Tenements to another in fee or in fee taile or for terme of life, and after the Abbot dieth, his Succeſſor cannot enter into the ſaid Lands or Tenements, albeit hee hath right to haue them as in right of his houſe, but he is put to his action to recouer the ſame Lands or Tenements, which is called a Writ, *Breue de ingreſſu ſine aſſenſu capituli, &c.*

21. E. 4. 36.

And here is to bee noted, that in Law the Conent, albeit they be regular and dead perſons in Law, yet are they ſaid in Law to be Capitulum to the Abbot, aſwell as the Deane and Chapiter, that be Secular to the Biſhop. But it is to bee obſerued and implyed in this (&c.) that a ſole bodie politique that hath the abſolute right in them, as an Abbot, Biſhop and the like may make a Diſcontinuance, but a Coꝛpoꝛation aggregate of many as Deane and Chapiter, Warden and Chaplaines, Maſter and Fellowes, Maioꝛ and Comminalte, &c. cannot make any Diſcontinuance, foꝛ if they ſoyne, the Gꝛant is good, and if the Deane, Warden, Maſter, oꝛ Maioꝛ make it alone where the bodie is aggregate of many it is void, and woꝛketh a diſſeiſin. But now (as hath beene ſaid) by the Statute of 27. H. 8. and 31. H. 8. all the Abbots, Pꝛioꝛs, and other Religious perſons are ſo diſſolued as there be none remayning this day, and by the Statutes of 1. Eliz. and 13. Eliz cap. 10. and 1. Iac. cap. 3. Biſhops and all other Eccleſiaſticall perſons are diſabled to alien oꝛ diſcontinue any of their Eccleſiaſticall Liuings, as by the ſame Acts doth appeare.

See more of this matter hereafter in the Chapter Sect. 648. *and before Sect.* 528.

Sect. 594.

¶ EN *droit ſa feme, &c.* That is to ſay, in fee ſimple, fee taile,

¶ **Item ſi home ſeiſie de terre come en dꝛoit de**

ALſo if a man bee ſeiſed of Land as in right of his

de ſa feme, &c. enter & feoffa vn auter, &c. & mozuſt, la feme ne puit enter mes eſt mis a ſon action, le quel eſt appel Cui in vita, &c.

wife, &c. and thereof infeoffe another, &c. and dieth, the Wife may not enter, but is put to her Action, the which is called, *Cui in vita, &c.*

oz foz life. Here Littleton putteth another caſe where a man is ſeiſed in auter droit, and may make a Diſcontinuance, as the huſband ſeiſed in the right of his wife, and therefoze the Common Law gaue her a Cui in vita, and her heire a Sur cui in vita becauſe they could not enter. But this is altered ſince our Authoz wzote by the Statute of 32.H.8. by the purview of which Statute, the wife and her heires after the deceaſe of her huſband may enter into the Lands oz Tenements of the wife notwithſtanding the alienation of her huſband.

Bracton lib.4 fol.202. & 22. & 324. Fleta lib.5.cap.34. & 36. F.N.B.193. Regiſt. 32.H.8.cap.28.

And here is one of the alienations to make a Diſcontinuance, viz. a feoffment, and where our Authoz ſpeaketh of a huſband ſeiſed in the right of his wife, ſo it is, where the huſband and wife are ioyntly ſeiſed to them & their heires of an eſtate made during the Conerture, & the huſband make a feoffment in fee, & dieth, the wife now may enter within that ſtatute, although it was the Inheritance of them both. And ſo it is if the feoffment bee made by the huſband and wife, (albeit the wozds of the Statute be by the huſband only) foz in ſubſtance this is the act of the huſband only.

Dier 4. & 5.Ph.& Mar. 146.3.Eliz.Dier 191.Lib.8. fol.71.72.Greneleys caſe.

If the huſband cauſe a Precipe quod reddat vpon a faint title to bee bzought againſt him and his wife, and ſuffereth a recouerie without any Voucher, and Execution to bee had againſt him and his wife, yet this is holpen by the Statute, foz this by like conſtruction is the act of the huſband, and the wozds of the Statute be, made, ſuffered, oz done.

If the huſband make a feoffment in fee of the Lands, which hee holdeth in the right of his wife, and after they are diuozced Cauſa præcontractus, yet the woman may enter within the purview of that Statute, and is not driuen to her wzit of Cui ante diuortium, as ſhe was at the Common Law, albeit the entrie be by the Statute giuen to the wife and now vpon the matter ſhe was neuer his lawfull wife. But it ſufficeth that ſhe was his wife De facto at the time of the alienation, and where her huſband dieth ſhee cannot bee his wife at the time of the entrie.

Greneleys caſe, vbi ſupra.

If the huſband leuie a fine with Pzoclamations, and dieth, the wife muſt enter oz auoid the Eſtate of the Conuſee within fiue yeares, oz elſe ſhee is barred foz euer by the Statute of 4.H.7. foz the Statute of 32.H.8. doth helpe the Diſcontinuance but not the barre, and the Statute ſpeaketh of a fine, and not of a fine with Pzoclamations.

8.E.6.Dier.72.b.

4.H.7.c.24.

If lands be giuen to the huſband and wife, and to the heires of their two bodies, and the huſband maketh a feoffment in fee and dieth, the wife is holpen by the ſaid Statute as hath beene ſaid, and ſo is the iſſue of both their bodies. Fem tenant in taile taketh huſband, the huſband maketh a feoffment in fee, the wife before entrie dieth without iſſue, hee in the Reuerſion oz Remaynder may enter. Foz firſt the Reuerſion oz Remaynder cannot bee diſcontinued in this caſe becauſe the eſtate tayle is not diſcontinued. Secondly, the wozds of the Statute be Shall not be preiudiciall or hurtfull to the wife or her heires, or ſuch as ſhall haue right title or intereſt by the death of ſuch wife, but that the ſame wife and her heires, and ſuch other to whom ſuch right ſhall appertaine after her deceaſe, ſhall or lawfully may enter into all ſuch Mannors, Lands, &c. according to their rights and titles therein, by which wozds the entrie of him in the Reuerſion oz Remaynder in that caſe is preſerued. The huſband is Tenant in taile, the remaynder to the wife in taile, the huſband make a feoffment in fee, by this the huſband by the Common Law did not only diſcontinue his owne eſtate taile but his wines remaynder but at this day after the death of the huſband without iſſue, the wife may enter by the ſaid Act of 32.H.8. If the huſband hath iſſue and maketh a feoffement in fee of his wines Land, and the wife dieth, the heire of the wife ſhall not enter during the huſbands life, neither by the Common Law nor by the Statute.

Greneleys caſe vbi ſupra. Paſch.7.Iac.

8.E.2 tit. Cui in vita.26. 34.E.1.ibidem 30.10.E.3. 12. Dier 21.Eliz.363.

¶ Cui in vita, &c. **Here is alſo implyed a** Sur cui in vita, **alſo foz** the heire this wzit here mentioned in our Authoz is ſo called of thoſe wozds contained in the wzit which you may reade in the Regiſter and Fitzherberts, N.B..

Sect. 595.

¶ E *Nfeoffa vn auter,&c.* Here is implyed, or make a gift in taile or an eſtate for life. Here Littleton putteth a third example of a Diſcontinuance made by Tenant in taile ſo as his iſſue is put to his Formedon in the Diſcender, which is giuen to the iſſue in taile by the Statute of 13. E.1.cap.1. becauſe he cannot enter.

Fleta,lib.5.ca.34. F.N.B.211.212.Regiſtr.

¶ *Tenant en taile.* This extendeth aſwell to a woman Tenant in taile as to a man, and was generally good Law when Littleton wrote, but now by the Statute of (d) 11.H.7. if the woman hath any eſtate in taile ioyntly with her huſband, or only to her ſelfe or to her vſe in any Lands or Hereditaments of the inheritance or purchaſe of her huſband, or giuen to the huſband and wife in taile by any of the Anceſtors of the huſband, or by any other perſon ſeiſed to the vſe of the huſband or his Anceſtors, and ſhall hereafter being ſole or with any other after taken huſband diſcontinue,&c. the ſame: euery ſuch Diſcontinuance ſhall be voyde, and that it ſhall be lawfull for euery perſon to whom the intereſt, title, or inheritance, after the deceaſe of the ſaid woman ſhould appertaine, to enter,&c. So as if ſuch a feme Tenant in taile doe make any Diſcontinuance in fee, in taile, or for life, although it be without warranty, yet this doth not take away the entrie after her death either of the iſſue or of him in reuerſion or remainder. This Statute hath beene excellently expounded by diuers reſolutions and iudgements (e) which I haue quoted in the margent, and are worthy of due obſeruation.

(d) 11.H.7.ca.20. *Vid.Sect.*697.

(e) *Lib.*3.*fo.*50.51. *Sir George Browne's caſe.eodem lib. fo* 60.&c. *Linc. Coll. caſe. lib.*1.*fo.*176. *Mildemayes caſo. Dier* 3.& 4.*Ph.& Mar.* 146 *idem* 8.*Eliz.*248. 17.*Eliz.*340. *idem* 19.*Eliz.* 354.*Idem.*20. *Eliz.*362. 27.*H.*8.23. *Lib.*5.*fo.*79. *Fitch caſe. Lib.*8.*fo.*71.72. *Groneleys caſe.*

If lands were entayled to a man and to his wife, and to the heires of their two bodyes, and the huſband had made a Feoffment in fee and died, and then the wife died, this had beene a diſcontinuance at the Common Law: for the title of the iſſue is as heire of both their bodyes, and not as heire to any one of them, and his entrie muſt enſue his title or action.

¶ *De formedon.* De forma donationis, **ſo called becauſe the Writ** doth comprehend the forme of the gift. And there be three kinde of Writs of Formedon, viz. The firſt in the Diſcender to be brought by the iſſue in taile, which claime by diſcent Per formam doni. The ſecond is in the Reuerter, which lyeth for him in the reuerſion or his heires or Aſſignes after the ſtate taile be ſpent, The third is the Remainder, which the Law giueth to him in the remainder, his Heires or Aſſignes after the determination of the eſtate taile, of all which you may reade in the Regiſter and F.N.B.

Here Littleton ſheweth that the iſſue in taile ſhall haue a Formedon in the Diſcender. What other actions Tenant in taile may haue, and not haue, is good to be ſeene.

(a) 4.*E.*3.38. 43.*E.*3 25. 4.*E.*4.25. *F.N.B.*124.
(b) 2.*E.*2.*Droit.*28.
(c) *F.N.B.*123.
(d) 21.*E.*3.12. 5.*E.*3.23. 11.*H.*4.49.
(e) 2.*E.*3.*Droit.*28. 13.*H.*7 24. 5.*E.*4.2. 20.*E.*3.*Auowry* 131. *F.N.B.*10. 46.*E.*3.*tit. Ceo in vita,*33.

(a) Tenant in taile ſhall haue a Quod permittat.

(b) Tenant in taile ſhall haue a Writ of Cuſtomes and Seruices In le debet, & ſolet, but ſhall not haue it in the Debet only.

(c) In like manner he ſhall haue a Secta ad molendinum in le debet & ſolet, but not in the Debet tantum.

(d) Tenant in taile ſhall haue a Writ of Entre in conſimili caſu and an Admeaſurement, and a Natiuo habendo, Ceſſauit, Eſcheat, Waſte, and the like.

(e) But Tenant in taile ſhall not haue a Writ of Right Sur diſclaymer, nor a Quo jure, nor a Ne iniuſte vexes, nor a Nuper obijt, or Rationabile parte, nor a Mordanceſter, nor a Sur cui in vita, for theſe and the like none but Tenant in fee ſhall haue: and the higheſt Writ that a Tenant in taile can haue is a Formedon.

¶ **Item ſi ten en taile de certaine terre ent enfeoffa vn auter,&c. et ad iſſue et mozuſt, ſon iſſue ne poit pas enter en la ter̄ coment que il ad title et dzoit a ceo, mes eſt mis a ſon action que eſt appel** Formedon **en le diſcender,&c.**

Alſo if tenant in taile of certaine land, thereof enfeoffe another,&c. and hath iſſue and dieth, his iſſue may not enter into the land albeit he hath title and right to this, but is put to his action which is called a *Formedon in le diſcender,&c.*

Section 596.597.

¶ Item ſi ſoit ten en le taile, le reuerſion eſteant al donor et a ſes heires, ſi le tenant fait feoffment, &c. et morust ſans iſſue, celuy en le reuerſion ne poit enter, mes eſt mis a ſon action de Formedon en le reuerter.

ALſo if there bee tenant in taile the reuerſion being to the Donor and his heires, if the Tenant make a feoffment, &c. and die without iſſue, hee in the reuerſion cannot enter, but is put to his action of *Formedõ in le reuerter.*

Sect.597.

¶ En meſme l' maner eſt, lou tenãt en le taile ſeiſie de certaine terre dont le remainder eſt a vn auter en le taile, ou a vn auter en fee. Si le tenant en le taile alienaſt en fee, ou en fee taile, et puis deuiaſt ſans iſſue, ceux en le remainder ne poiẽt enter, mes ſont mis a lour briefe de Formedon en le remainder, &c. et pur ceo que per force de tiels feoffments et alyenations en les caſes auantdits, et en ſemblables caſes, ceux queux ont title et droit apres la mort de tiel feoffour ou alienour, ne poient pas enter, mes ſont miſes a lour actions Vt ſupra, et p̃ ceo cauſe tiels feoffments et alienations ſont appels diſcontinuances.

IN the ſame manner is it where tenant in taile is ſeiſed of certaine land whereof the remainder is to another in taile, or to another in fee. If the tenant in taile alien in fee, or in fee taile, and after die without iſſue they in the remainder may not enter, but are put to their writ of *Formedon* in the remainder, &c. and for that that by force of ſuch feoffments and alienations in the caſes aforeſaid, and the like caſes, they that haue title and right after the death of ſuch a feoffor or alienor may not enter, but are put to their actions, *Vt ſupra*, and for this cauſe ſuch feoffments and alienations are called diſcontinuances.

¶ *Ait feoffment &c.* Here is implyed Fee ſimple, Fee taile, or eſtate for life, and in this and the next Section Littleton putteth two caſes, where if the iſſues in taile faile, they in the reuerſion and remainder are driuen to their Formedon in reuerſion or remainder, and this remaineth as it was when Littleton wrote not altered by any Statute. And the reaſon whereof theſe Alienations in the ſeuerall caſes in this and the next Section doe make a Diſcontinuance, and put him in the reuerſion or remainder that right had to his Action, and toke away his entrie, was for that hee was priuie in eſtate, and for the benefit of the Purchaſor, and for the ſafegard of his Warrantie, ſo as euery mans right might bee preſerued, viz. to the Demandant for his ancient right, and to the Feoffee for the benefit of his Warrantie, which was founded vpon great reaſon and equity, which benefit of the Warranty ſhould bee preuented and anoyded if the entrie of him that right had were lawfull, and therby alſo the danger that many times happeneth by taking of poſſeſſions was warily preuented by Law. But then it may bee demanded, ſeeing that there was no reuerſion or remainder expectant vpon any eſtate taile at the Common Law, nor the iſſue in taile had any remedy by the Common Law, if the Tenant in taile had alienes, then by what Law is the alienation of Tenant in taile a Diſcontinuance at this day to the iſſue in taile?

Vid. Sect.592.597.601. 637.638.

30.E.1.Formedon 65. 19.E.2.Formedon,61. 18.E.3.46. 12.E.4.3.

taile or to him in reuerſion or remainder. Whereunto it is thus anſwered, That it is prouided by the Statute of W.2.ca.1. De donis conditionalibus, quod non habeant illi quibus tenementum ſic fuerit datum poteſtatem alienandi, &c. Vpon theſe words the Sages of the Law haue conſtrued the ſaid Act according to the rule and reaſon of the Common Law, and that in diuers and ſundrie variable manners. For ſome Alienations of Tenant in taile, they haue adiudged voydably by the Iſſue in taile by action only: ſome at the election of the Iſſue in taile to auoyde it by Action, Entrie, or Clayme, ſome are meerely voyde by the death of the Tenant in Taile: which ſeuerall Conſtructions were made vpon the ſelfe ſame words aforeſayd.

18.E.3.12.19.E.3.*Bre.*468
24.E.3.28.36.*Aſſ.*8.
22.R.2.*Diſcon.* 5.E.4.3.
4.H.7.17.33.E.3.*Formdn.*
& 13.H.7. *Pl. Com. Smith*
& *Stapletons caſe.*

As for example, If Tenant in Taile make a Feoffement in fee, this driues the Iſſue in Taile to his Action, which is called in Law a Diſcontinuance, and this Conſtruction was made, for that at the Common Law the Feoffement of an Abbot or Biſhop, or of the husband ſeiſed in the right of his wife, did worke a Diſcontinuance, and did driue the Succeſſor and the wife to their Action, and forecloſed them of their entrie: and as the entrie of the iſſue was taken away, ſo conſequently of them in reuerſion and remainder. Alſo if an Abbot, Biſhop, or husband in the right of his wife, ſeiſed of a Rent, or of any other Inheritance that lieth in Graunt had alened, it was in the election of the Succeſſour or wife after the death of her husband to claime the rent, &c. or to bring an Action, for that alienation did not worke a Diſcontinuance, and ſo it is by conſtruction in caſe of Tenaunt in Taple. Laſtly, If the Abbot, Biſhop, or Husband, had granted a Rent newly created out of the land &c. to another in fee, this had vtterly ceaſed by their death; and ſo it is alſo by conſtruction in caſe of Tenant in Taile. So as theſe words, (Non habent poteſtatem alienandi) doe worke theſe effects, viz. as to Lands, That a Feoffement barreth not the Iſſue, &c. of his Action, but worketh a Diſcontinuance to barre him of his Entrie: as to Rents or any thing in eſſe, that lie in grant, that the ſayd words doe take away his power to make any Diſcontinuance: as to Rents, &c. newly created, that they take away his power to make them to continue longer than during his life.

But there is a diuerſitie betweene an Alienation working a diſcontinuance of an eſtate which taketh away an entrie, and an Alienation working, diueſting or diſplacing of Eſtates which taketh away no entrie. As if there be Tenant for life, the remainder to A. in Taple, the remainder to B. in fee, if Tenant for life doth alien in Fee, this doth diueſt and diſplace the remainders, but worketh no diſcontinuance. And therein it is to be obſerued, That to euerie Diſcontinuance there is neceſſarie a diueſting, or diſplacing of the Eſtate, and turning the ſame to a right: for if it be not turned to a right, they that haue the Eſtate cannot be driuen to an Action. And that is the reaſon that ſuch Inheritances as lie in Grant cannot by Grant bee diſcontinued, becauſe ſuch a Grant diueſteth no Eſtate, but paſſeth onely that which hee may lawfully grant, and ſo the eſtate it ſelfe doth diſcend, reuert, or remaine, as ſhall be ſayd hereafter in this Chapter.

A. maketh a gift in Taile to B. who maketh a gift in Taile to C. C. maketh a Feoffement in Fee and dieth without Iſſue, B. hath Iſſue and dieth, the Iſſue of B. ſhall enter, for albeit the Feoffement of C. did diſcontinue the reuerſion of the Fee ſimple which B. had gayned vpon the Eſtate taile made to C. yet could it not diſcontinue the right of Intaile which B. had, which was diſcontinued before: and therefore when C. died without Iſſue, then did the diſcontinuance of the eſtate Taile of B. which paſſed by his Liuerie, ceaſe, and conſequently the entrie of the Iſſue of B. lawfull, which caſe may open the reaſon of many other caſes.

Alſo note, That a Diſcontinuance made by the husband, did take away the entrie onely of the wife and her heires by the Common Law, and not of any other which claimed by title paramount aboue the Diſcontinuance. As if Lands had beene giuen to the husband and wife and to a third perſon, and to their heires, and the husband had made a Feoffement in Fee, this had beene a diſcontinuance of the one moitie, and a diſſeiſin of the other moitie: if the husband had died, and then the wife had died, the ſuruiuor ſhould haue entred into the whole, for hee claimed not vnder the diſcontinuance, but by title paramount from the firſt Feoffor, and ſeeing the right by Law doth ſuruiue, the Law doth giue him a remedie to take aduantage thereof by entry, for other remedie for that moitie he could not haue.

¶ *Fee, ou Fee taile.* And ſo it is of an eſtate for life.

Sect. 598.599.600.

¶ Item ſi Tenant en Taile ſoit diſſeiſie, et il releſſa per ſon

ALſo if Tenant in Taile be diſſeiſed, and he releaſe by his

ſon fait a le Diſſeiſor et a ſes heires tout le droit, le quel il ad en meſme les tenements, ceo nē pas diſcontinuance, pur ceo que rien de droit paſſa al Diſſeiſor forſque pur terme de vie del tenant en le Taile que fiſt le Releaſe, &c.

Deed to the Diſſeiſour and to his heires all the right which he hath in the ſame Tenements, this is no diſcontinuance, for that nothing of the right paſſeth to the Diſſeiſor, but for terme of the life of tenant in Taile, which made the releaſe, &c.

Sect 599.

¶ MEs per feoffment del tenant en le Taile, fee ſimple paſſa per meſme le feoffement per force de Liuerie de ſeiſin, &c.

BVt by the Feoffement of Tenaunt in Taile, Fee ſimple paſſeth by the ſame Feoffement by force of the Liuerie of Seiſin, &c.

Sect. 600.

¶ MEs per force dun releaſe rien paſſera forſque le droit que il poet lopalmēt, & droituralment releſſer, ſans leſiō ou damage as auters perſons q̄ ent aueront droit apres ſon deceaſe, &c. Iſſint il eſt graund diuerſitie perenter vn feoffement dun tenant en le taile, et vn Releaſe fait per tenant en le taile.

BVt by force of a Releaſe nothing ſhall paſſe but the right which he may lawfully and rightfully releaſe, without hurt or damage to other perſons who ſhall haue right therin after his deceaſe, &c. So there is great diuerſitie betweene a Feoffement of Tenant in Taile, and a releaſe made by Tenant in Taile.

¶ OVr Author hauing put examples of Eſtates paſſing by tranſmutation of an Eſtate and poſſeſſion, doth in this and the two Sections following put a diuerſitie betweene a Feoffement and a releaſe or confirmation of a bare right: for it is a rule in Law, That the Diſſeiſee or any other that hath a right onely by his Releaſe or Confirmation, cannot make any diſcontinuance, becauſe nothing can paſſe thereby but that which may lawfully paſſe. But otherwiſe it is of a Feoffment in reſpect of the Liuerie of Seiſin, for that it is the moſt ſolemne and common aſſurance in the Countrie, and to be maintained for the common quiet of the Realme: and by the Feoffement the Freehold (which is ſo much eſteemed in Law) doth paſſe by open Liuerie to the Feoffee, and by the releaſe a bare right.

9.E.4.18.12.E.4.17. 5.H.4.8. 21.H.6.58.

Section 601.

¶ MEs il eſt dit, que ſi le tenant en taile en ceſt cas releſſa a ſon diſſeiſor, et oblige luy et ſes hēs

BVt it is ſaid, That if the Tenant in Taile in this caſe releaſe to his Diſſeiſor, and bind him and his heires to Warran-

¶ THe reaſon why the addition of the warrantie in this caſe maketh a Diſcontinuance, is that which hath been ſayd, viz. If the Iſſue in Tayle ſhould enter, the warrantie (which is ſo much fauoured in Law) ſhould be deſtroyed, And

3.H.4.9. 22.R.2.Diſcont.50. 12.E.4.11. 21.H.7.9. 43.E.3.8. 15.E.4.6b. Diſcont.30.

Vs.Sect. 596.602.637.658.

and therefore to the end that if Assets in Fee simple doe discend, he to whom the Release is made, may plead the same, and barre the Demandant: by which meanes all rights and advantages are saued. And that I may note it once for all, an (Il est dit) with Littleton, is as good as a Concessum in a Booke case.

a Garranty et mes, et cest garranty discendist a son Issue, ceo est discontinuance per cause de le garrantie.

tie, and dieth, and this Warrantie discend to his Issue, this is a Discontinuance, by reason of the Warrantie.

Section 602.

¶ Mes si vn home ad Issue fits per sa Feme, et sa Feme morust, et puis il prent auter Feme, et tenements sont dones a luy et a sa second Feme, et a les heires de lour deux corps engendres, et ils ont issue vn auter fits, et le second Feme morust, et puis le Tenant en le taile est disseisie, et il relessa al Disseisor tout son droit, &c. et oblige luy & ses heires a le garrantie, &c. et deuia, ceo nest pas discontinuance al issue en le Taile per le second feme, mes il poit bien enter, pur ceo que le garrantie discendist a son eigne frere que son pier auoit per le primer feme, &c.

BVt if a man hath issue a Sonne by his Wife, and his Wife dieth, and after hee taketh another wife, and Tenements are giuen to him and to his second wife, and to the Heires of their two bodies engendred, and they haue issue another sonne, and the second Wife dieth, and after the Tenant in taile is disseised, and hee release to the Disseisor all his right, &c. and bind him and his heires to Warrantie, &c. and die, this is no Discontinuance to the Issue in Taile by the second wife, but he may wel enter, for that the Warrantie discendeth to his elder brother which his Father had by the first wife, &c.

Sect. 603.

¶ En mesme le manner est, lou tenements sont discendable a le fits puisne solonqs le custome de Burgh English, queux sont entailes, &c. et le tenant en le taile ad deux fits, & est disseisie, et il relessa a son Disseisor tout son droit oue garrantie, &c. et morust, le puisne fits poit enter sur le Disseisor, nient obstant le garrantie, pur ceo que le garrantie discendist al eigne fits, car touts foits le Garrantie

IN the same manner is it, where Lands are discendible to the youngest sonne after the Custome of Burrough-English, which are entayled, &c. and the Tenaunt in Taile hath two sonnes, and is disseised, and he releaseth to his Disseisour all his right with Warrantie, &c. and dieth, the younger sonne may enter vpon the Disseisor notwithstanding the Warranty, for that the Warrantie discendeth to the elder son: for always the War-

tie diſcendera a celuy q̄ eſt heire per le common ley.

rantie ſhall diſcend to him who is heire by the Common Law.

¶ By theſe two examples in this and the Section next following, it appeareth that a warrantie being added to a releaſe or Confirmation, and diſcending vpon him that right hath to the Lands maketh a Diſcontinuance, otherwiſe it is out of the reaſon of the Law, and worketh no Diſcontinuance if the warrantie diſcendeth vpon another.

¶ *Oue garrantie, &c.* Here is implyed that he doth bind him and his heires to warrant to the releaſee and his heires.

¶ *Touts foits le garrantie diſcendiſt ſur le heire al Common ley.* This is a Maxime of the Common Law, and hereof more ſhall be ſaid in the Chapter of Warrantie. Sections 718.735.736 727. ſoas it is not the warrantie only that maketh a diſcontinuance, but the warrantie and the Diſcent vpon him that right hath together.

13.H.4.Garrantie 94. 19.R.2.Garranties 100.

Sect. 604.

¶ Item ſi vn Abbe ſoit diſſeiſie, & il releſſa a l' diſſeiſor ouesque garrantie, ceo neſt pas diſcontinuance a ſon ſucceſſor, pur ceo que rien paſſa per cel releas, forſque le droit que il ad durant le temps que il eſt Abbe, & le Garrantie eſt expire per ſon priuation, ou per ſa mort.

Alſo if an Abbot bee diſſeiſed and hee releaſeth to the diſſeiſor with warrantie, this is no Diſcontinuance to his ſucceſſor, becauſe nothing paſſeth by this releaſe but the right which hee hath during the time that he is Abbot, and the Warrantie is expired by his priuation, or by his death.

¶ The reaſon hereof yelded by Littleton is for that the warrantie is expired by his priuation or death.

¶ *Per ſon priuation ou per ſa mort.* Note, that priuation is here reſembled to death, and to its tranſlation alſo. Wherein this diuerſitie is worthy of obſeruation, that when a Biſhop, &c. make an eſtate, leaſe, graunt of a Rent charge, Warrantie, or any other Act which may tend to the diminution of the reuenues of the Biſhopricke, &c. which ſhould maintaine the ſucceſſor, there the priuation or tranſlation of the Biſhop, &c. is all one with his death. But where the Biſhop is Patron and Ordinarie, and confirmeth a Leaſe made by the Parſon without the Deane and Chapter, and after the Perſon dieth, and the Biſhop collateth another, and then is tranſlated, yet his Confirmation remayneth good, for the Reuenues that are to maintaine the Succeſſor are not thereby diminiſhed. And the like diuerſitie doth hold in caſe of reſignation, notwithſtanding (m) the authority to the contrary.

Vide 29.E.3.16.

(m) 29.E.3.16.*fin.* *grant.* 99.

Sect. 605.

¶ Item ſi home ſeiſie en droit ſa feme eſt diſſeiſie, & il releſſa, &c. oue garrantie, ceo neſt pas diſcontinuance a la feme ſi el ſuruesquiſt ſon baron, mes que el poit enter &c. Cauſa patet.

Alſo if a man ſeiſed in the right of his Wife be diſſeiſed, and he releaſeth, &c. with warrantie, this is no diſcontinuance to the wife if ſhee ſuruiueth her husband, but that ſhe may enter, &c. *Cauſa patet.*

¶ This is euident, vnleſſe the wife be heire to the husband (as by law ſhee may bee) and then it is a diſcontinuance for the cauſe aforeſaid.

Section 606.

¶ Item ſi tenant en taile de certaine terre, leſſa meſme la terre a vn auter pur terñ des ans, per force de quel le leſſee ent eit poſſeſſion, en quel poſſeſſion le tenant en taile per ſon fait releſſa tout le droit que il auoit en meſme le terre, a auer & tener a le leſſee & a ſes heires a touts iours ceo neſt pas diſcontinuance, mes apres le deceaſe le tenant en taile ſon iſſue poit bien enter, pur ceo que per tiel releas riens paſſa forſque pur terme de la vie de le tenant en le taile.

ALſo if Tenant in tayle of certaine Land letteth the ſame Land to another for tearme of yeares, by force whereof the Leſſee hath thereof poſſeſſiō, in whoſe poſſeſſion the Tenant in tayle by his Deed releaſeth all the right that he hath in the ſame Land. To haue and to hold to the Leſſee and to his heires for euer. This is no diſcontinuance, but after the deceaſe of the Tenant in tayle, his iſſue may well enter, becauſe by ſuch Releaſe nothing paſſeth but for tearme of the life of the Tenant in tayle.

¶ *Car per tiel releas riens paſſa.* Here is one of the maximes of the Common Law rehearſed by our Author, whereof hee doth put diuers examples hereafter.

Sect. 607.

¶ En meſme le manner eſt, ſi le tenant en le taile, confirma leſtate le leſſee pur terme des ans, a auer & tener a luy & a ſes heires, ceo neſt pas diſcontinuance, pur ceo que riens paſſa per tiel confirmation forſque leſtate que le tenant en le taile auoit pur terme de ſa vie, &c.

IN the ſame manner it is if the Tenant in tayle confirme the eſtate of the Leſſee for yeares. To haue and to hold to him and to his heires, this is no diſcontinuance, for that nothing paſſeth by ſuch Confirmation, but the eſtate which the Tenant in tayle hath for tearme of his life, &c.

¶ R *Iens paſſa per tiel confirmation.* Here is another of the maximes of the Common Law rehearſed by our Author, whereof he putteth examples hereafter.

More ſhall be ſaid hereof in the next Section following.

Section 608.

¶ Item ſi tenant en taile apres tiel leas granta le reuerſion en fee per ſon fait a auter, & voile que

ALſo if tenant in taile after ſuch leaſe grant the reuerſion in fee by his Deed to another, and wil-

que apres le terme fine, q̃ meſme le terre remaindroit a le grantee et a ſes heires a touts iours, & le tenant a term̃ dans atturna, ceo neſt pas diſcontinuance. Car tiels choſes queux paſſont en tiels caſes de tenant en le taile tantſolement per voy de graunt, ou per confirmation, ou per tiel releaſe, rien poit paſſer pur faire eſtate a celuy a que tiel graunt, ou confirmatiõ, ou releaſe eſt fait forſque ceo que le tenant en taile poit droiturelment faire, et ceo neſt forſque p̃ terme de ſa vie, &c.

leth that after the terme ended, that the ſame land ſhall remaine to the grantee and his heires for euer, and the tenant for yeares attorne, this is no diſcontinuance. For ſuch things which paſſe in ſuch caſes of tenant in taile only by way of grant, or by confirmation or by ſuch releaſe, nothing can paſſe to make an eſtate to him to whom ſuch grant, or confirmation or releaſe is made, but that which the tenant in taile may rightfully make, and this is but for terme of his life, &c.

Sect. 609.

CAr ſi ieo leſſa terre a vn hom̃ pur terme de ſa vie, &c. et le tenant a terme de vie leſſe meſm̃ la terre a vn auter pur terme des ans, &c. et puis mon tenant a terme de vie graunta le reuerſiõ a vn auter en fee, et le tenant a terme des ans atturna, en ceſt caſe le grantee nad en le franktenement forſq̃ eſtate pur terme de vie ſon grauntor, &c. & ieo que ſuis en le reuerſion de fee ſimple, ne puiſſe enter per force de cel grant del reuerſion fait per mon tenant a terme de vie, pur ceo que per tiel grant mon reuerſion neſt pas diſcontinue, mes tout temps demurt a moy, ſicome il fuit adeuant, nient obſtant tiel grant del reuerſion fait al grantee a luy et a ſes heires, &c. pur ceo que riens paſſa per force de tiel grant forſque eſtate que le grantor auoit, &c.

FOr if I lett land to a man for terme of his life, &c. and the tenant for life letteth the ſame land to another for terme of years, &c. and after my tenant for life grant the reuerſion to another in fee, and the tenant for yeares attorne, in this caſe the grantee hath in the freehold but an eſtate for terme of the life of his grantor, &c. And I which am in the reuerſion of the fee ſimple may not enter by force of this grant of the reuerſion made by my tenant for life, for that by ſuch grant my reuerſion is not diſcontinued, but alwayes remaine vnto me as it was before notwithſtanding ſuch grant of the reuerſion made to the grantee, to him and to his heires, &c. becauſe nothing paſſed by force of ſuch grant, but the eſtate which the grantor hath, &c.

Sect. 610.

¶ En meſme le maner eſt, ſi le tenant a terme de vie, per ſon fait confirme leſtate ſon leſſee pur terme des ans, a auer et tener a luy et a ſes heires, ou releſſa a ſon leſſee et a ſes heires, vncore l leſſee a terme dans nad eſtate forſque pur terme de vie de le tenant a terme de vie, &c.

¶ IN the ſame manner is it, if tenant for terme of life by his Deed confirme the eſtate of his Leſſee for yeares, To haue and to hold to him and his heires, or releaſe to his Leſſee and his heires, yet the Leſſee for yeares hath an eſtate but for terme of the life of the tenant for life, &c.

¶ *Car tiels choſes que paſſont en tiels caſes de tenant en le taile, &c.* Here is rehearſed another Ancient maxime of the Common Law touching Grants, and hereby it appeareth that a Feoffment in fee (albeit it be by Parol) is of a greater operation and eſtimation in Law, then a grant of a reuerſion by Deed though it be enrolled and Attornement of the Leſſee for yeares of a Releaſe, or a Confirmation by Deed for the reaſons aforeſaid. And this is manifeſted by the Examples which our Author here in theſe three Sections putteth.

Sect. 611.

¶ F *Orſque eſtate per term dans, &c.* Here it is implyed that albeit the feoffment made by Leſſee for yeares be a feoffment betweene the Feoffor and feoffee, and that by this feoffment the fee ſimple paſſeth by force of the liuery, yet is it a diſſeiſin to the Leſſor. And here it is worthy to bee obſerued, that our Author ſaith that Tenant for terme of yeares may make a feoffment, whereupon it followeth, that the Feoffor may thereunto annexe a Warrantie, whereupon the Feoffee may vouch him, but of this you ſhall reade more in the Chapter of Warranties, Sect. 698.

¶ Mes auterment eſt quant tenāt a terme de vie, fait vn feoffmēt en fee, car per tiel feoffment le fee ſimple paſſa. Car tenant a termē dans poit faire feoffment en fee, et per ſon feoffment le fee ſimple paſſera, et vncore il nauoit al temps del feoffment fait forſque eſtate pur terme dans, &c.

BVt otherwiſe it is when tenant for life maketh a feoffment in fee, for by ſuch a feoffment the fee ſimple paſſeth. For tenant for yeares may make a feoffment in fee, and by his feoffment the fee ſimple ſhall paſſe, and yet he had at the time of the feoffment made but an eſtate for terme of yeares, &c.

Sect. 612.

¶ Item ſi teñ en le taile granta ſon terre a vn auter pur terme de vie de meſme le tenant en taile, et liuer a luy ſeiſin, &c. et apres per ſon fait il releſſa a le tenant et a ſes heires tout le droit

ALſo if tenant in taile grant his land to another for terme of the life of the ſaid tenant in taile and deliuer to him ſeiſin, &c. and after by his Deed hee releaſeth to the tenant and to his heires all the

droit que il auoyt en meſme la terre, en ceſt cas leſtate del tenãt de la terre neſt pas enlarge per force de tiel releas, pur ceo que quant le tenant auoit leſtate en le terre pur terme de vie de le tenant en le taile, donque il auoit tout le droit que le tenant en le taile puiſſoit droiturelment grãter ou releſſer, iſſint que per tiel releas nul droit paſſa, entant que ſon droit fuit ale deuant.

right which hee hath in the ſame land, In this caſe the eſtate of the tenant of the land is not enlarged by force of ſuch releaſe, for that when the tenant had the eſtate in the land for terme of the life of the tenant in taile, hee had then all the right which tenant in taile could rightfully grant or releaſe. So as by this releaſe no right paſſeth, inaſmuch as his right was gone before.

Sect. 613.

¶ Item ſi tenant en l' taile per ſon fait grant a vn auter tout ſon eſtate que il auoit en les tenits a luy tailes, a auer et tener tout ſon eſtate al auter et a ſes heires a touts iours, et deliuera a luy ſeiſin accordant, en ceſt cas le tenant a que lalienation fuit fait, nad auter eſtate forſque pur terme de vie del tenant en taile, et iſſint il poit bien eſtre proue, que le tenant en taile ne poit pas graunter ne aliener, ne faire aſcun droiturel eſtate de franktenement a auter perſon, forſque pur terme de ſa vie demeſne, &c.

ALſo if tenant in taile by his Deed grant to another all his eſtate which hee hath in the tenements to him entailed, To haue and to hold all his eſtate to the other, and to his heires for euer, and deliuer to him ſeiſin accordingly. In this caſe the tenant to whom the alienation was made hath no other eſtate but for terme of the life of tenant in taile. And ſo it may bee well proued, that tenant in taile cannot grant nor alien, nor make any rightfull eſtate of freehold to another perſon, but for terme of his owne life only, &c.

¶ The meaning of Littleton in both theſe caſes in this and in the Section next preceding is, that having regard to the iſſue in taile, and to them in reuerſion or remainder, Tenant in taile cannot lawfully make a greater eſtate then for terme of his life, and therefore this Releaſe or Grant is no Diſcontinuance. But in regard of himſelfe this Releaſe or Grant leaueth no reuerſion in him, but put the ſame in abeiance, ſo as after this Releaſe or Grant made he ſhall not haue any action of Waſte, &c. 13.H.7.10.4. Brooke Releaſes 95.

¶ *Grant tout ſon eſtate, Vid. Sect.* 650. Action of waſte, &c. there is implyed that he ſhall not enter for a forfeiture if after the Releaſe or Grant the Leſſee maketh a feoffment in fee.

Sect. 614.

¶ CAr ſi ieo done Terre a vn home en taile, ſauant

FOr if I giue land to a man in taile, ſauing the reuerſion to my

¶ HEre Littleton proueth, that the feoffee of Tenant in Taile hath no rightfull eſtate hauing

hauing reſpect to two perſons, the one is to the Donor, whoſe reuerſion is diuerted and diſplaced, and the other to the Iſſue in Taile, who is driuen to his Action to recouer his Right.

A tort luy deforce.

(n) Deforciare is a word of Art, and cannot be expreſſed by any other word, for it ſignifieth, To withhold lands or tenements from the right owner, in which caſe either the entete of the right owner is takin away, or the Deforceor holdeth it ſo faſt, as the right owner is driuen to his reall Præcipe, wherein it is ſayde, Vnde A. eum iniuſtè deforceat, or the Deforceor ſo diſturbeth the right owner, as hee cannot enioy his owne: and therefore it is ſayd, Per hoc autem quod dicitur in breui vltimæ præſentationis deforceant, videtur quibuſdam quod querens innuat per hoc quod deforcians ſit in ſeiſina, ſicut in breui de recto, ſed reuera non eſt ita, ſed ſatis deforceat qui poſſeſſorem vti ſeiſina non permiſerit omnino vel minus commode impediat præſentando, appellando, impetrando ſecundum quod dicitur de diſſeiſitore, ſatis facit diſſeiſinam, qui vti non permiſit poſſeſſorem vel minus commode licet omnino non expellat. In this caſe that Littleton putteth, the Diſcontinuee being in by wrong, is no Diſſeiſor, Abator, or Intruder, but a Deforceor, and hereof commeth Deforcement, and thus did Antiquitie deſcribe it: (o) Deforcement, come ſi aſcun enter en auter tenement tout come le veray Seignior eſt al Market, ou ailors, & retorne, & ne poet auer entre eins eſt celuy deforce & debotue. And for that at the firſt the withholding was with violence and force, it was called a deforcement of the Lands or Tenements, but now it generally extended to all kind of wrongfull withholding of Lands or Tenements from the right owner. There is a writ called a Quod ei deforceat, and lieth where Tenant in Taile, or Tenant for life, looſeth by default, by the Statute he ſhall haue a Quod ei deforceat againſt the Recoueror, and yet he commeth in by courſe of Law.

(n) *Bract. li.4.fo 238. Flet. li.5.ca.11.*

Bract. & Flet. vbi ſupra.

(o) *Mir. ca.2.§.13.*

Weſtm.2.ca.4.

le reuerſion a moy, et puis le tenant en le Taile enfeoffa vn auter en fee, le feoffee nad pas droiturell eſtate en les tenemts pur deux cauſes. Un eſt, pur ceo que p tiel Feoffement ma Reuerſiõ ẽ diſcontinue, l' quel eſt a tort fait, ẽ nẽ p a droit fait. Un auter cauſe eſt, ſi le Tenant en taile moruſt, et ſon iſſue ſuiſt Briefe de Formedon **enuers le feoffee le bꝰ diſra, et auxp l' count ꝛc. que l' feoffee a tort luy deforce, ꝛc.** Ergo **ſil a tort luy deforce, ꝛc. il nad pas droiturel eſtate.**

ſelfe, and after the Tenant in tayle infeoffeth another in Fee, the Feoffee hath no rightfull eſtate in the Tenements for two cauſes: One is, For that by ſuch Feoffement my reuerſion is diſcontinued, the which is a wrong and not a rightfull Act: Another cauſe is, If the Tenant in Taile dieth, and his Iſſue bring a Writ of *Formedon* againſt the Feoffee, the Writ and alſo the Declaration ſhall ſay, &c. That the Feoffee by wrong him deforces, &c. *ergo* if he deforceth him by wrõg, he hath no right eſtate.

Sect. 615.

ITem ſi terre ſoit leſſe a vn home pur terme de ſa vie, le remainder a vn auter en le Taile, ſi celuy en le remainder voile graunter ſon remainder a vn auter en fee per ſon fait, et le Tenant a terme de vie atturna, ceo neſt pas diſcontinuance de le remainder.

ALſo if Land bee let to a man for terme of his life, the remainder to another in Taile, if he in the remainder will grant his remainder to another in Fee by his Deed, and the Tenaunt for life attorne, this is no diſcontinuance of the Remainder.

Sect.

Sect. 616.

¶ Item ſi home ad Rent ſeruice ou Rent charge en Taile, et il granta le dit Rent a vn auter en fee, et le tenaunt attorna, ceo neſt pas diſcontinuance, &c.

Alſo if a man hath a Rent ſeruice or Rent charge in Taile, and hee graunt the ſayd Rent to another in Fee, and the Tenaunt attorne, this is no Diſcontinuance, &c.

Sect. 617.

¶ Item ſi home ſoit Tenant en Taile de vn aduowſon en groſſe, ou de vn Common en groſſe, ſil per ſon fait voile graunt laduowſon, ou le Common a vn auter en fee, ceo neſt pas diſcontinuance. Car en tielx caſes les Grantees nont eſtate forſque pur terme de vie de le Tenant en Taile que fiſt le Grant, &c.

Alſo if a man bee Tenaunt in Taile of an Aduowſon in Groſſe, or of a Common in groſſe, if he by his Deed will graunt the Aduowſon or Common to another in Fee, this is no Diſcontinuance; for in ſuch caſes the Grauntees haue no eſtate but for terme of the life of Tenant in Taile that made the Grant, &c.

¶ By the caſes in theſe three Sections it appeareth, That if a Remainder or a Rent ſeruice, or a Rent charge, or an Aduowſon, or a Common, or any other Inheritance that lieth in Grant, be granted by Tenant in Taile, it is no Diſcontinuance, as formerly hath beene ſayd. *Bract. li.2.fo.53.& fo.366. 378. Brit fo.187. Mir.ca.2. §.17. Flet.li.3.ca.15.*

(p) Note, here is an Aduowſon named by Littleton, as a thing that lieth in Grant, and paſſeth not by Liuerie of Seiſin. *(p) 5.E.3.58. 21.E.3.37.38 43.E.3.1.b. 11.H.6.4. 5.H.7.37. 18.H.8. 26.El.Dy.383.b.*

Section 618.

¶ Et nota, que de tielx choſes que paſſont per voy de graunt per Fait fait en pays, et ſans liuerie, la tiel graunt ne fait pas diſcontinuance, come en les caſes auantdits, & en auter caſes ſemblables, &c. et coment que tielx choſes ſont graunts en Fee per fine leuie en le Court

And note that of ſuch things as paſſe by way of grant, by Deed made in the Countrie, and without Liuery, there ſuch Grant maketh no diſcontinuance, as in the caſes aforeſayd, and in other like caſes, &c. And albeit ſuch things bee graunted in Fee, by Fine leuied in the Kings Court, &c.

¶ Here is the generall reaſon yelded of the precedent caſes and the like, for that it is a Maxime in Law, That a Grant (d) by Deed of ſuch things as doe lie in Grannt, and not in Liuerie of Seiſin, doe worke no diſcontinuance. But the particular reaſon is, for that of ſuch things the Grant of Tenant in Tayle worketh no wrong, either to the Iſſue in Taile, or to him in reuerſion or remainder, for nothing doth paſſe but onely during the life of Tenant in Taile, which is lawfull, and euery diſcontinuance worketh a wrong, as hath beene ſayd. *(d) 6.E.3.56 32.E.3. Diſcont.1.33. Aſſ.8.4.H.7.17. 21.H.7.42.15.H.7.19. 21.H.6.52.53.5.E.4.3. 21.E.4 5. 22.R.2.Diſcon.56 38.H.8. Diſcont.35.Brooke. 19.E.3.Bre.468.Fl.Com. 435. 18.Aſſp.2.*

(q) If

(q) 33.E.3.Formd.47. 13.H.7.10. 36.Aſſ 8. 4.H.7.17.

(q) If Tenant in Tayle of a Rent ſeruice, &c. or of a Reuerſion, or Remainder in Taile, &c. grant the ſame in Fee with warrantie, and leaueth Aſſets in Fee ſimple, and dieth, this is neither barre nor diſcontinuance to the Iſſue in Taile, but he may diſtraine for the Rent or ſeruice, or enter into the land after the deceaſe of Tenant for life. But if the Iſſue bringeth a Formedon in the Diſcender, and admit himſelfe out of poſſeſſion, then he ſhal be barred by the warrantie and Aſſets.

le Roy, &c. uncore ceo ne fait diſcontinuance, &c.

yet this maketh not a Diſcontinuaunce, &c.

(r) 3.H.7.12.

(r) Tenant in Taile of a Rent diſſeiſeth the Tenant of the Land, and maketh a Feoffement in Fee with warrantie and dieth, this is no diſcontinuance of the Rent, but the Iſſue may diſtreyne for the ſame, and albeit the warrantie extend to the Rent, yet by the rule of Littleton, it lieth not in Diſcontinuance: and where the thing doth lie in Liuerie, as Lands and Tenements, yet if to the conueyance of the Freehold or Inheritance, no Liuerie of Seiſin is requiſite, it worketh no diſcontinuance. (f) As if Tenant in Taile exchange lands, &c. or if the King being Tenant in Taile, grant by his Letters Patents the Lands in Fee, there is no Diſcontinuance wrought.

9.E.4.22.

(f) 38.H.8.Patent.Br.101. Pl.Com.233. Lr.1.fo.26. Alton Woods caſe.

¶ *Per Fine.* **Of a thing that lieth in Grant, though it bee granted by Fine, yet it worketh no Diſcontinuance, and this is regularly true.**

48.E.3.23.

(t) 15.E.4.tit.Diſcent.30.

(t) If Tenant in Taile make a Leaſe for yeares of Lands, and after leaue a Fine, this is a Diſcontinuance, for a Fine is a Feoffement of Record, and the Freehold paſſeth. But if tenant in Taile maketh a Leaſe for his owne life, and after leaue a Fine, this is no Diſcontinuance, becauſe the Reuerſion expectant vpon a ſtate of Freehold which lieth onely in Grant paſſeth thereby.

6.E.56.57.

Sect. 619.

¶ ***Nota, ſi ieo done terre a vn auter en taile, et il leſſa meſme la terre a vn auter p̄ t̄me dans, et puis le Leſſor graunta le reuerſion a vn auter en fee, et le tenant a terme dans atturna al Grantee, et le terme eſt expire durant la vie le tenant en taile, per que le Grantee enter, et puis le tenant en taile ad iſſue et deuie, en ceo caſe ceo neſt diſcontinuance, nient obſtant que le Grant ſoit execute en la vie le Tenaunt en Taile, pur ceo que al temps de Leaſe fait a terme dans nul nouel Fee ſimple fuit reſerue en le Leſſor, eins le Reuerſion demurt a luy en Taile ſicome il fuit deuant le Leaſe fait. ***

NOte, If I giue Land to another in Taile, and hee letteth the ſame land to another for terme of yeares, and after the Leſſor graunteth the reuerſion to another in fee, and the Tenant for yeares attorne to the Grantee, and the terme expireth during the life of the tenant in Tayle, by which the Grauntee enter, and after the Tenant in Taile hath Iſſue and die: in this caſe this is no Diſcontinuance, notwithſtanding the Grant be executed in the life of the tenant in Taile, for that at the time of the Leaſe made for yeares, no new Fee ſimple was reſerued in the Leſſor, but the Reuerſion remained to him in Taile, as it was before the leaſe made.

¶ *This is added to Littleton, and not in the Originall, and therefore I purpoſely omit it: Yet is the caſe good in Law, becauſe neither the Leaſe for yeares, nor the grant of the Reuerſion diueſteth any Eſtate.

Sect. 620.

¶ Mes si le tenant ẽ taile fait leas a terme de vie le lessee, &c. en cest case le tenãt en le tayle ad fait vn nouel reuersion de fee simple en luy, pur ceo que quant il fist leas p̃ terme de vie, &c. il discontinua le taile, &c. p̃ force de mesm̃ le leas, & auxy il discontinua ma reuersion, &c. & il couient que la reuersion de fee simple soit en ascun person ẽ tiel cas, et il ne poit estre en moy que sue donor, entant que mon reuersiõ est discontinue, Ergo il couient que la reuersiõ de fee soit en le tenant en le taile, que discontinua ma reuersion per tiel leas, &c. En si en cest case le tenant en le taile graunta per son fait cest reuersion en fee a vn auter, et le tenant a terme de vie atturna, &c. & puis le tenant a term̃ de vie morust, viuant l'tenant en le taile, et le grantee de le reuersion entra, &c. en la vie le tenant en le taile, donqz ceo est vn discontinuance en fee, & si apres le tenant en l'taile morust, son issue ne poit entrer, mes est mis a son bõ de Formedon.

BVt if the Tenant in taile make a leafe for tearme of the life of the Leſſee, &c. In this caſe the Tenant in tayle hath made a new reuerſion of the fee ſimple in him, becauſe when hee made the Leaſe for life, &c. he diſcontinued the tayle, &c. by force of the ſame Leaſe, and alſo hee diſcontinued my reuerſion, &c. And it behoueth that the reuerſion of the fee ſimple be in ſome perſon in ſuch caſe. And it cannot be in me which am the donor inaſmuch as my reuerſion is diſcontinued, *Ergo* the reuerſion of the fee ought to be in the tenant in tayle who diſcontinued my Reuerſion by Leaſe, &c. And if in this caſe the Tenant in tayle grant by his Deed this Reuerſion in fee to another, and the Tenant for life attorne, &c. and after the Tenant for life dieth, liuing the Tenant in taile & the grantee of the reuerſion enter, &c. in the life of the Tenant in taile, then this is a diſcontinuance in fee, and if after the Tenant in tayle dieth, his iſſue may not enter, but is put to his Writ of *Formedon*.

¶ *Vr terme de vie del leſſee, &c.* Here is implyed or for tearme of another mans life.

¶ *Nouel reuerſion de fee ſimple.* 15.E.4.Tit Diſcont.30.
which muſt bee vnderſtood of a fee ſimple determinable vpon the life of the Leſſee, which our Author here calleth a fee ſimple, for if the Leſſee dieth, the Donee is Tenant in tayle againe as he was before, and that is the reaſon that if in that caſe hee granteth ouer the reuerſion and dieth, and after the death of Tenant in taile the Leſſee dieth, the entry of the iſſue is lawfull, becauſe by the death of the Leſſee the Diſcontinuance is determined, and conſequently the grant made of the reuerſion gained vpon that diſcontinuance is void alſo.

If Tenant in tayle maketh a leaſe for three liues according to the Statute of 32.H.8. that is no diſcontinuance of the eſtate tayle or of the reuerſion, becauſe it is authoriſed by Act of Parliament whereunto euery man in iudgement of Law is partie. 32.H.8 cap.28.

And yet in ſome caſes the freehold may bee diſcontinued and not the reuerſion. (u) As if the husband and wife make a leaſe for life by Deed of the wiues Land reſeruing a rent, the husband dieth, this was a Diſcontinuance at the Common Law for life, and yet the reuerſion was not diſcontinued but remayned in the wife. Otherwiſe it is (u) 38.E.3.32. 18.Aſſ.2. 18 E.3.54. 22.H.6.24.

if the huſband had made the Leaſe alone.

21.H.6.52. 25.E.4.tit. Diſcont. 30.

¶ *Et puis le tenant a terme de vie moruſt, &c.* The like Law it is if the tenant for life ſurrender to the Grantee, or if the Grantee recouer in an Action of waſte, or enter for the forfeiture.

33.E.3.Diſcont 2. 43 E.3.Entr.Cong.33. 3.H.4.9. 22.R.2. diſcont 50 34.Aſſ.6. Pl.4 38. Aſſ 6 p. 6. 43.Aſſ.6.48.18.E.3.43. 21.H.6.52.15.E.4.tit Diſcontinuance 30.Brooke.tit.diſcont.3.& 14.4.H.7.17. 21.H.7.11.

¶ *Auoit ſeiſin & execution.* And here it is to be obſerued, that when the reuerſion in this caſe is executed in the life of Tenant in tayle, it is equiualent in iudgement of Law to a feoffment in fee, for the ſtate for life paſſed by liuery

don. Et la cauſe eſt, pur ceo que ceſtuy q̄ auoit l' grant de tiel reuerſion en fee Simple, auoit le ſeiſin & execution de meſmes les terres ou tenements dauer a luy et a ſes heires en ſon demeſne come de fee, en la vie l' tenant en taile, et ceo eſt per force de grant de meſme le tenant en taile.

And the cauſe is for that he which hath the grant of ſuch reuerſion in fee ſimple hath the ſeiſin and execution of the ſame lands or tenemēts. To haue to him and to his heires in his Demeſne as of fee in the life of the tenant in taile. And this is by force of the grant of the ſaid Tenant in tayle.

(w) If Tenant in tayle make a leaſe for life, the remaynder in fee, this is an abſolute Diſcontinuance albeit the remaynder be not executed in the life of Tenant in tayle, becauſe all is one eſtate and paſſeth by one liuery. And ſo note a diuerſity betweene a grant of a reuerſion, and a limitation of a remaynder. B. Tenant in tayle maketh a gift in tayle to A. and after B releaſeth to A and his heires, and after A. dieth without iſſue, the iſſue of the firſt Donee may enter vpon the collaterall heire, becauſe A. had not ſeiſin and execution of the reuerſion of the land in his Demeſne as of fee, as Littleton here ſpeaketh. But if Tenant in tayle make a leaſe for the life of the Leſſee, and after releaſeth to him and his heires, this is an abſolute Diſcontinuance, becauſe the fee ſimple is executed in the life of Tenant in tayle.

(w) 21.H.6.52.53.

(y) If Tenant in tayle of a Mannor whereunto an Aduowſon is appendant maketh a feoffment in fee by deed (as it ought to be) of one Acre with the Aduowſon, and the Church becommeth void, and the feoffee preſent, Tenant in tayle dieth, the Church becommeth beide, the iſſue ſhall not preſent vntill he hath recontinued the Acre. But if the feoffee had not executed the ſame by preſentment, then the iſſue in tayle ſhould haue preſented. And ſo was it at the Common Law of the huſband ſeiſed in the right of his wife, mutatis mutandis

(y) 34.E.1.Quare Impedit 179. 22.E.3.6. 17.E.3.3. 33.E.3.Quare Imp.196. 23.Aſſ.8. 50.E.3.26.

If a fine be leuied to a Tenant in tayle, and hee granteth and rendzeth the Land to him and his heires and die before execution, this is no Diſcontinuance. Otherwiſe it is, if it had beene executed in the life of Tenant in tayle.

36.Aſſ.8. 42.E.3.20. 32.R.2.Diſcont. 50.

If Tenant in tayle make a Leaſe for life of the Leſſee, and after grant the Reuerſion with warrantie, and dieth before execution, this is no Diſcontinuance, becauſe the Diſcontinuance was (as hath beene ſaid) but for life, and the warrantie cannot enlarge the ſame.

31.H.6.52.53. Brooke tit. Diſcontin. 3. 21.H.7.11. Lib.1.fol.85. Lib.10.fol.96.97.

¶ *Et ceo eſt per force del grant de meſme le tenant en tayle.* Hereupon Littleton himſelfe is of the ſame opinion, (*) as it appeareth he was in our Bookes, that if Tenant in tayle make a Leaſe for life, and grant the Reuerſion in fee, and the Leſſee attorne, and that Grantee granteth it ouer, and the Leſſee attorne, and then the Leſſee for life dieth, ſo as the Reuerſion is executed in the life of Tenant in tayle, yet this is no Diſcontinuance, but that after the death of Tenant in tayle the iſſue may enter, becauſe as Littleton here ſaith, he is not in of the grant of the Tenant in tayle, but of his Grantee.

(*) 15.E.4.Diſcont.30. Vide Sect.642.

If at this day Tenant in tayle make a Leaſe for life, and after by Deed indented and inrolled according to the Statute he bargaineth and ſelleth the Reuerſion to another in fee, and the Leſſee dieth, ſo as the Reuerſion is executed in the life of Tenant in tayle, albeit the bargaine is not in the per by the Tenant in tayle, yet in aſmuch as hee claymeth the Reuerſion immediately from him, which is executed in his life time, this is a Diſcontinuance. And ſo it is and for the ſame cauſe if Tenant in tayle had granted the Reuerſion to the vſe of another and his heires If Tenant in tayle maketh a Leaſe for life, and after diſſeiſeth the Leſſee for life and maketh a feoffment in fee, the Leſſee dieth, and then Tenant in tayle dieth, albeit the fee be executed, yet for that the fee was not executed by lawfull meanes, (as in all the Caſes of Littleton it appeareth it ought to be) it is no Diſcontinuance.

Sect. 621.

¶ En meſme le manner ſerra, ſi en le caſe auantdit, le tenant a terme de vie apres lattournement al grantee vſt alien en fee, & le grantee vſt enter pur forfeiture de ſon eſtate, & puis le tenant en taile vſt deuie, ceſt vn diſcontinuance, Cauſa qua ſupra. ¶.

IN the ſame manner ſhall it be, if in the caſe aforeſaid the Tenant for tearme of life after the Attornement to the Grantee had aliened in fee, and the Grantee had entred by forfeiture of his eſtate, and after the Tenant in tayle had died this is a Diſcontinuance, *Cauſâ quâ ſupra.* ¶.

¶ This is added in this place, but in the Originall it commeth in after in this Chapter. 21.*H.*6.52.53. 15.*E.*4.*Diſcont.*30.

Section 622.

¶ Mes en ceſt cas, ſi tenãt en taile que granta le reuerſion, &c. muruſt viuant le tenant a terme de vie, et puis le tenant a terme de vie muruſt, & puis celuy a que le reuerſion fuit graunt enter, &c. donque ceo neſt pas diſcontinuance, mes que iſſu del tenant en taile poit bien enter ſur le grauntee del Reuerſion pur ceo que le Reuerſion que le grauntee auoit, &c. ne fuit executé, &c. en le vie le tenant en taile, &c. Et iſſint il eſt graund diuerſitie quant tenant en taile fait vn leas pur terme dans, & lou il fait leas pur terme de vie, car en lun cas il ad reuerſion en taile, & en lauter cas il ad vn reuerſion en fee.

BVt in this caſe if Tenant in taile that grants the reuerſion, &c. dieth liuing the tenant for life, and after the Tenant for life dieth, and after hee to whom the reuerſion was granted enter, &c. then this is no diſcontinuance, but that the iſſue of the tenant in tayle may well enter vpon the Grantee of the reuerſion, becauſe the Reuerſion which the Grantee had &c. was not executed, &c. in the life of the tenant in taile, &c. And ſo there is a great diuerſitie when Tenant in tayle maketh a Leaſe for yeares, and where hee maketh a Leaſe for life, for in the one caſe hee hath a reuerſion in tayle, and in the other caſe he hath a reuerſion in fee.

¶ Of this ſufficient hath beene ſaid before, and is of it ſelfe manifeſt and needeth no explication.
Like Law was at the Common Law of a husband ſeiſed of Land in right of his wife, Mutatis mutandis. 18.*Aſſ.*6. 21.*H.*6 53.

Sect. 623.

¶ Car ſi terre ſoit done a vn hõe et a ſes heires males de ſon corps engendres, le quel ad iſſue deux fits, et leigne fits ad iſſue file et deux, et le ten en taile fait vn leas pur terme des ans, et deux, ore le reuerſion diſcendiſt a le fits puiſne, pur ceo que le reuerſion fuit forſque en le taile, et le fits puiſne eſt heire male, &c. Mes ſi le tenant vſt fait vn leas pur terme de vie, &c. et puis morust, ore le reuerſion diſcendiſt a le file del eigne fits, pur ceo que le reuerſion eſt en fee ſimple, et la file eſt heire general, &c.

FOr if land bee gluen to a man and to his heires males of his body engendred, who hath iſſue two ſonnes, and the eldeſt ſonne hath iſſue a daughter and dieth, and the tenant in tayle maketh a leaſe for yeares and die, now the reuerſion diſcendeth to the younger ſonne, for that the reuerſion was but in the taile, and the youngeſt ſonne is heire male, &c. but if the tenant had made a leaſe for life, &c. and after died, now the reuerſion diſcend to the daughter of the elder brother, for that the reuerſion is in the fee ſimple, and the daughter is heire generall, &c.

This is euident alſo and needeth no explanation.

Section 624.

¶ Item ſi home ſoit ſeiſie en taile de terres deuiſables per teſtament, &c. et il ceo deuiſa a vn auter en fee, et morust, et lauter enter, &c. ceo neſt pas diſcontinuance, pur ceo que nul diſcontinuance fuit fait en la vie del tenant en le taile, &c.

ALſo if a man be ſeiſed in taile of lands deuiſable by Teſtament, &c. and hee deuiſeth this to another in fee, and dieth and the other enter, &c. this is no diſcontinuance, for that no diſcontinuance was made in the life of the Tenant in taile, &c.

9.E.4 22. 20.H.6.14. Vid.18.E.3.8.

¶ This is manifeſt and needeth no explanation; Only this is to be obſerued, that no Diſcontinuance can be made by Tenant in taile, but ſuch as is made, and taketh effect in his life time, which is here implied in the (&c.)

Sect. 625.

(a) 9.E.4.24.b.

AFfid of this opinion is Littleton (a) in our bookes, and ſaith that ſo it was adiudged.

*Lib.*3.*fo.*140.*in Chudleies caſe*

¶ *Enfeoffe le donor, &c.* This muſt bee vnderſtood where the reuerſion of the Donor is immedi-

¶ Item ſi terr ſoit done en taile, ſauant le reuerſion al donor, et puis le tenãt en taile per ſon fait enfeoffa le donor,

ALſo if land be giuen in taile, ſauing the reuerſion to the Donor, and after the Tenant in taile by his deed enfeoffe the Do-

a

a auer et tener a luy et a ſes heirs a touts iours, et liuer a luy ſeiſin accordant, &c. ceo neſt pas diſcontinuance, pur ceo que nul poit diſcontinuer leſtate en le taile, ſi non q̄ il diſcontinue le reuerſion celuy que ad le reuerſion, &c. ou le remainder, ſi aſcun ad le remainder, &c. & entant que per tiel feoffment fait a le donor (le reuerſion adonqz eſteant en luy) ſon reuerſion ne fuit diſcontinue ne alterate, &c. ceſt feoffmēt neſt pas diſcontinuance, &c.

nor, To haue and to hold to him and to his heires for euer, and deliuer to him ſeiſin accordingly, &c. this is no diſcontinuance, becauſe none can diſcontinue the eſtate taile, vnleſſe he diſcontinueth the reuerſion of him who hath the reuerſion, &c. or remainder, if any hath the remainder, &c. and in aſmuch as by ſuch feoffment made to the Donor (the reuerſion then being in him) his reuerſion was not diſcontinued nor altered, &c, this feoffment is no diſcontinuance, &c.

ately expectant vpon the eſtate of the Donee (b) for if a man make a Gift in taile the remainder in taile, reſerving the reuerſion to himſelfe, In this caſe if the Donee enfeoffe the Donor, this is a diſcontinuance becauſe there is a meane eſtate, and ſo doth Littleton here put his caſe of a reuerſion immediately expectant vpon the gift in taile. Alſo it is to be intended of a feoffment made to the Donor ſoly or only, for if the Donee enfeoffe the Donor and a ſtranger, this is a diſcontinuance of the whole land.

(b) 41.*Aſſ.*2. 41.*E.*3.2.

28.*H.*8.*Dier.*12.

But if Tenant for life make a Leaſe for his owne life to the Leſſor, the remainder to the Leſſor and an eſtranger in fee. In this caſe for aſmuch as the limitation of the fee ſhould worke the wrong, it enureth to the Leſſor as a ſurrender for the one moyty, and a forfeiture as to the remainder of the ſtranger, for he cannot giue to the Leſſor that which he had before, as our Author here ſaith, and as to the remainder to the ſtranger, it is a forfeiture for his moity, and when the Leſſor entreth he ſhall take the benefit of it. But if two Joyntenants be, and one of them enfeoffe his Companion and a ſtranger, and make Liuery to the ſtranger, this ſhall veſt only in the ſtranger, becauſe the Liuery cannot enure to his Companion.

¶ *Nul poet diſcontinuer leſtate en taile, ſinon que il diſcontinue le reuerſion, &c. ou le remainder, &c.* And therefore for this cauſe if the reuerſion or remainder be in the King, the Tenant in taile cannot diſcontinue the eſtate taile. (c) But Tenant in taile, the reuerſion in the King, might haue barred the eſtate taile by a Common recouery vntill the Statute of 34.H.8 ca.20. which reſtrayneth ſuch a Tenant in taile, but that common recouery neither barred nor diſcontinued the Kings reuerſion.

40.*Aſſ.*36. 21.*Aſſ.*36. 18.*E.*3.45. *F.N.B.*143.c. *Pl Com.*555.

(c) 33.*H.*8.*tit.Taile.Br.*41. *Pl.Com.vbi ſupra.*

Note the reuerſion may be reuested, and yet the Diſcontinuance remaine. (d) As if a Feme Couert be Tenant for life, and the husband make a Feoffment in fee, and the Leſſor enter for the forfeiture, here is the reuerſion reuested, and yet the Diſcontinuance remained at the Common Law.

(d) 27.*Aſſ.*p 60. 29.*Aſſ.*43. 11.*Aſſ.*11. 16.*Aſſ.*11. 18.*E.*3.45.

Sect. 626.

¶ EN meſme le maner eſt, lou terres ſont dones a vn hōe en taile, le remainder a vn auter en fee, et le tenāt en taile enfeoffa celuy, que eſt en le remainder, a auer et tener a luy, et a ſes heirs, ceo neſt pas diſcontinuance, Cauſa qua ſupra.

IN the ſame manner is it where lands are giuen to a man in taile, the remainder to another in fee, and the tenant in taile enfeoffe him that is in the remainder, To haue and to hold to him & to his heires, this is no diſcontinuance, *Cauſa qua ſupra.*

¶ *LE remainder a vn auter.* Here it appeareth that (as hath bin ſaid in caſe of a reuerſion) that the remainder muſt be immediately expectant vpon the eſtate taile.

Sect. 627.

¶ Item ſi vn Abbe ad vn Reuerſion ou Rent ſeruice, ou Rent charge, et voile graunter cel reuerſion, ou Rent ſeruice, ou Rent charge a vn auter en fee, et le tenant atturna, &c. ceo nē pas diſcontinuance.

ALſo if an Abbot hath a Reuerſion, or a Rent ſeruice, or a Rent charge, and he will grant this Reuerſion, or Rent ſeruice, or Rent charge to another in Fee, and the Tenant attorne, &c. this is no diſcontinuance.

Of Inheritances that lie in Grant, ſufficient hath beene ſayd before.

Section 628.

¶ E meſme le manner lou Abbe eſt ſeiſie dun Aduowſon, ou de tielx choſes que paſſont per voy ō grant ſans liuerie de ſeiſin, &c.

IN the ſame manner where an Abbot is ſeiſed of an Aduowſon, or of ſuch things which paſſe by way of Grant, without Liuerie of ſeiſin, &c.

¶ Here it appeareth, (as hath beene ſayd) That an Aduowſon doth not lie in Liuery, but in Grant.

Section 629.

¶ Item ſi Tenant en Taile leſſa ſa terre a vn aut pur terme de vie, et puis il graunta en fee le Reuerſion a vn auter, et le tenant atturna, & puis le tenant a terme de vie aliena en fee, et le Grantee de reuerſion entra, &c. en le vie le Tenant en le Taile, et puis le Tenant en le Taile mozuſt ſon Iſſue ne poet enter, mes eſt mis a ſon Brieſe ō Formedon, pur ceo que le Reuerſion en Fee ſimple que le Grauntoz auoit per le grant del tenant en le Taile, fuit executē en le vie de meſme le tenaunt en le Taile, et pur ceo eſt vn diſcontinuance en fee, &c.

ALſo if Tenant in Tayle letteth his Land to another for life, and after he granteth in Fee the Reuerſion to another, and the Tenant attorne, and after the Tenant for life alien in Fee, and the Grauntee of the Reuerſion enter, &c. in the life of the Tenant in Taile, and after the Tenant in Taile dieth, his Iſſue ſhall not enter, but is put to his Writ of *Formedon*, becauſe the Reuerſion in Fee ſimple which the Grauntor had by the Graunt of the Tenant in Tayle, was executed in the life of the ſame Tenant in Tayle, and therefore it is a diſcontinuance in Fee, &c.

Of this ſufficient hath beene ſayd before.

Sect.

Section 630.

¶ ET nota que aſcuns font diſcontinuances p̄ terme de vie. Si come Tenaunt en le taile fait vn Leaſe pur terme de vie, ſauant le reuſion a luy, auxy longement que le reuerſion eſt al tenant en taile, ou a ſes heires, ceo neſt diſcontinuance, forſque durant la vie le tenant a terme de vie, &c. Et ſi tiel tenant en taile dona les tenements a vn auter en taile, ſauant le reuerſion, donques ceo eſt diſcontinuance durant le ſecond taile, &c.

AND note that ſome make diſcontinuances for terme of life. As if Tenant in Tayle make a Leaſe for life, ſauing the reuerſion to him as long as the Reuerſion is to the Tenaunt in Tayle or to his Heyres: This is no diſcontinuance but during the life of Tenaunt for life, &c. And if ſuch Tenant in Taile giueth the lands to another in Tayle, ſauing the Reuerſion, then this is a Diſcontinuance during the ſecond Tayle, &c.

¶ This is manifeſt, and hath beene handled before, and needeth no explanation, onely this is to be obſerued, where Littleton putteth hereafter caſes of Diſcontinuances by Feoffement, &c. he hath a double entendment: Firſt, By Feoffement or by any other Conueyance which may make a Diſcontinuance. Secondly, (&c.) implieth a Diſcontinuance by a gift in Taile, or a leaſe for life, &c.

Sect. 631.

¶ MES lou le tenant en tayle fait vn leaſe pur terme dans, ou pur terme de vie, le remainder a vn auter en fee, et deliuer̄ liuerie de ſeiſin accordant, ceo eſt diſcontinuance en fee, pur ceo que le Fee ſimple paſſa per force de liuerie de ſeiſin, &c.

BVt where the Tenant in Tayle maketh a Leaſe for yeares or for life, the remainder to another in Fee, and deliuereth Liuerie of Seiſin accordingly, this is a Diſcontinuance in Fee, for that the fee ſimple paſſeth by force of the Liuerie of Seiſin, &c.

¶ This is euident alſo, and hereof ſufficient hath beene ſpoken before.

Sect. 632.

¶ ET eſt aſcauoir̄, q̄ aſcuns tiels diſcontinuances ſont fait ſur condition, &c. et pur ceo que les conditions ſont enfreints, &c. ou pur

AND it is to be vnderſtood, That ſome ſuch Diſcontinuances are made vpon Condition, &c. and for that the conditions be broken, &c. or for

¶ *Diſcontinuances fait ſur Condition, &c.* Heere is to be vnderſtood a Diuerſity betweene a Condition in Deed, whereof Littleton here ſpeaketh, and a Condition in law, whereof ſomewhat hath beene ſayd before in this Chapter, viz.

viz. where the Feme is tenant for life, and the husband maketh a Feoffement in Fee, and the Lessor entreth for the Condition in Law.

¶ *Conditions ſont enfreints, &c.* Here is implied, Or any cause giuen either by disabilitie of the feoffees, or by any condition performed on the part of the feoffor, or otherwise, whereby the state is in any sort auoyded.

¶ *Come ſi le Baron ſoit ſeiſie de certain terre en droit ſa feme, &c.* Here it appeareth, That for the Condition broken, the heire of the husband may enter, for albeit no right discend from the husband to his heire, per the title of entry by force of the Condition which the husband created vpon the Feoffement, and reserued to him and his heires, doth discend to his heyre, and Littleton saith truly, That so it hath beene adiudged.

4.H 6.2.9.H.7.24.b. Lib.8.fo.43.44. Whittinghams caſe.

¶ *Sur le heire.* Nota, when the heire in this case hath entred for the Condition broken, and hath auoyded the Feoffement, the estate of the heire vanisheth away, and presently the Estate vesteth in the Feme or her heires, without any entrie or claime by her or them; for the heire entreth in respect of the Condition, vpon the reall Contract, and not of any right, as hath beene sayd, and if the husband himselfe had re-entred, the state had vested in his wife: And therefore where Littleton and our Bookes say, That the wife shall enter vpon the heyre, the meaning is, that after the re-entrie of the heire she may enter.

Whittinghams Case vbi supra.

auters cauſes, ſolonque le courſe d̄ la ley, tiels eſtates ſont defeates, donques ſont les diſcontinuances defeates, et ne tollēt aſcun home per force de eux, de ſon entrie, &c. Come ſi le Baron ſoit ſeiſie de certē tre en droit ſa Feme, et fait Feoffement en fee ſur condition, et deuie, ſi le heire apres enter ſur l'feoffee pur le Condition enfreint, lentrie la Feme eſt congeable ſur le heire, pur ceo que per lentrie del heire le diſcontinuance eſt defeat, come eſt adiudge.

other causes, according to the course of Law such Estates are defeated, then are the Discontinuances defeated, and shall not by force of them take any man from his entrie, &c. As if the husband be seised of certaine land in right of his wife, and maketh a Feoffement in Fee vpon Condition, and dyeth, if the Heire after enter vpon the Feoffee for the condition broken, the entrie of the wife was cōgeable vpon the heire, for that by the entry of the heire the discontinuance is defeated, as is adiudged.

Sect. 633.

¶ The reason here rendred by Littleton, is, for that the husband cannot enter in his owne right, but in the right of his wife; and the heire of the Husband cannot enter, for no right or title discends vnto him, and the wife in this case shall take benefit of the nonage of her husband, and enter into the land.

If an Infant be Tenant for another mans life, and make a Feoffement in fee, and Cestuy que vie dieth, the Enfant himselfe shall not enter, because he hath no right at all.

¶ **Item ſi Feme inheritrix q̄ ad vn Baron, quel Baron eſt deins age, et il eſteant deins age fait vn Feoffement de les Tenements ſon fēe en fee, et mozuſt, il ad eſte queſtion, ſi la Fēe poit entrer, ou non, &c. Et il ſemble a aſcuns, que lentry la Feme**

ALſo if a Woman Inheritrix hath a husband who is within age, and hee beeing within age maketh a Feoffement of the Tenements of his wife in Fee, and dieth, it hath beene a queſtion, If the Wife may enter or not, &c. And it seemeth to some, that the

Feme apres la mort ſa baron, eſt congeable en ceſt cas. Car quant ſa baron feaſoit tiel feoffment, &c. il puiſſoit biẽ enter, nient contriſteãt tiel feoffmẽt, &c. durãt la couerture, & il ne puiſſoit enter en ſon droit demeſne, mes en le droit la feme, Ergo tiel droit que il auoit dentrer en droit ſa feme, &c. ceſt droit dentrer demurt al feme apres ſon deceaſe.

entrie of the wife after the death of her Huſband is congeable in this caſe, for when her Huſband made ſuch feoffment, &c. he might well enter notwithſtanding ſuch feoffment, &c. during the couerture, and he could not enter in his owne right but in the right of his wife, *Ergo* ſuch right as hee had to enter in the right of his wife, &c. this right of entrie remayneth to the wife after his deceaſe.

If the husband within age take to wife feme tenant intayle generall, and the husband make a gift in tayle and dieth within age, in this caſe the wife may enter, as Littleton here holdeth, or the heire of the husband in reſpect of the new reuerſion diſcended vnto him may enter. But if the heire enter preſently thereupon his eſtate vaniſheth. If tenant in tayle being within the age of one and twenty yeares make a feoffment in fee, and after is attainted of felonie and dieth, the entry of the iſſue is not lawfull, for his entry is not lawfull in reſpect of his eſtate only, but of his blood alſo which is corrupted, and therefore in that caſe he is driuen to his Formedon.

If husband and wife be both within age, and they by Deed indented ioyne in a feoffment reſeruing a rent, the husband dieth, the wife may enter or haue a Dum fuit infra ætatem. But if ſhe were of full age, ſhe ſhall not haue a Dum fuit infra ætatem, for the nonage of her husband, albeit they be but one perſon in Law. 14.E.3.Bre.282. 14.E.3. *Dum fuit infra ætatem* 6. F.N.B 192.

Sect. 634.

Et il y ad ẽe dit, que ſi deux ioyntenants eſteãts deins age, font vn feoffment en fee, et lun des enfants deuy, et lauter ſuruiſquiſt, entant que les ambideux enfants puiſſont ent ioyntment en lour vies, cel droit acruiſt tout a luy que ſuruiſquiſt, et pur ceo, celuy q̃ ſuruiſquiſt poit enter en lentiertie, &c. Et auxy lheire le baron que fiſt le feoffment deins age ne poit enter, &c. pur ceo que nul droit diſcendiſt a tiel heire en le cas auantdit, pur ceo que le baron nauoit vnques riens forſque en droit de ſa feme, &c.

And it hath beene ſaid that if two Ioyntenants being within age make a feoffment in fee and one of the Infants die, and the other ſuruiueth in as much as both the Infants might enter ioyntly in their liues, this right accrueth all to him which ſuruiueth, and therefore hee that ſuruiueth may enter into the whole, &c. And alſo the heire of the husband which made the feoffment within age cannot enter, &c. becauſe no right diſcendeth to ſuch heire in the caſe aforeſaid, for that the husband had neuer any thing but in right of his wife, &c.

Poet enter en lentiertie, &c. And the reaſon hereof is implyed in this (&c.) for that they may ioyne in a writ of right, and therefore the right ſhall ſuruiue. But they cannot ioyne in a Dum fuit intra ætatem, becauſe the nonage of the one 21.E.3.50.18.E.2.Bre.838 6.E.3.4.9.H.6.6. 19.H.6.6. 39.H.6.42. 34.H.6.31. F.N.B.192.

See of this in the Chapter of Iointenants.

one is not the nonage of the other. In this caſe if one Iointenant had made a feoffment in fee and died, the right ſhould not haue ſuruiued, for the Iointure was ſeuered for a time. If two Iointenants be, and the one is of full age. and the other within age, and both they make a feoffment in fee, and he of full age dieth, the Infant ſhall enter or haue a Dum fuit infra ætatem, but for the moitie.

Section 635.

¶ Et auxy quant vn enfant fait vn feoffment eſteant deins age ceo ne luy greeuera ne ledra, mes que il poit enter bien, &c. car ceo ſerroit encounter reaſon, que tiel feoffment fait per celuy que ne fuit able de faire tiel feoffment, greeuera ou ledera auter de toller eux de lour entre, &c. Et pur ceux cauſes il ſemble a aſcuns, que apres la mort de tiel baron iſſint eſteant deins age al temps de le feoffment, &c. que ſa feme bien poit enter, &c.

And alſo when an infant make a feoffment being within age, this ſhall neither grieue nor hurt him, but that hee may well enter, &c. for it ſhould be againſt reaſon that ſuch feoffment made by him that was not able to make ſuch a feoffment, ſhall grieue or hurt another to take them from their entry, &c. And for theſe reaſons it ſeemeth to ſome, that after the death of ſuch husband ſo being within age at the time of the feoffment, &c. that his wife may well enter, &c.

Bald. fol.14. Britton fol.88. a. Flet. lib.3. cap.3.

¶ *Mes que il poet enter bien, &c.* Here is implyed that he might enter either within age, or at any time after full age, and likewiſe after his death his heire may enter. Meliorem enim conditionem facere poteſt minor deteriorem nequaquam.

Nota, A ſpeciall heire ſhall take aduantage of the infancie of the Anceſtor. As if Tenant in tayle of an Acre of the cuſtome of Worow Engliſh make a feoffment in fee within age, and dieth, the yongeſt ſonne ſhall auoyd it, for he is priuie in bloud, and claymeth by diſcent from the Infant.

And ſo if Tenant in tayle to him and the heires females of his bodie make a feoffment in fee and dieth within age, hauing iſſue a ſonne and a Daughter, the Daughter ſhall auoyd the feoffment. And ſo note that a cauſe to enter by reaſon of Infancy is not like to Conditions, warranties, and Eſtoppels, which euer diſcend to the heire at the Common Law.

The reſidue of this Section vpon that which hath beene ſaid is euident.

Section 636.

¶ S*Vrrender.* Surſum redditio properly is a yeelding vp of an eſtate for life or yeares to him that hath an immediate eſtate in reuerſion or remaynder, wherein the eſtate for life or yeares may dyrowne by mutuall agreement betweene them.

¶ Item ſi feme enheritrix prent baron, et ont iſſue fits, et l' baron mozuſt, & el prent auter baron, et le ſecond baron leſſa la terre que il ad en droit ſa feme a vn auter

Alſo if a woman inheritrix taketh husband, and they haue iſſue a ſonne, and the husband dieth, and ſhe takes another husband, and the ſecond husband letteth the Land which he

ter pur terme de ſa vie, et puis la feme mozuſt, et puis le tenant a terme de vie ſurrendiſt ſon eſtate a le ſecond baron, &c. Quære ſi le fits le feñ poit enter en ceſt cas ſur le ſecond baron durant la vie le tenant a terme de vie, &c. Mes il eſt cleere ley, q̃ apres la mozt le tenant a terme de vie, le fits la feme poit enter, pur ceo que l' diſcontinuance que fuit tantſolemẽt pur terme de vie, eſt determine, &c. per la mozt de meſme le tenant a terme de vie.

hath in right of his wife to another for terme of his life, and after the wife dieth, and after the tenant for life ſurrendreth his eſtate to the ſecond huſband, &c. *Quære* if the ſonne of the wife may enter in this caſe vpon the ſecond husband during the life of tenant for life, &c. but it is cleere Law, that after the death of the Tenant for life the ſon of the wife may enter, becauſe the diſcontinuance which was only for terme of life, is determined, &c. by the death of the ſame Tenant for life.

Note there be three kinde of Surrenders, viz. a Surrender properly taken at the Common Law, which is here before diſcribed, and whereof Littleton ſpeaketh. Secondly, a Surrender by cuſtome of lands holden by Copie, or of cuſtomary eſtates whereof you haue read before, Sect. 74. and a Surrender improperly taken (as appeare before, Sect. 550.) of a Deed. And ſo of a Surrender of a Patent, and of a Rent newly created, and of a fee ſimple to the King.

2. *Eliz. Dier* 176. 14. *H.*7.3. 27. *Aſſ.*37. 49. *E.*3.2. 11. *H.*4.2. 12. *H.*4.21. 13. *H.*4.13.

A Surrender properly taken is of two ſorts, viz. a ſurrender in Deed, or by expreſſe words, (whereof Littleton here putteth an example) and a ſurrender in Law wrought by conſequent by operation of Law. Littleton here putteth his caſe of a Surrender of an eſtate in poſſeſſion, for a Right cannot bee ſurrendred. And it is to be noted that a ſurrender in Law is in ſome caſes of greater force, then a ſurrender in Deed. As if a man

14 *H.*8.15. 37 *H.*6.17. 21. *H.*7.6. 40. *E.*3.24. 31. *Aſſ.*26. 50. *E.*3.6. 44. *Aſſ* 3. 35. *H.*8. *Dier* 37. 8. *Aſſ.*20. 4. *Ma.* *Dier* 141 11. *Eliz. Dier* 280.

make a Leaſe for yeares to begin at Michaelmaſſe next, this future intereſt cannot bee ſurrendred, becauſe there is no Reuerſion wherein it may drowne, but by a Surrender in Law it may be drowned. As if the Leſſe before Michaelmaſſe take a new Leaſe for yeares either to begin preſently, or at Michaelmaſſe, this is a Surrender in Law of the former Leaſe, Fortior & æquior eſt diſpoſitio legis quam hominis.

6. *H.*7.9. 37. *H.*6.17. 21. *H.*7.6. 14. *H.*7.4. *Lib.*6. *fo.*69. *Sir Moyls Finches caſe.*

Alſo there is a ſurrender without Deede, whereof Littleton putteth here an example of an eſtate for life of lands, which may be ſurrendred without Deed, and without Liuery of ſeiſin, becauſe it is but a yeelding, or a reſtoring of the ſtate againe to him in the immediate reuerſion or remainder, which are alwayes fauoured in Law. And there is alſo a ſurrender by Deed, and that is of things that lye in grant, whereof a particular eſtate cannot commence without Deed, and by conſequent the eſtate cannot be ſurrendred without Deed. But in the example that Littleton here putteth, the eſtate might commence without Deed, and therefore might be ſurrendred without Deed. And albeit a particular eſtate be made of lands by Deed, yet may it be ſurrendred without Deed, in reſpect of the nature and quality of the thing demiſed, becauſe the particular eſtate might haue bene made without Deed; and ſo on the other ſide. If a man be Tenant by the Curteſie, or Tenant in Dower of an Aduowſon, Rent or other thing that lye in grant, albeit there the eſtate begin without Deed, yet in reſpect of the nature and quality of the thing that lyes in grant, it cannot be ſurrendred without Deed. And ſo if a Leaſe for life be made of lands, the Remainder for life, albeit the remainder for life began without Deed, yet becauſe remainders and reuerſions though they be of lands are things that lye in grant, they cannot be ſurrendred without Deed. See in my Reports plentifull matter of ſurrenders.

19. *H.*6.33. 27. *Aſſ.*46. 14. *H.*7.4. 1. *H.*6.1. *Pl. Com.*541.

¶ *Quære ſi le fits la feme poet enter, &c.* Here Littleton **maketh a** quære. So as graue and learned men may doubt without any imputation to them, for the moſt learned doubteth moſt, and the more ignorant for the moſt part are the more bold and peremptorie.

It is holden of ſome, that after the ſurrender the iſſue in taile during the life of Tenant for life may enter, for that hauing regard to the iſſue the ſtate for life is drowned, and conſequently the inheritance gained by the Leaſe is by the acceptance of the ſurrender baniſhed and

gone, as if Tenant in taile make a Leaſe for life, whereby he gaineth a new reuerſion (as hath beene ſaid) if Tenant for life ſurrender to the Tenant in taile, the eſtate for life being drowned, the reuerſion gained by wrong is, vaniſhed and gone, and he is Tenant in taile againe againſt the opinion Obiter of Portington, 21.H.6.53.

21.H.6.53.

But herein are two diuerſities worthy of obſeruation. The firſt is that hauing regard to the partyes to the ſurrender, the eſtate is abſolutely drowned, as in this caſe betweene the Leſſee and the ſecond baron. But hauing regard to ſtrangers, who were not parties or priuies thereunto, leaſt by a voluntary ſurrender they may receiue preiudice touching any right or intereſt they had before the ſurrender, the eſtate ſurrendred hath in conſideration of Law a continuance. As if a Reuerſion be granted with Warrantie and Tenant for life ſurrender, the Grantee ſhall not haue Execution in value againſt the Grantor who is a ſtranger during the life of Tenant for life, for this ſurrender ſhall worke no preiudice to the Grantee who is a ſtranger.

45.E.3.13. 5.H.5.9. 9.E.4.18.

So if Tenant for life, ſurrender to him in reuerſion being within age, he ſhall not haue his age, for that ſhould be a preiudice to a ſtranger. who is to become Demandant in a reall action.

40.E.3.13. 9.E.4.18. 1.H.6.1. 24.E.3.77.

If Tenant for life grant a Rent charge, and after ſurrender, yet the rent remaineth, for to that purpoſe he commeth in vnder the charge. Cauſa qua ſupra.

5.H.5.8. 26.Aſſ.38. 7.H.6.2. b.

If a Biſhop be ſeiſed of a Rent-charge in fee, the Tenant of the land enfeoffe the Biſhop and his Succeſſors, the Lord enter for the Mortmaine, he ſhall hold it diſcharged of the rent, for the entrie for the Mortmaine affirmeth the alienation in Mortmaine, and the Lord claymeth vnder his eſtate, but if Tenant for life grant a rent in fee, and after infeoffe the Grantee, and the Leſſor enter for the forfeiture, the rent is reuiued, for the Leſſor doth claime aboue the Feoffment. But if I grant the reuerſion of my Tenant for life to another for terme of his life, and Tenant for life attorne, now is the Waſte of Tenant for life diſpunishable. Afterwards I releaſe to the Grantee for life and his heires, or grant the reuerſion to him and his heires, now albeit the Tenant for life be a ſtranger to it, yet becauſe he attorned to the Grantee for life, the eſtate for life which the Grantee had, ſhall haue no continuance in the eye of the Law as to him, but he ſhall be punished for waſte done afterward.

48.E.3.16.

The ſecond diuerſity is, that for the benefit of an eſtranger the eſtate for life is abſolutely determined. As if he in the reuerſion make a Leaſe for yeares or grant a Rent-charge, &c. and then the Leſſee for life ſurrender, the Leaſe or rent ſhall commence maintenant. So in the caſe of Littleton, firſt betweene the Leſſee, and the ſecond husband, the ſtate for life is determined, and ſecondly for the benefit of the iſſue it ſhall be ſo adiudged in Law. Here note a diuerſity, when it is to the preiudice of a ſtranger, and when it is for his benefit.

If a man maketh a Leaſe to A. for life reſeruing a rent of 40. ſhillings to him and his heires, the remainder to B. for life, the Leſſor grant the reuerſion in fee to B. A attorne, B. ſhall not haue the rent, for that although the fee ſimple doe drowne the remainder for life betweene them, yet as to a ſtranger it is in eſſe, and therefore B. ſhall not haue the rent, but his heire ſhall haue it.

Adredge Mich.16.& 17. Eliz. in. Turner Pl. & Gray def. in ſectione ſirme in Communibance Rot 945. Sir Francis Flemings caſe.

A Maſter of an Hoſpitall being a ſole Corporation by the conſent of his brethren make a Leaſe for yeares of part of the poſſeſſions of the Hoſpitall, afterwards the Leſſee for yeares is made maſter, the terme is drowned, for a man cannot haue a terme for yeares in his owne right, and a freehold in auter droit to conſiſt together (as if a man Leſſee for yeares take a feme Leſſor to wife.) (a) But a man may haue a freehold in his owne right and a terme in auter droit, and therefore if a man Leſſor take the feme Leſſee to wife, the terme is not drowned, but he is poſſeſſed of the terme in her right during the Coverture. (b) So if the Leſſee make the Leſſor his Executor, the terme is not drowned. Cauſa qua ſupra.

(a) 6.H.4.7. Pl.Com.418.

(b) 32.H.8.Br.ſurrender 52.

But if it had beene a Corporation aggregate of many, the making of the Leſſee Maſter had not extinguiſhed the terme, no more then if the Leſſee had beene made one of the brethren of the Hoſpitall.

Sect. 637.

Vid.Sect.638.

VN *ſoits.* Here it is to bee obſerued that it is not neceſſary that the Tenant in taile bee euer ſeiſed of an eſtate taile at the time when the Diſcontinuance of the whole eſtate is begun, as if Tenant in taile make a leaſe for life, whereby he gaineth,

CNota que vn eſtate taile ne poit eſte diſcontinue, meſla ou ceſtuy que fait le diſcontinuance fuit vn foits ſeiſie per force de le taile, ſinon que

NOte, that an eſtate taile cannot bee diſcontinued, but there where hee that makes the diſcontinuãce was once ſeiſed by force of the taile, vnles it be

que ſoit per reaſon de garrantie, &c. Come ſi ſoit aiel, pier, & fits, et lapel ſoit tenant en taile, et eſt diſſeiſie per le pier que eſt ſon fits, et le pier fait vn feoffment ō ceo ſans garranty & deuie, et puis laiel deuie, le fits bien poit enter ſur le feoffee, pur ceo que ceo ne fuit pas diſcontinuance, entant que le pier ne fuit ſeiſie per force de le taile al temps del feoffmēt &c. mes fuit ſeiſie en fee per le diſſeiſin fait al ayel.

by reaſon of a warrāty, &c. As if there be grād-father, father, & ſon, & the grandfather is tenant in taile, & is diſſeiſed by the father who is his ſon, & the father maketh a feoffment of this without warranty & die, & afterwards the grādfather dies, the ſon may wel enter vpō the feoffee, becauſe this was no diſcontinuāce, inaſmuch as the father was not ſeiſed by force of the entaile at the time of the feoffment, &c. but was ſeiſed in fee by the diſſeiſin of the grandfather.

as hath bene ſaid, a fee ſimple by wrong, in this caſe if he grant the Reuerſion in fee, and the Leſſee dieth, the whole eſtate is diſcontinued, and yet at the time of the grant (by which the Diſcontinuance continueth) he was not ſeiſed by force of the taile, and therefore Littleton materially added theſe words (Vn ſoits) that is, that he was once ſeiſed by force of the eſtate taile: and ſeeing that (as hath bene ſaid) a Diſcontinuance is a priuation, the rule of Law agreeth well with the rule of Philoſophie that Omnis priuatio præſupponit habitum, and therefore he cannot diſcontinue that eſtate which he never had.

Vid. Sect. 592. 596. 597. 601. 640. 658.

¶ *Sinen que il ſoit per reaſon del garrantie, &c.* For in many caſes a warranty added to a Conueyance is ſaid to make a diſcontinuance Ab effectu, although hee that made the conueyance was neuer ſeiſed by force of the eſtate taile, becauſe it taketh away the entrie of him that right hath, as a Diſcontinuance doth. As if Tenant in taile be diſſeiſed and dieth, and the iſſue in taile releaſe to the Diſſeiſor with warranty; in this caſe the iſſue was neuer ſeiſed by force of the taile, and yet this hath the effect of a Diſcontinuance by reaſon of the warranty, and the reaſon hereof appeareth before in this Chapter.

9. E. 4. 19. 12. E. 4. 11. 21. E. 4. 97.

¶ *Le fits poet enter.* But if the father that made the feoffment had ſuruiued the Grandfather he ſhould neuer haue entred againſt his owne feoffment, but albeit the Father had ſuruiued, yet after his deceaſe the Sonne ſhould haue entred for the reaſon here yeilded by Littleton. But if the feoffment had beene with warranty, then it had wrought the effect of a Diſcontinuance, and therefore Littleton ſaith Sauns Garranty, without warrantie.

15. E. 4. *Diſcont.* 30. *& entr. Cong.* 21. 21. E. 4. 97. 9. E. 4. 19. 39. H. 6. 45. 21. H. 6. 32. 12. E. 4. 11. 1. *Mar. Dier* 98.

Sect. 638.

¶ Item ſi Tenant en Taile fait vn leaſe a vn auter pur terme de vie, et le Tenant ē taile ad Iſſue et deuie, et le reuerſion diſcendiſt a ſon Iſſue, et puis Iſſue granta le reuerſion a luy diſcendue a vn auter en fee, et le tenant a terme de vie attourna & deuie, et le Grantee del reuerſion enter, &c. et eſt ſeiſie en fee en la vie del Iſſue, et puis iſſue en le taile ad iſſue fits et deuie, il ſemble

ALſo if Tenant in Taile make a Leaſe to another for terme of life, and the Tenaunt in Tayle hath Iſſue and dieth, and the Reuerſion diſcendeth to his Iſſue, and after the Iſſue granteth the reuerſion to him diſcended, to another in Fee, and the Tenant for life attorne and die, and the Grantee of the Reuerſion enter, &c. and is ſeiſed in Fee in the life of the Iſſue, and after the Iſſue in Tayle hath

ble que ceo neſt pas diſcontinuance a le fits, mes que le fitz poit enter, &c. pur ceo que ſon pier a que le reuerſion de Fee ſimple diſcendiſt, &c. nauoit vnques riens en la terre, per force de le Taile, &c.

Iſſue a ſon and dieth, it ſeemes that this is no diſcontinuance to the ſon, but that the ſon may enter, &c. for that his father, to whom the reuerſion of the fee ſimple diſcēded, had neuer any thing in the land by force of the entaile, &c.

15.E.4.*Diſcont.*30. 43.*Ed.*3. 6. 21.*H.*6.52.4.*H.*7.17.

¶ OF this opinion is Littleton in our Bookes.

¶ *Le Grantee del reuerſion enter, &c.* Here it is to be vnderſtood and obſerued, That in this caſe of the grant of the Reuerſion, Littleton doth not ſay, Sans garrantie, becauſe if a Warrantie had bene added, it had wrought no diſcontinuance, for that (as hath bene ſaid) the Diſcontinuance in iudgement of Law was but for life: but when the addition of a Warrantie doth worke a Diſcontinuance, then Littleton ſaith, Sans garrantie, as you may obſerue often in this Chapter.

21.*H.*6.52.53.

Sect. 639.

¶ CAr ſi home ſeiſie en droyt ſa feme, leſſa meſme la Terre a vn auter pur terme de vie, ore eſt le reuerſion de fee ſimple a le Baron, &c. Et ſi le Baron morust, viuant ſa feme et le Tenant a terme de vie, et le reuerſion diſcendiſt al heire le Baron, ſi le heire le Baron grant le reuerſion a vn auter en fee, et le tenant atturna, &c. et puis le tenaunt a terme de vie morust, et le Grauntee del Reuerſion en cel Caſe enter: En ceſt caſe ceo neſt pas Diſcontinuance a le Feme, mes la feme bien poit enter ſur le Grantee, &c. pur ceo que l'grantor nauoit riens al temps del Graunt, en le droit la Feme, quant il fiſt le graunt del Reuerſion.

FOr if a man ſeiſed in the right of his Wife, letteth the ſame land to another for terme of life, now is the reuerſion of the Fee Smple to the Huſband, &c. And if the Husband dyeth, liuing his Wife, and the Tenant for life, and the Reuerſion diſcend to the heire of the Husband, if the Heire of the Huſband grant the reuerſion to another in Fee, and the Tenant attorne, &c. and afterwards the Tenant for life dieth, and the Grantee of the reuerſion in this caſe enter: In this caſe this is no diſcotinuance to the wife, but ſhe may well enter vpon the Grantee, &c. becauſe the grantor had nothing at the time of the Graunt, in the right of his Wife when hee made the Graunt of the Reuerſion.

14.*E.*3.*Diſcont.*5.18.*aſſp.*2 18.*E.*3.54. 38.*E.*3.32. 22.*H.*6.24. 21.*H.*6.52.53. 15.*E.*4.*Diſcont.*30.

¶ CAr ſi home ſeiſie en droit ſa feme, *leſſa, &c.* Here Littleton, putteth his caſe where the Baron onely makes a Leaſe for life, for if he and his wife ioyne in a Leaſe by Deed, there the Reuerſion is not diſcontinued. See before, Sect.620. More need not to be ſayd hereof, in reſpect the like caſe of Tenant in Taile hath bene explained before.

Section 640.641.

¶ Et iſſint il ſemble, coment que homes queux ſont inheritables per force de le Taile, et ils ne fueront vnques ſeiſies per force de meſme le Taile, que tiel feoffements ou grants p eux fait ſans clauſe de Garrantie, nē pas diſcontinuance a lour iſſues apres lour deceaſe, mes q̄ lour Iſſues poyent bien enter, &c. coment que ceux queux fierent tielz grants en lour vies fueront forbarres dentrer per lour Fait demeſne, &c.

AND ſo it ſeemeth, That men which are inheritable by force of an Entaile, and neuer were ſeiſed by force of the ſame entaile, that ſuch Feoffements or grants by them made without clauſe of warrantie, is no diſcontinuance to their Iſſues after their deceaſe, but that their Iſſues may well enter, &c. albeit they which made ſuch Graunts in their liues were forebarred to enter by their owne act, &c.

Sect. 641.

¶ Et ſi le tenant en Taile ad iſſue deux fits, et leigne diſſeiſiſt ſon pier, et ent fait feoffment en fee ſans clauſe de Garrantie, et deuia ſans Iſſue, et puis le pier deuie, le puiſn̄ fits poit bien enter ſur le feoffee, pur ceo que l' Feoffment ſon eigne Frere ne poit eſtre diſcontinuance, pur ceo que il ne fuit vnques ſeiſie p force de meſme le Taile. Car il ſemble encounter reaſon, que per matter en fait, &c. ſans clauſe de Garrantie, home poit diſcontinuer vn Fait, &c. que ne fuit vnques ſeiſie per force de meſme le Taile.

AND if Tenant in Taile hath Iſſue two Sonnes, and the eldeſt diſſeiſeth his Father, & thereof maketh a Feoffement in Fee, without clauſe of Warrantie, and die without iſſue, and after the father die, the yongeſt ſon may well enter vpon the Feoffee, for that the Feoffement of his elder brother cannot be a diſcontinuāce, becauſe he was neuer ſeiſed by force of the ſame Tayle. For it ſeemeth to be againſt reaſon, that by matter in fact, &c. without clauſe of Warrantie, a man ſhould diſcontinue a Deed, &c. that was neuer ſeiſed by force of the ſame Taile.

¶ NOte, here alſo in theſe two Sections appeareth, That (as hath beene ſayd before) a Warrantie, though he were neuer ſeiſed, by force of the Tayle may worke the effect of a Diſcontinuance. *Vid. Sect.* 592. 596. 597. 601. 658.

¶ *Home poet diſcontinuer vn fait, &c.* This is miſtaken, & ſhould be, Home poet diſcontinuer vn taile, and ſo is the Originall.

Sect.

Sect. 642.

¶ Nota q̄ ſoit Sir, et tenāt, et le tenant dona les tenements a vn auter en taile, le remainder a vn auter en fee, et puis le tenant en taile fait vn leas a vn home pur terme de vie, &c. ſauant le reuerſion, &c. & puis granta le reuerſion a vn auter en fee, et le tenant a terme de vie atturna, &c. et puis le grantee del reuerſion mozuſt ſans heire, ozе meſme l' reuerſion deuient al ſeignioz per voy deſcheate. Si en ceſt cas, le tenant a terme de vie deuiaſt, et le Seignioz per fozce de ſon eſcheate enter en la vie le tenant en le taile, et puis le tenant en le taile mozuſt, il ſemble en ceo cas que ceo neſt pas diſcontinuance al iſſue en le taile ne a celuy en le remainder, mes que il poit bien enter pur ceo que le Seignioz eſt eins per voy deſcheat, et nemy per le tenant en le taile, &c. Mes ſecus eſſet, ſi le reuerſion vſt eſte execute en le grauntee en le vie le tenant en le tayle, car adonque vſt le grauntee eſte eins en les tenements per le tenant en le tayle, &c.

NOte if there be Lord and Tenant and the Tenant giueth lands to another in taile, the remainder to another in fee, and after the Tenant in taile makes a leaſe to a man for a terme of life, &c. ſauing the reuerſion, &c. and after granteth the reuerſion to another in fee and the tenant for life attorne, &c. and after the Grantee of the reuerſion die without heire, now the ſame reuerſion commeth to the Lord by way of eſcheate. If in this caſe the Tenant for life dieth and the Lord by force of his eſcheat enter in the life of Tenant in taile, and after the Tenant in taile dieth, it ſeemeth in this caſe that this is no diſcontinuance to the iſſue in taile, nor to him in the remaynder, but that he may well enter, becauſe the Lord is in by way of eſcheate, and not by the Tenant in tayle, but otherwiſe it ſhould bee, if the reuerſion had beene executed in the Grantee, in the life of Tenant in tayle, for then had the Grantee beene in the Tenements by the Tenant in taile, &c.

Vide Sect.620.

Lib.1.fol.136.
Lib.3.fol.62.63.

¶ The reaſon of this caſe is here rendred (as before it was in this Chapter) that albeit the reuerſion be executed in the Lord by eſcheate in the life of Tenant in tayle, yet becauſe he is not in by the Tenant in tayle but by eſcheate, it worketh no Diſcontinuance. But if it had beene executed in the life of Tenant in tayle in the Grantee which was in by Tenant in tayle, then the Lord by eſcheate ſhould haue taken aduantage of it; but of this ſufficient hath beene ſaid before in this Chapter.

Sect. 643.644. & 645.

¶ P *Arcel de ſon Glebe &c.* In whom the fee ſimple of the glebe is,

¶ Item ſi vn parſon dun Eſglíſe, ou vn Vicar dun Eſglíſe

ALſo if a Parſon of a Church or a Vicar of a Church alien

Eſglíſe, alien certaine terres, ou tenements parcel de ſon glebe, &c. a vn auter en fee, et mozuſt, ou reſigne, &c. ſon ſucceſſoz poit bien ent̄, nient contriſteāt tiel alienation, come eſt dit en vn Nota 2. H. 4 Terme Mich. quod ſic incipit.

certaine Lands or Tenements parcell of his Glebe, &c. to another in fee, and die or reſigne, &c. his ſucceſſor may well enter notwithſtanding ſuch alienation, as is ſaid in a *Nota* 2. *H.* 4. *Termino Mich.* which beginneth thus.

Sect. 644.

NOta quod dictum fuit pro lege en vn briefe de accompt pozt per vn maſter dun colledge, vers vn Chapleine, que ſi vn Parſon, ou vn Vicar, graunt certaine terre, quel eſt de dzoit ſon Eſglíſe a vn auter & deuie, ou permute, le ſucceſſoz poit enter, &c. Et ieo croy que la cauſe eſt, pur ceo que le Parſon, ou Vicar, que eſt ſeiſie, &c. come en dzoit de ſon Eſglíſe, nad pas dzoit de fee ſimple en les tenements, et le dzoit de fee ſimple de ceo demurt en aſcun auter perſon, et pur cel cauſe ſon ſucceſſ. poit bien enter, nient contriſteant tiel alienation, &c.

Nota quod dictum fuit pro lege, in a Writ of Account brought by a Maſter of a Colledge againſt a Chaplaine, that if a Parſon or Vicar grant certaine Land, which is of the right of his Church to another and die, or changeth, the Succeſſor may enter, &c. And I take the cauſe to bee, for that the Parſon or Vicar that is ſeiſed, &c. as in right of his Church hath no right of the fee ſimple in the tenements, but the right of the fee ſimple abideth in another perſon. And for this cauſe his Succeſſour may well enter, notwithſtanding ſuch alienation, &c.

is a queſtion in our Bookes: (a) ſome hold that it is in the Patron, but that cannot bee for two reaſons, firſt, for that in the beginning the Land was giuen to the Parſon and his Succeſſors, and the Patron is no Succeſſor. Secondly, the words of the Writ of Iuris vtrum bee, ſi ſit libera Eleemoſina Eccleſiæ de D. and not of the Patron. Some others doe hold that the fee ſimple is in the patron & Ordinary, but this cannot bee for the cauſes aboueſaid And therefore of neceſſitie the fee ſimple is in abeyance as Littleton ſaith. And this was prouided by the Prouidence and Wiſdome of the Law; for that the Parſon & Vicar haue Curam animarum, and were bound to celebrate Diuine Seruice, and adminiſter the Sacraments, & therefore no Act of the Predeceſſor ſhould make a diſcontinuāce to take away ꝑ entry of the ſucceſſor, and to driue him to a reall action whereby he ſhould be deſtitute of maintenance in the mean time; vpon conſideration of all our Bookes I obſerue this diuerſitie, that a Parſon or Vicar for the benefit of the Church and of his Succeſſor is in ſome caſes eſteemed in Law to haue a fee ſimple qualified but to doe any thing to the prejudice of his Succeſſor in many caſes, the Law adiudgeth him to haue in effect but an eſtate for life, Cauſæ Eccleſiæ publicis cauſis æquiparantur, and ſumma ratio eſt quæ pro religione facit. And Eccleſia fungitur vice minoris meliorem facere poteſt conditionem ſuam deteriorem nequaquam.

As a Parſon, Vicar, Archdeacon, Prebend, Chantery Prieſt, and the like may haue an Action of Waſte, and in the Writ it ſhall be ſaid ad exhæredationem Eccleſiæ, &c. ipſius B. or Præbendæ ipſius A.

And the Parſon, &c. that maketh a Leaſe for life ſhall haue

(a) 8. *H.* 6. 24. 12. *H.* 8. 8.

Vide Regiſtr. 307. *a.* 45. *E.* 3. *tit. Eſchange.* 12. *H.* 8. 9.

F.N.B. 49. *L.*

Bracton lib. 4. *fol.* 226.

Britt. fol. 143.

F.N.B. 55. *D.* & 57. *E.F.* 10. *H.* 7. 5.

*F.N.B.*49.*l.m.*a.20.*E.*3. *tit.Iuris vtrum. Temps E.*3. *Iura vtrum* 14.1.14.*E.*3. *ibid.*4. *F.N.B.*50. 30.*E.*3. 26. 11.*E.*3.11.*tit.Entrie* 10 *F.N.B.*206.*F. Regiſtr.*237. 4.*E.*4.2. 8.*E.*3.*tit.Entrie* 3. 7.*E.*3.54.55.

haue à Conſimili caſu during the life of the Leſſee, and a Writ of entry ad communem legem after his death, or a Writ Ad terminum qui præterijt, or a quod permittat in the debet, and none can maintaine any of theſe Writs, but a Tenant in fee ſimple or fee taple.

And a Parſon, &c. may receiue homage, which Tenant for life cannot doe, Temps E.1. Incumbent 19.

(c) Likewiſe a Parſon, &c. ſhall haue a Writ of meſne and a Contra formam feoffamenti.

(c)*F.N.B.*49.*l.*50.*a.*

But a Parſon cannot make a diſcontinuance as Littleton here teacheth, for that ſhould bee to the preiudice of his Succeſſor, to take away his entrie, and to driue him to a reall action.

Alſo if a Parſon, &c. make a leaſe for yeares reſeruing a rent & dieth, the leaſe is determined by his death, as if Tenant for life had made a leaſe, no acceptance of the rent by the Succeſſor can make it good. Alſo in a reall action a Parſon, Vicar, Archdeacon, Prebend, &c. ſhall haue aide of the Patron and Ordinary as tenant for life ſhal haue. So as it is euident that to many purpoſes a Parſon hath but in effect an eſtate for life, and to many a qualified fee ſimple, but the entire fee and right is not in him, and that is the reaſon that hee cannot diſcontinue the fee ſimple that he hath not, nor euer had, for as it hath beene ſaid, Omnis priuatio præſupponit habitum. And for the ſame cauſe he cannot haue a Writ of right right, nor a Writ of right in his nature, as a Writ of Right Sur diſclaimer of cuſtomes and ſeruices, Ne iniuſte vexes, rationabilibus diuiſis, quo iure, and the like.

*20.E.*3.*tit.Aide* 30.25.*E.*3. 34.*E.*2.3.45.*8.H.*6.21. 11.*H.*6.9. 6.*E.*3.45.43.*Aſſ. Pl.*23.*F.N.B.*129.

But here it appeareth by Littleton that ſuch bodies politique or corporate as haue a ſole ſeiſin, and may haue a Writ of right for that the fee and right is in them (albeit they cannot abſolutely conuey away their Lands, &c. without aſſent of others) may make a Diſcontinuance, as a Biſhop, an Abbot, a Deane, a Maſter of an Hoſpitall and the like. But this is to bee vnderſtood, where a Deane or a Maſter of an Hoſpitall, &c. are ſole ſeiſed of diſtinct poſſeſſions, for if the bodie that is ſeiſed be aggregate of many, as the Deane and Chapiter, Maſter and Confreres, &c. then the feoffment of the Deane or Maſter is ſo farre from a Diſcontinuance as it is a diſſeiſin.

*34.E.*3.*tit.*11.*H.*4.68. 9.*E.*4.16.18.*E.*3.7. 6.*E.*3. 22.3.*E.*2.*Aide* 167. 12.*E.* 4.11.32.*E.*3.*Aide* 39. 38.*E.*3.*tit.*14.*E.*3.*Iuris vtrum* 4.

And theſe that haue the fee and right in them ſhall not haue aide in reſpect of their high and large eſtate, albeit any of them be preſentable: but a Deane that is collatiue ſhall haue aide of the King.

And it is to be obſerued, that the remedy is euer agreeable to the right, and therefore the Biſhop, Deane, Maſter of an Hoſpitall, that hath Colledge and common Seale, or the like, ſhall haue a Writ of Right Right, which is the higheſt remedie, for that they haue the higheſt eſtate.

Here

Sect. 645.

CAr vn Eueſq̃ poit auer bꝛe de dꝛoit de tenemẽts de dꝛoit de ſon Eſglike, pur ceo que le dꝛoit eſt en ſon Chapiter, et le fee ſimple demurrant en luy et en ſ̃ Chapiter. Et vn Deane poit auer bꝛe de dꝛoit, pur ceo que le dꝛoit demurt ẽ luy. Et vn Abbe poit auer bꝛiefe de dꝛoit, p̃ ceo que le dꝛoit demurt en luy, et en ſon couent. Et vn Maſter dun Hoſpitall poit auer bꝛiefe de dꝛoit, pur ceo que le dꝛoit demurt en luy, et en ſes confreres, &c. Et ſic de alijs caſibus conſimilibus. **Mes vn parſon ou vn Vicar ne poit auer bꝛiefe de dꝛoit, &c.**

FOr a Biſhop may haue a writ of right of the tenemẽts of the right of his Church, for that the right is in his Chapiter, and the fee ſimple abideth in him and in his Chapiter. And a Deane may haue a writ of right, becauſe the right remaynes in him. And an Abbot may haue a writ of right for that the right remaynes in him and in his Couent. And a Maſter of an Hoſpitall may haue a Writ of Right becauſe the right remayneth in him and in his Confreres, &c. And ſo of other like caſes. But a Parſon or Vicar cannot haue a Writ of Right, &c.

Here Littleton citeth the Booke Caſe, Mich.2.H 4. as an authoritie whereupon he groundeth his opinion. And it is to be obſerued, that the yeares of H.4. were publiſhed before Littleton did write.

But at this day, the Biſhop, Deane, Maſter of an Hoſpitall, or the like that haue the fee and right in them, as hath beene ſaid, cannot diſcontinue, neyther can they or any Parſon, Vicar, Archdeacon, Prebend, or any other hauing any Eccleſiaſticall Liuing with aſſent of Deane and Chapiter, Patron and Ordinary, or the conſent of any others make any Leaſe, Gift, Grant or Conueyance, Eſtate, Charge or Incumberance to bind his Succeſſor other then for tearme of one and twentie yeares, or three liues in poſſeſſion, whereupon the accuſtomed Rent or more ſhall be reſerued. Theſe be excellent Lawes, and haue beene well expounded for the maintenance of Religion; and the good of Gods Church, for otherwiſe it is to bee feared that holy Church would loſe more then it would gaine in theſe dayes. *Vide Sect.* 527. 593. *&c.* 1. *Eliz. ca.* 18. 13. *Eliz. ca.* 10 1. *Iacobi cap.* 3.

But where Littleton in this and other Sections make mention of Maſters of Hoſpitals, the Reader muſt know, that ſince Littleton wrote, there hath beene a great alteration made by diuers Acts of Parliament concerning Hoſpitals. *Lib.*2. *fol.*46. *Lib.*4 *fol.*76. *&* 10. *Lib.* 5. *fol.*9. *&* 14. *Lib.*6 *fol* 37. *Lib.*7. *fol.*8. *Lib.*11. *fol.*67. 37. *H.*8. 31 *H.*8. 32. *H.*8. 37. *H.*8. 1. *E.*6. *&c.*

¶ *Maſter del Hoſpitall.* Theſe points concerning Hoſpitals were reſolued (c) by the Iuſtices.

(c) *Paſch.*24. *Eliz. The Lord Cheneys caſe. Lib.*2 *fol.*48. 49. *Eueſque de Canterburies caſe.*

Firſt, That no Hoſpitall was giuen to the Crowne by the Statute of 27.H.8. nor any Hoſpitall is within the Statute of 31.H.8. of Monaſteries, but only religious and Eccleſiaſticall Hoſpitals, and that no Lay Hoſpitall was within thoſe Statutes.

Secondly, If vpon the foundation of any lay Hoſpital or after it was ordained, That one or diuers Prieſts ſhould be maynteined within the Hoſpitall to celebrate Diuine Seruice to the poore, and to pray for the ſoule of the Founder, and all Chriſtian ſoules, or the like, and that the poore of ſuch Hoſpitall ſhould make the like Oriſons, yet ſuch an Hoſpitall is not within the ſaid Statutes, for the Hoſpitall is Lay, and not Religious, and all or the moſt part of antient Lay Hoſpitalls were founded or ordained after the like ſort, and the makers of thoſe ſtatutes neuer intended to ouerthrow workes of Charitie, but to take away the abuſe.

Thirdly, That no Hoſpitall was giuen to the King by the Statute of 37.H.8. but in two caſes, where the Donors, Founders or Patrons, &c. had entred and expulſed the Prieſts, Wardens, &c. betweene the fourth day of February, Anno 27.H.8 and the fiue and twentieth of December, Anno 37.H.8. or where King Henrie the eighth by Commiſſion according to that Act ſhould enter and ſeiſe the ſame, but that determined by the death of that King. *Lib.*1. *fol.*24. *Porters caſe.*

Fourthly, That the Statute of 1.E.6. extended not to any Hoſpitall whatſoeuer eyther Lay or Religious, as by the ſame appeareth. *Porters caſe vbi ſupra. Lib.*4. 111. 113. 114. 116. *In Lamberts caſe.*

And I was of Counſell with the Lord Cheney in this caſe, which, ſeeing it may doe good for maynteinance of Charitable vſes, I thought good ſummarily to report it, to this I will adde Panis pauperum vita pauperum, qui defraudat eos vir ſanguinis eſt. *Eccleſiaſticus ca.*34. *verſe.*22.

Nota, of Hoſpitals ſome are Corporations aggregate of many, as of Maſter or Warden, &c. and his Confreres: ſome where the Maſter or Warden hath only the eſtate of Inheritance in him, and the Brethren or Siſters power to conſent hauing Colledge and Common Seale, Some where the Maſter or Warden hath the ſtate in him, but hath no Colledge and common Seale, and ſuch a Maſter or warden ſhall haue a Iuris vtrum: and of theſe Hoſpitals ſome be eligible, ſome donatiue, and ſome preſentable. 14.*E.*3. *Iuris Vtrum.*4.

Sect. 646.

¶ Mes le pluis haut briefe q̄ ils poient auer eſt le briefe de Iuris vtrum, le quel eſt graund proofe que le droit de fee neſt en eux ne en nul autres, &c. Mes le droit de fee ſimple eſt en abeiance &c. ceo eſt adire, que il eſt tantſolement en le remembrance, entendement, & conſideration de la ley, &c. Car moy ſemble que tiel choſe

BVt the higheſt Writ that they can haue is the Writ of *Iuris vtrum*, which is a great proofe that the right of fee is not in them, nor in any others, &c. but the right of the fee ſimple is in abeiance, that is to ſay, that it is only in the remembrance, intendement and conſideration of

choſe et tiel droit que eſt dit en diuers Lieurs eſtre en abeyance, eſt a tant adire en Latyne, (ſ.) Talis res, vel tale rect' quæ vel qđ non eſt in homine adtunc ſuperſtite, ſed tantummodo eſt, & conſiſtit in conſideratione & intelligentia Legis, & quod alij dixerunt, talem rem aut tale rectum fore in nubib°. **Mes ieo ſuppoſe que ils intenderont per ceux parols,** In nubibus, &c. **come ieo aye dit adeuant.**

the Law, &c. for it ſeemeth to me, That ſuch a thing, and ſuch a Right which is ſayd in diuers bookes to be in abeyance, is as much to ſay in Latine, (ſ.) *Talis res, vel tale Rectum quæ vel quod non eſt in homine adtunc ſuperſtite, ſed tantummodo eſt, & conſiſtit in conſideratione & intelligentia legis, & quod alij dixerunt, talem rem aut tale rectum fore in nubibus.* But I ſuppoſe, that they meane by theſe words, *(In nubibus, &c.)* as I haue ſaid before.

4.E.3.63. Vi.Sect.648.649 650.651.

¶ *En abeiance.* **That is in in expectatiõ, of the frẽch word** Bayer to expect. For when a Parſon dyeth we ſay that the freehold is in Abeiance, becauſe a Succeſſor is in expectation to take it, and here note the neceſſitie of the true interpretation of words.

Vid. Sect.1.

If Tenant Pur terme dauter vie dyeth, the freehold is ſaid to be in Abeiance vntill the occupant entreth. If a man make a Leaſe for life the remainder to the right heires of I.S. the fee ſimple is in Abeiance vntill I.S. dieth. And ſo in the caſe of the Parſon, the fee and right is in Abeiance, that is in expectation, in remembrance, entendment or conſideration of Lawe 1. In conſideratione ſiue intelligentia legis, becauſe it is not in any man then liuing, and the right that is in Abeiance is ſaid to be In nubibus in the Clouds, and therein hath a qualitie of fame whereof the Poet ſpeaketh;

Virg.4.Aneid. Inſequiturque ſolo, & caput inter nubila condit.

Section 647.

¶ **Tẽ ſi vn parſon dun eſgliſe deuie, ore le franktenement del glebe del perſonage eſt en nulluy durant le temps que le parſonage eſt voide, mes in abeiance, ceſt aſcauoir, in conſideration & en le intelligenc̃ de le ley, tanque vn auter ſoit fait parſon de meſme leglife, et immediat quant vn auter eſt fait parſon, le franktenement en fait eſt en luy come ſucceſſor.**

ALſo if a Parſon of a Church dieth, now the freehold of the glebe of the Parſonage is in none during the time that the Parſonage is voide but in abeiance, *viz.* in conſideration and in the vnderſtanding of the Law vntill another be made Parſon of the ſame Church, and immediatly when another is made Parſon, the freehold in Deed is in him as Succeſſor.

¶ *Si vn Parſon dun Eſgliſe deuie, &c.* **So it is of a Biſhop, Abbot,** Deane, Archdeacon, Prebend, Vicar, and of euery other ſole Corporation or body politique preſentatiue, electiue, or donatiue, which inheritances put in abeiance are by

Bract.li.1.ca.2. Brit.fo.249. ſome called Hæreditates jacentes, and ſome ſay, Que le fee eſt en balaunce.

Sect.

Sect. 648.

¶ Tẽ aleuns peradventure voilẽt arguer & dire, que entant que vn parson ouc lassent del patron & ordinarie poit grãter vn rent charge hors del glebe del parsonage en fee, et issint charger l' glebe del parsonage perpetualmẽt ergo ils ont fee simple, ou deux, ou vn de eux, auoit fee simple al meins. A ceo poit estre respondue, que il est prinsiple en le ley, que de chescuns terres il y ad fee simple, &c. en aleun hom, ou autrement le fee simple est en abeyance. Et vn auter prinsiple est, Que chescun terre de Fee simple poit estre charge de vn Rentcharge en fee per vn voy, ou per auter. Et quant tiel rent est graunt per le Fait le Parson, et l' Patron, et Ordinarie, &c. en Fee, nul auera preiudice ou parde p force de tiel Grant, forsque les Grantors en lour vies, et les Heires le Patron, et les successors del Ordinary aprés lour decease. Et aprés tiel charge, si le

ALso some peraduenture will argu and say, that inasmuch as a Parson with the assent of the Patron and Ordinary, may grant a rent charge out of the Glebe of the Parsonage in fee, and so charge the glebe of the Parsonage perpetually, *ergo* they haue a Fee simple, or two or one of them haue a fee simple at the least. To this may bee answered, That it is a Principle in Law, That of euerie land there is a Fee simple, &c. in some bodie, or otherwise the fée simple is in abeyance. And there is another Principle, that euery Land of Fee simple may bee charged with a Rent charge in Fee by one way or other. And when such Rent is granted by the Deede of the Parson, and the patron, and Ordinarie, &c. in Fee, none shall haue preiudice or losse by force of such Grant, but the Grantors in their liues, and the Heires of the Patron, and the successours of the Ordinarie after their decease. And after such charge

¶ *Lest vn Principle en la Ley, &c.* Principium, quod est quasi primum caput, from which many cases haue their originall or beginning, which is so strong, as it suffereth no contradiction; and therefore it is sayd in our Bookes, that antient Principles of the law (a) ought not to be disputed, Contra negantem principia non est disputandum. That which our Author here calleth a Principle, Sect. 3. & 90. hee calleth a Maxime.

(a) 11. H. 4. 5.

Sect. 3. & 90.

Here Littleton in answer to an obiection alledgeth two Principles. First,

¶ *Que de chescun terre il y ad Fee simple, &c.* This is Perspicue verum, and needeth no explanation. Secondly,

¶ *Chescun terre de Fee simple poet estre charge en Fee per vn voy ou auter.* Hereby it appeareth, That albeit the right of the Fee simple be in abeyance, yet it may be charged by one way or another. And so it may bee altened in Fee, albeit the right of the fee be in abeyance, or in consideration of Law. And herein is a diuersitie worthie the obseruation to be made, That when the right of Fee simple is perpetually by iudgement of Law in abeyance, without any expectation to come in esse, there hee that hath the qualified fee concurrentibus his quæ in iure requiruntur, may charge or alien it, as in the case of Parson, Vicar, Prebend, &c. But where the Fee simple is in abeyance, and by possibilitie may euerie houre come in esse, there the fee simple cannot bee charged vntill it commeth in esse. As if a Lease for life be made, the remainder to the right heires of I.S. the Fee simple cannot be charged

charged till I.S. be dead. And ſo is Littleton to bee vnderſtood, viz. that either it may be charged in præſenti or in futuro.

¶ *Cheſcun Terre de Fee ſimple.* And ſo it is of Lands entailed, for they may bee charged in Fee alſo, for the Eſtate Taile may bee cut off by Fine or Recouery. Alſo the Eſtate taile may continue, and yet Tenant in taile may lawfully charge the land and bind the Iſſue in Taile. As if a Diſſeiſor make a gift in Taile, and the Donee in conſideration of a Releaſe by the Diſſeiſee of all his right to the Donee, granteth a rent charge to the Diſſeiſee and his heires, proportionable to the value of his right, this ſhall bind the Iſſue in Taile: Vide Sect. 1. Bridgewaters Caſe: which Lands by the rule of Littleton may be charged: and therefore if the owner of thoſe thirteene acres grant a Rent charge out of thoſe thirteene Acres generally, lying in the Meadow of eightie, without mentioning where they lie particularly, there as the ſtate in the land remoues, the charge ſhall remoue alſo. But ſince our Author wrote, all Eccleſiaſticall perſons are diſabled to charge in Fee any of their Eccleſiaſticall poſſeſſions, as before hath beene ſpoken of at large.

Vi. Sect. 1. Bridgewaters caſe. & 59.

Vi. Sect 593.

¶ *Et quant tiel rent eſt grant, &c.* This is an excellent interpretation and limitation of the ſayd Principle, viz. That none ſhall haue preiudice or loſſe by any ſuch Grant, but ſuch as are partie or priuie thereunto, as the Patron and his Heyres, the Ordinarie and his Succeſſors, and the Parſon and his Succeſſors: which Succeſſors of the Parſon are to be preſented by the Patron or his heires, and admitted and inſtituted by the Ordinarie or his Succeſſors. The like is to be ſayd of an Archdeacon, Prebend, Vicar, Chauntrie Prieſt, and the like.

31.E.1.tit.Grant 90. 8.R.2.Annuit.53.

Parſon deuie, ſ̃ ſucceſſour ne poit bener a le dit Eſgliſe d̃ eſtre Parſon de meſme le Eſgliſe per la Ley, forſque per preſentment del Patron, et admiſſion et inſtitution del Ordinarie. Et pur cel cauſe il conuient que le Succeſſor ſoy teigne content, et agree de ceo, que ſon Patron et Lordinary loyalmẽt feſoyent adeuant, &c. Mes ceo neſt proofe que le Fee ſimple, &c. eſt en le Patron et Lordinarie, ou en aſcun de eux, &c. Mez la cauſe que tiel grãt de Rent charge eſt bone, eſt pur ceo que ceux queux aueront intereſt, &c. en la dit Eſgliſe, ſ̃, le Patron ſolonque la Ley temporal, et Lordinarie ſolonque la Ley ſpirituall, fueront aſſentus, ou parties a tiel charg̃, &c. Et ceo ſemble eſtre la verie cauſe que tiel Glebe poit eſtre charge en perpetuitie, &c.

if the Parſon die, his ſucceſſor cannot come to the ſayd Church to be Parſon of the ſame, by the Law, but by the preſentment of the Patron, and admiſſion and inſtitution of the Ordinarie. And for this cauſe the Succeſſour ought to hold himſelfe content, and agree to that which his Patron and the Ordinarie haue lawfully done before, &c. But this is no proofe that the Fee ſimple, &c. is in the Patron and the Ordinarie, or in either of them, &c. but the cauſe that ſuch graunt of rent charge is good, is for that they who haue the intereſt, &c. in the ſayde Church, *viz.* the Patron according to the Law Temporall, and the Ordinarie, according to the law ſpiritual, were aſſenting, or parties to ſuch charge, &c. And this ſeemeth to be the true cauſe why ſuch Glebe may be charged in perpetuitie, &c.

¶ *Per le Fait le Parſon, & Patron, & Lordinarie, &c.* Yet if the Parſon die, and in time of vacation, the Patron of the aſſent of the Ordinarie, or the Patron and Ordinarie grant an annuitie or Rent charge out of the Glebe, this ſhall (as hath beene ſayd) binde the ſucceeding Parſons for euer.

26.E.3.tit.Annuit.24. 40.E.3.30.3.E.3.17.Reg.38

If there be Parſon, Patron, and Ordinarie, and the Parſon by the Ordinance and aſſent of

of the Ordinarie grant an Annuitie to another, hauing quid pro quo in consideration thereof, this shall bind the successor of the Parson, without the consent of the Patron.

A Church Parochiall may be donatiue and exempt from all ordinarie iurisdiction, and the Incumbent may resigne to the Patron, and not to the Ordinarie, neither can the Ordinarie visit, but the Patron by Commissioners to be appoynted by him: And by Littl. rule, the Patron and Incumbent may charge the Glebe, and albeit it be donatiue by a Lay man, yet mere laicus is not capable of it, but an able Clerke infra sacros Ordines is, for albeit he come in by Lay donation, and not by admission or institution, yet his Function is spirituall, and if such a Clerke donatiue be disturbed, the Patron shall haue a Quare impedit of this Church donatiue, and the Writ shall say, Quod permittat ipsum præsentare ad Ecclesiam, &c. and declare the speciall matter in his Declaration. And so it is of a Prebend, Chanterie, Chappell donatiue, and the like, and no Laps shall incurre to the Ordinarie, except it be so specially prouided in the Foundation. But if the Patron of such a Church, Chanterie, Chappell, &c. donatiue, doth once present to the Ordinarie, and his Clerke is admitted and instituted, it is now become presentable, and neuer shall be donatiue after, and then Laps shall incurre to the Ordinary, as it shall of other Benefices presentable. But a presentation to such a Donatiue by a stranger, and admission and institution thereupon, is meerely voyd. And all this was resolued by the whole Court of Kings Bench, for the Rectorie Parochiall donatiue of Saint Burian in the Countie of Cornewall.

6 E.3.4.55. 7.E.3.40.41. F.N.B.152.17.E.3.32. 39.E.3 17.b. 11.H.4.68. 8 H.3.33. Vi.Sect.133.53c.11.E.3. Ior.vtr.3.8.Ass.29.31. 13.Ass.2.

14.H.3.Quar.imp 183. 17.E.3.12.69. 14.H.4.11. F.N.B.33.e.16.E.3.bre.660

13.E.4 3.6.H.7.14.

Vi.Sect 530. 22.H 6.26. F.N.B.35.e.

Hil.1.Iac.coram Reg rot.601 inter Wil Fairchild Pl. & Wil.Goyer def.in Trespas.

It appeareth by our Bookes, and by diuers Acts of Parliament, That at the first all the Bishopricks in England were of the Kings foundation, and donatiue per traditionem baculi, (id est) the Crosier, which was the Pastorall Staffe, & annuli, the Ring whereby hee was married to the Church. And King Henrie the first beeing requested by the Bishop of Rome to make them electiue, refused it: but King Iohn by his Charter bearing date quinto Iunij, anno decimo septimo, granted that the Bishopricks should be eligible. If the King doth found a Church, Hospitall, or free Chappell donatiue, he may exempt the same from ordinarie Iurisdiction, and then his Chancellor shall visit the same. Nay, if the King doe found the same without any speciall exemption, the Ordinarie is not, but the Kings Chancellor, to visit the same. Now as the King may create Donatiues exempt from the visitation of the Ordinarie, so he may by his Charter licence any subiect to found such a Church or Chappell, and to ordaine that it shall be donatiue, and not presentable, and to be visited by the Founder, and not by the Ordinarie. And thus began Donatiues in England, whereof common Persons were Patrons.

17.E.3.40.6.E.3.10. 25.E.3.e1. vide de Prouisor. Math. Par pa.10.& 62.

F.N.B.35.E.42.A.B. 27.E.3.84 & 85. 8.Ass 29. 8.E.3.Ass 150. 18.E Acco Fac.11. 6.H.7.14. 16.E.3. Breife 660. 31.E.3.60. Register 40. Dyer 10.Eliz.f. 273 14.Eli.ca.5.2.H.5.c.1.

¶ *Ordinarie.* Ordinarius is he that hath ordinarie iurisdiction in causes Ecclesiasticall, immediate to the King and his Courts of Common Law, for the better execution of Iustice, as the Bishop or any other that hath exempt and immediate iurisdiction in Causes Ecclesiasticall.

¶ *Ley temporel.* Which consisteth of three parts, viz. First, On the Common Law, expressed in our Bookes of Law and iudiciall Records. Secondly, On Statutes contained in Acts and Records of Parliament. And thirdly, On Customes grounded vpon reason, and vsed time out of mind, and the Construction and determination of these doe belong to the Iudges of the Realme.

¶ *Ley Spiritual, &c.* That is, the Ecclesiasticall Lawes allowed by the Lawes of this Realme, viz. which are not against the Common Law (whereof the Kings Prerogatiue is a principall part) nor against the Statutes and Customes of the Realme, and regularly according to such Ecclesiasticall Lawes, the Ordinarie and other Ecclesiasticall Iudges doe proceed in causes within their Conusance. And this Iurisdiction was so bounded by the antient Common Lawes of the Realme, and so declared by Act of Parliament.

The Statute of 25.H.8.ca.19. 33.H.6.34. 32.H.6.28.

¶ *Admission & Institution.* In proprietie of speech, Admission is, when the Bishop vpon examination admitteth him to be able, and saith, Admitto te habilem. (d) Institution is, when the Bishop saith, Instituo te rectorem talis Ecclesiæ cum cura animarum, & accipe Curam tuam & meam. (e) But sometime in a more large sence, admissus doth include Institutus also, Cuius præsentatus sit admissus, (i.) institutus. And it is to bee obserued, That Institution is a good plenartie against a common person, (but not against the King, vnlesse he be inducted) and that is the cause that regularly plenartie shall be tried by the Bishop, because the Church is full by Institution, which is a spirituall Act, but voyd or not voyd shall be tried by the Common Law.

(d) Lib.4.fo 75. & 79. Lib.6.fo.49. Lib.7.fo 46. (e) W.2.cap.5.13.E.1.

22.H.6.27. 38.E.3.4.

At the Common Law if an estranger had presented his Clerke, and hee had beene admitted and instituted to a Church, whereof any Subiect had beene lawfull Patron, the Patron had no other remedie to recouer his Aduowson, but a Writ of Right of Aduowson, wherein

Glanuill lib.13.ca.18.19.20. Mirror cap.5.§ 5. Bracton Lib.4.fol.238.240. 244.& c.291. Flet.li.5.c.11. 16.19. Brit.fo.232,233.234

6.E 3.28.39 52. 39.E.3.24 43.E.3.25.45.E.3.*Quar. imp.*139.10.E.2.*Com.*22. 31.E.1.*Quar.imp.*186.

in the Incumbent was not to be remoued: and ſo it was at the Common Law, if an vſurpation had bene had vpon an Enfant or Feme Couert, hauing an Aduowſon by diſcent, or vpon Tenant for life, &c. the Infant, Feme Couert, and he in the reuerſion were driuen to their Writ of Right of Aduowſon; for at the Common Law, if the Church were once full, the Incumbent could not be remoued, and Plenarty generally was a good Plea in a Quare impedit, or Aſſiſe of Darreine preſentment, and the reaſon of this was, to the intent that the Incumbent might quietly intend & applie himſelfe to his ſpiritual Charge. And ſecondly, the Law intended, that the Biſhop that had cure of ſoules within his Dioceſſe, would admit and inſtitute an able man for the diſcharge of his dutie and his owne, and that the Biſhop would doe right to euerie Patron within his Dioceſſe. But at the Common Law, if any had vſurped vpon the King, and his Preſentee had bene admitted, inſtituted, and inducted, (for without induction the Church had not bene full againſt the King) the King might haue remoued him by

F.N.B.36 k.143.a.35.F.3. ca.3.13.R.2.ca 1.4.H.4. 21.2.H.6.19.

Quare impedit, and bene reſtored to his preſentation, for therein he hath a Prerogatiue, *Quod nullum tempus occurrit Regi*, but he could not preſent, for the plenarty barred him of that, neither could he remoue him any way but by Action, to the end the Church might bee the more quiet in the meane time: * Neither did the King recouer dammages in his Quare impedit at the Common Law. But the ſayd Statute (a) hath altered the Common law in the caſes aforeſayd, as namely, *Quoad hoc, quod ſi pars rea accipiat de plenitudine Eccleſiæ per ſuam propriam præſentationem, non propter illam plenitudinem remaneat loquela, dummodo breue infra tempus ſemeſtre impetretur*, &c. And alſo hath prouided remedie in the other caſes, as by the ſayd Act appeareth.

* *Li.6 fo.51.Li.7 fo.19. 3.H.6.Dam.17.34.H.6. 28.12.E.3.Champerty 9 18.E.3.2.Temps E.1.Quar. imp.181.*

(a) *W.2.ca 5.13.E.1.*

(g) 45 E.3.35.38.E.3.4. 25.E.3.47.13.El.Dy.292. Reg.302.&c.18.El.Dy.348. 14.E.4.2.7.H.4.32.31.E.1 *Quar.imp.185.W.2.vb. ſup.*

(g) And if the King doe preſent to a Church, and his Clerke is admitted and inſtituted, yet before induction the King may repeale and reuoke his preſentation. But regularly no man can be put out of poſſeſſion of his Aduowſon, but by admiſſion and inſtitution vpon a vſurpation by a preſentation to the Church, *Cum aliquis ius præſentandi non habens præſentauerit*, &c. and not by collation of the Biſhop: (h) And therefore if the Biſhop collate without title, and his Clerke is inducted, this ſhall not put the rightfull Patron out of poſſeſſion, for it ſhall be taken to be onely prouiſionally made for celebration of diuine Seruice vntill the Patron do preſent, and therefore hee is not driuen to his Quare impedit, or Aſſiſe of Darreine preſentment, in that caſe, but an Vſurpation by collation ſhall take away the right of Collation that is in another.

(h) 17.E.3.64.

It is to be obſerued, That an vſurpation vpon a Preſentation ſhal not only put out of poſſeſſion him that hath right of preſentation, but right of Collation alſo. Therefore at this day the Incumbent ſhall be remoued in a Quare impedit, or Aſſiſe of Darreine preſentment, if there be not a Plenarty by ſixe moneths before the Teſte of the Writ, but then the Incumbent muſt be named in the Writ, or elſe he ſhall neuer be remoued: yet at the Common law, if the Ordinarie refuſed to admit and inſtitute the Clerke of the Patron, or when any diſturbed him to preſent, ſo as he could not preferre his Clerke, he might haue his Quare impedit, or Aſſiſe de Darreine preſentment, and if the Church were not full, haue a Writ to the Biſhop to admit his Clerke: but ſo odious was Symonie in the eye of the Common Law, that before the Statute of W.2. he recouered no dammages. At the Common Law, if hanging the Quare impedit againſt the Ordinarie for refuſing of his Clerke, and before the Church were full, the Patron brought a Quare impedit againſt the Biſhop, & hanging the Suit, the Biſhop admit & inſtitute a Clerk at the preſentation of another, in this caſe if Iudgement be giuen for the Patron againſt the Biſhop, the Patron ſhall haue a Writ to the Biſhop, and remoue the Incumbent that came in pendente lite by vſurpation, for pendente lite nihil innouetur, and therefore at the Common Law it was good policie to bring the Quare impedit againſt the Biſhop as ſpeedily as might be. And it is to be obſerued, That albeit the Clerke that comes in pendente lite, by vſurpation, ſhall be remoued, yet if the rightfull Patron, being a ſtranger to the Writ, preſent pendente lite, and his Clerke is admitted and inſtituted, he ſhall not be remoued, for elſe by the bringing of ſuch Quare impedit againſt the Ordinarie, the rightfull Patron might bee defeated of his Preſentation: and therefore euer after the Statute of Weſtm 2. amongſt other things it was inquired ex Officio, if the Church were full, and of whoſe preſentation, &c. and if the Plaintife ſhould haue a Writ to the Biſhop, and his Clerke admitted (as in moſt caſes he ought) yet may the rightfull Incumbent haue his remedie by Law.

9.H.6.32.& 56.19.H.6.68

18.E.2.*Preſentment* 20. 50.E.3.*Encumbent* 10.21.H. 7.8 a.& b 9.*Eliz.Dyer.*260 *F.N.B.*32.14.H.8.31. 19 E.2.*Dar.Pref.*21. 10.E.3.19.9.H.6.31.

And as it was good policie (as hath bene ſayd) to bring a Quare impedit as ſpeedily as might be againſt the Biſhop, ſo it is good policie at this day to name the Biſhop in the Quare impedit, for then he ſhall not preſent by Laps. But ſeeing the Biſhop ſhall not preſent by Laps becauſe he is named in the Writ, what then, after that the time be deuolued to the Metropolitan, ſhall not he preſent by Laps becauſe he is not named? To this it is anſwered, That he ſhal not in that caſe preſent by laps, for the Metropolitan ſhal neuer preſent or collate by laps after ſixe moneths, but when the immediate Ordinarie might haue collated by Laps within the ſixe moneths, and had forceaſed his time. And ſo it is if the time be deuolued to the King for

30.E.3.*tit.Quar.imp.Stath.* 48.E.3.15.9.H.6.32 56. 19.H.6.68. L.5.E.4.115. 9.E.4.30.

11.H.4.80.

for the firſt ſtep or beginning faileth, and in humane things Quod non habet principium, non habet finem. And all theſe points were reſolued (*) in a Writ of Error brought by Richard Biſhop of London, and Iohn Lancaſter againſt Anthony Lowe vpon a Iudgement giuen againſt them in a Quare impedit in the Common Place for the Church of Winbiſhe. But nowe let vs heare what our Author will ſaye vnto vs. (*) *Mich.*3.*Iacobi.*

Section 649.

¶ Item ſi f̄ ẽ taile ad iſſue & ſoit diſſeiſie, et puis il releſſa per ſon fait tout ſon droit a l' diſſeiſor, en ceſt caſe nul droit de taile poit eſtre en le tenant en taile, pur ceo que il auoit releas tout ſon droit. Et nul droit poit eſtre en liſſue en le taile durant le vie ſon pere. Et tiel droit del enheritance en le taile neſt pas tout ouſterment expire p force de tiel releas, &c. Ergo, il couient que tiel droit demurt en abeiance, vt ſupra, durant la vie le tenant en taile, que releſſa, &c. & apres ſon deceaſe donque eſt tiel droit maintenant en ſon iſſue en fait, &c.

ALſo if Tenant in tayle hath iſſue and is diſſeiſed, and after he releaſeth by his Deed all his right to the Diſſeiſor. In this caſe no right of taile can be in the tenant in taile, becauſe hee hath releaſed all his right. And no right can bee in the iſſue in taile during the life of his father. And ſuch right of the Inherirance in the taile is not altogether expired by force of ſuch releaſe, &c. *Ergo*, it muſt needs be that ſuch right remain in abeiance, *vt ſupra*, during the life of Tenant in taile that releaſeth, &c. And after his deceaſe ſuch right preſently is in his iſſue in deed, &c.

Sect. 650.

¶ En meſme le maner eſt, lou tenant en taile granta tout ſon eſtate a vn auter, ẽ ceſt cas le grauntee nad eſtate forſque pur terme de

IN the ſame manner it is where Tenant in taile grant all his eſtate to another. In this caſe the Grantee hath no eſtate but for terme of life of the Tenant

¶ Littleton hauing declared where a fee is in abeiance, & where a freehold and fee is in abeiance by Act in Law, & where a fee that is in abeiance may be charged. Here hee putteth two caſes where a right of an eſtate taile may bee in abeiance by the act of the partie, which are ſo clere and euident, as there needs no further proofe or argument, then Littleton hath ſubtily and artificially made, albeit ſome obiections of no weight haue beene made againſt it. If tenant in taile of Lands holden of the King bee attainted of felony, and the King after office ſeiſeth the ſame, the eſtate taile is in abeiance, there ſaid to be in ſuſpence. *Pl. Com fol.*552.563. *in Walſinghams caſe.* 14.*E.*3. *Diſcont.*5. 19 *H.*6.60. 29.*Aſſ.*p. *Walſinghams caſe vbi ſupra.*

¶ *Grant ſon eſtate concedit ſtatum ſuum.* State or eſtate ſignifieth ſuch Inheritance, Freehold, terme for yeares, Tenancie by ſtatute Merchant, Staple, Elegit or the like, as any many hath in Lands or tenements, &c. And by the grant of his eſtate, &c. as much as he can grant ſhall paſſe, as here by Littletons caſe appeareth Tenant for life the remaynder in taile, the remaynder to the right heires of Tenant for life, Tenant for life grant totum ſtatum ſuum to a man and his heires, both eſtates doe paſſe. *Vid. Sect.*65.524.535.526. 44.*E.*3.10. 44.*Aſſ.*28. 43.*Aſſ.*8. 5.*H.*7.30. 44.*Aſſ.*28. 44.*E.*3.10.

¶ *Right.* Ius, ſiue rectum (which Littleton often vſeth) ſignifieth properly, and ſpecially in Writs and pleadings, when an eſtate is turned to a right, as by Diſcontinuance, Diſſeiſin, &c. where it ſhall be ſaid, Quod ius diſcendit & non terra. But (right) doth alſo in- 20.*H.*6.9.

clude

Vide Sect.465. Pl.Com.484 Lib.8.fol.153. Altham's caſe 39.H.6.38.

clude the eſtate in eſſe in conueyances, and therefore if Tenant in fee ſimple make a Leaſe for yeares, and releaſe all his right in the land to the Leſſee and his heires, the whole eſtate in fee ſimple paſſeth.

vie del tenant en le taile et le reuerſion ꝺ le taile neſt pas en le tenant en taile, pur ceo q̄ il auoit graunt tout ſon eſtate et ſon ꝺroit, &c. Et ſi le tenant a que le graunt fuit fait fiſt waſt, le tenant en le taile ne vnq̄ auera ꝺreife ꝺe waſt, pur ceo que nul reuerſion eſt en luy. Mes le reuerſion et le enheritance de le taile, durant le vie le tenant en le taile, eſt en abeiance, ceſtaſcauoir, tantſolement en le remembꝛance, conſideration, et intelligence de la ley.

in taile, and the reuerſion of the taile is not in the Tenant in taile, becauſe he hath granted all his eſtate and his right, &c. And if the Tenant to whom the grant was made make waſte, the Tenant in taile ſhall not haue a Writ of waſte, for that no reuerſion is in him, but the reuerſion and inheritance of the taile during the life of the Tenant in taile is in abeiance, that is to ſay, only in the remembrance, conſideration, and intelligence of the Law.

And ſo commonly in fines, the right of the Land includeth and paſſeth the ſtate of the Land, as A. cognouit tenementa prædicta eſſe ius ipſius B. &c. And the Statute (a) ſaith, Ius ſuum defendere, (which is) ſtatum ſuum. And note that there is Ius recuperandi, ius intrandi, ius habendi, ius retinendi, ius percipiendi, & ius poſſidendi.

(a) *W.2. Cap.3. Pl.Com.484.& 487.b.*

Title, properly (as ſome ſay) is when a man hath a lawfull cauſe of entrie into Lands whereof another is ſeiſed, for the which hee can haue no Action, as title of condition, title of Mortmaine &c. But legally this word (Title) includeth a right alſo, as you ſhall perceiue in many places in Littleton: and title is the more generall word, for euery right is a title, but euery title is not ſuch a right for which an Action lyeth, and therefore Titulus eſt iuſta cauſa poſſidendi quod noſtrum eſt, and ſignifieth the meanes whereby a man commeth to land, as his title is by fine or by feoffment, &c. And when the Plaintife in Aſſiſe maketh himſelfe a title, the Tenant may ſay, Veniat Aſſiſa ſuper titulum, which is as much to ſay, as vpon the title which the Plaintife hath made by that particular Conueyance, Et dicitur titulus à tuendo, becauſe by it he holdeth and defendeth his Land, and as by a releaſe of a right a title is releaſed, ſo by releaſe of a title a right is releaſed alſo. See more hereof in Fitzherbert and Brookes Abridgements in the title of Title.

Vide Sect.429.659. &c.

6.H.7.8.a. Altham's caſe vbi ſupra.

Pl.Com fol.374.in Seignior Zouches caſe et fol.487.& 448. in Nicholls caſe.

¶ *Intereſt*, Intereſſe is vulgarly taken for a terme or chattle real, and more particularly for a future tearme, in which caſe it is ſaid in pleading that hee is poſſeſſed De intereſſe terimni. But Ex vi termini in legall vnderſtanding it extendeth to Eſtates, Rights and Titles, that a man hath of, in, to, or out of Lands, &c. for he is truly ſaid to haue an intereſt in them: and by the grant of totum intereſſe ſuum in ſuch Lands as well reuerſions as poſſeſſions in fee ſimple ſhall paſſe. And all theſe words ſingularly ſpoken are nomina collectiua, for by the grant of totum ſtatum ſuum in Lands all his Eſtates therein paſſe. Et ſic de cæteris.

23.H.8.Taile Br.32. 35.H.8.Grant Br.150. Vide 16.Eliz. Dier 325.b. Titulum.

¶ *Ne vnques auera briefe de waſte, &c.* So it is if Tenant for life be, the remaynder in tayle, and he in the remaynder releaſe to the Tenant for life, all his right and ſtate in the Land. Hereby it is ſaid in our Bookes, that the eſtate of the Leſſee is not inlarged, but the releaſe ſerueth to this purpoſe to put the eſtate taile into abeiance, ſo as after that he in the remaynder cannot haue an Action of waſte; yet in that caſe (ſauing reformation) the Leſſee for life hath an eſtate for the life of Tenant in tayle expectant vpon his owne life. But if Tenant in fee releaſe to his Tenant for life all his right, yet he ſhall haue an Action of waſte. And if Tenant in taile make a Leaſe for his owne life, hee ſhall haue an Action of waſte.

41.Aſſ.p.13.41.E.3.tit Waſte 83. 11.H.4.67. 13.H.7.10. Pl.Com.482. Ter Dier 27.H.8.20.

42.E.3.23.

F.N.B.60.H.41.E.3.Waſt 83. 42.E.3.18.

Section 651.

¶ Item ſi vn Eueſque alien terres que ſont parcel de ſon Eueſquery & deuy, ceo eſt vn diſcontinuance a ſon ſucceſſor, pur ceo que il ne poit enter, mes eſt mis a ſon briefe De Ingreſſu ſine aſſenſu capituli.

ALſo if a Biſhop alien lands which are parcell of his Biſhopricke and die, this is a diſcontinuance to his ſucceſſor, becauſe he cannot enter, but is put to his writ of *De Ingreſſu ſine aſſenſu capituli.*

Of this ſufficient hath bene ſaid (how the Law ſtandeth at this day) before in this Chapter.

Sect. 652.

¶ Item ſi vn Dean alien terres queux il ad en droit de luy et ſon Chapiter, & mourſt, ſon ſucceſſor poit enter. Mes ſi le Deane eſt ſole ſeiſie come en droit ſon Deanry donque ſon alienation eſt diſcontinuance a ſon ſucceſſor come eſt dit adeuant.

ALſo if a Deane alien lands which he hath in right of him and his Chapter and dieth, his ſucceſſor may enter. But if the Deane bee ſole ſeiſed as in right of his Deanry, then his alienation is a diſcontinuance to his ſucceſſor as is ſaid before.

¶ Hereof alſo that which was neceſſary is before ſaid in this Chapter, and Littletons owne words are plaine and euident.

22.E.4 *tit. Feoffments, & faits* 29. 21.E.4.85.86.

Sect. 653.654.655 & 656.

¶ Item peraduenture aſcuns voilont arguer et dire, que ſi vn Abbe et ſon Couent ſont ſeiſies en lour demeſne come de fee de certaine terres a eux et a lour ſucceſſors, &c. et Labbe ſans aſſent d ſon Couent alien meſmes les terres a vn auter et deuie, ceo eſt vn diſcontinuance a ſon ſucceſſor, &c.

ALſo peraduenture ſome will argue and ſay, that if an Abbot and his Couent bee ſeiſed in their demeſne as of fee of certaine lands to them and to their ſucceſſors, &c. and the Abbot without the aſſent of his Couent alien the ſame lands to another and die, this is a diſcontinuance to his ſucceſſor, &c.

Sect. 654.

¶ Per meſme le reaſon ils voilent dire, que lou vn Dean et Chapter ſont ſeiſies de certain terre a eux et a lour ſucceſſors, ſi le Dean alien meſme la terre, &c. ceo

BY the ſame reaſon they will ſay, that where a Deane and Chapter are ſeiſed of certaine lands to them and their ſucceſſors, if the Deane alien the ſame lands,

ceo ſerroit vn diſcontinuance a ſon ſucceſſor iſſint q̄ ſon ſucceſſor ne poit enter,&c. A ceo poit eſtre reſpondue que il y ad grand diuerſity penter les deux caſes.

&c. this ſhall be a diſcontinuance to his ſucceſſor, ſo as his ſucceſſor cannot enter,&c. To this it may be anſwered, that there is a great diuerſitie betweene theſe two caſes.

*Sect.*655.

¶ Car quant vn Abbe & l'Couent ſont ſeiſies, vncore ſils ſont diſſeiſie, Labbe auera aſſiſe en ſon noſm demeſne, ſans noſmer le Couent,&c. Et ſi aſcun voile ſuer Præcipe quod reddat, &c. de meſmes les terres quant ils fueront en le maine Labbe et Couent, il couient que tiel action real ſoit ſue enuers Labbe ſolement ſans noſme la Couent, pur ceo q̄ touts ſont moꝛts perſons en la ley, foꝛſque Labbe que eſt le ſoueraigne,&c. Et ceo eſt per cauſe del ſoueraigntie; Car autrement il ſerroit foꝛſque come vn de les auters Moignes de le Couent,&c.

FOr when an Abbot, and the Couent are ſeiſed, yet if they bee diſſeiſed, the Abbot ſhall haue an aſſiſe in his owne name without naming the Couent,&c. And if any will ſue a *Præcipe quod reddat, &c.* of the ſame lands when they were in the hands of the Abbot and Couent, it behoueth that ſuch action reall be ſued againſt the Abbot only without naming the Couent, becauſe they are all dead perſons in Law, but the Abbot who is the ſoueraigne,&c. and this is by reaſon of the ſoueraignty; For otherwiſe he ſhould bee but as one of the other Monkes of the Couent,&c.

*Sect.*656.

¶ Mes vn Deane et le Chapter ne ſont moꝛts pſons en la ley,&c. car cheſcun de eux poit auer action per ſoy ē diuers caſes. Et de tiels terres ou tenemēts q̄ le Deane et Chapter ont en common,&c. ſils ſoient diſſeiſies, le Deane et Chapter aueront vn aſſiſe, et nemy le Deane ſole,&c. Et ſi auter voile auer action real de tiels terres ou tenements enuers le Deane, &c. il couient de ſuer enuers le Deane et chapter, et nemy enuers le Deane ſole,&c. et iſſint il appiert

BVt Deane and Chapter are not dead perſons in Law,&c. for euery of them may haue an action by himſelfe in diuers caſes. And of ſuch lands or tenements as the Deane and chapter haue in common,&c. if they bee diſſeiſed, the Deane and Chapter ſhall haue an aſſiſe, and not the Deane alone,&c. And if another will haue an action reall for ſuch lands or tenements againſt the Deane,&c. he muſt ſue againſt the Deane and Chapter, and not againſt the Deane alone, &c. and ſo there appeareth a

appiert grand diuerſitie perenter les deux caſes, &c.

great diuerſitie betweene the two caſes, &c.

¶ Theſe are apparant and need no explanation. Sauing in the 655. Section mention is made of the Præcipe quod reddat which in this place is intended of a reall action whereby land is demanded, and is ſo called of the words in euery ſuch writ.

And the reaſon of this, diuerſity betweene the caſe of the Abbot and Couent, and Deane and Chapter is, for that (as hath beene ſaid) the Monkes are regular, and ciuilly dead, and the Chapter are ſecular, and perſons able and capable in Law. But by the policy of Law the Abbot himſelfe (here termed the ſoueraigne) albeit he be a Monke and regular, yet hath he capacity and ability to ſue and be ſued, to enfeoffe, giue, demiſe and leaſe to others, and to purchaſe and take from others, for otherwiſe they which right haue ſhould not haue their lawfull remedy, nor the houſe remedie againſt any other that did them wrong, neither could the houſe without ſuch capacitie and ability ſtand. And the Couent haue no other ability or capacitie, but only to aſſent to eſtates made to the Abbot, and to eſtates made by him, which for neceſſities ſake, though they be ciuilly dead, they may doe.

Vid. Sect. 200. *8.E.*3.27. *11.H.*4.84. *21.E.*4.86. *11.H.*7.12.

Sect. 657.

¶ Item ſi le Maſter dun Hoſpitall diſcontinue certaine terre de ſon Hoſpitall, ſon ſucceſſor ne poit entrer, mes eſt mis a ſon briefe de ingreſſu ſine aſſenſu confratrum & conſororum &c. Et touts tiels briefes pleinment appearõt en l'Regiſter, &c.

Alſo if the Maſter of an Hoſpitall diſcontinue certaine land of his Hoſpitall, his ſucceſſor cannot enter, but is put to his writ of *De ingreſſu ſine aſſenſu confratrum & conſororum, &c.* And all ſuch writs fully appeare in the Regiſter, &c.

¶ This muſt alſo be vnderſtood where the Maſter of the Hoſpitall hath ſole and diſtinct poſſeſſions, and not where he and his brethren are ſeiſed as a body politique aggregate of many. And here Littleton (as diuers times before) doth cite the Regiſter.

Sect. 658.

¶ Item ſi terre ſoit leſſe a vn home pur terme de ſa vie, le remainder a vn auter en le taile, ſauant le reuerſion al leſſor, et puis celuy en le remainder diſſeiſiſt le tenant a terme de vie, et fait vn feoffment a vn auter en fee, et puis mozuſt ſans iſſue, et le tenant a terme de vie mozuſt, il ſemble en ceſt cas, q̃ celuy en la reuerſion bien puit enter ſur le feoffee, pur ceo que celuy en le remainder que fiſt le feoffment, ne fuit vnque ſeiſie en le taile per force de meſme le remainder, &c.

Alſo if land bee lett to a man for terme of his life, the remainder to another in taile ſauing the reuerſion to the Leſſor, and after he in the remainder diſſeiſeth the Tenant for terme of life, and maketh a feoffment to another in fee, and after dyeth without iſſue, and the Tenant for life dyeth. It ſeemeth in this caſe that hee in the reuerſion may well enter vpon the Feoffee, becauſe hee in the remainder which made the feoffment was neuer ſeiſed in taile by force of the ſame remainder, &c.

*Vid.Sect.*637.592.596.597. 601.640.641. *Vid.Sect.*637.

¶ HEre it appeareth, That albeit the Feoffor hath an Eſtate Taile in him expectant vpon an eſtate for life, yet his Feoffement worketh no Diſcontinuance. Wherein Littleton doth adde a limitation to that which in this Chapter he had generally ſaid, viz. That an Eſtate Taile cannot be diſcontinued, but where he that maketh the Diſcontinuance was once ſeiſed by force of the Taile, which is to be vnderſtood when hee is ſeiſed of the Freehold and Inheritance of the Eſtate in Taile, & not where he is ſeiſed of a Remainder or a Reuerſion expectant vpon a Freehold: which Freehold (as often hath been ſayd) is euer much reſpected in Law.

CHAP.12. Of Remitter. *Sect.*659.

¶ HEere our Author hauing next before treated of a Diſcontinuance, very aptly beginneth this Chapter with a deſcription of a Remitter.

¶ *Remitter eſt vn antient terme en la Ley*, and is deriued of the Latyne Verbe Remittere, which hath two ſignifications, either, To reſtore and ſet vp againe, or to ceaſe. Therefore a Remitter is an operation in Law vpon the meeting of an antient right remediable, and a latter ſtate in one perſon where there is no folly in him, whereby the antient right is reſtored and ſet vp againe, and the new defeaſible eſtate ceaſed and baniſhed away. And the reaſon hereof is, for that the law preferreth a ſure and conſtant right, though it bee little, before a great Eſtate by wrong and defeaſible, and therefore the firſt and more antient is the moſt ſure and more worthy title; Quod prius eſt, verius eſt, & quod prius eſt tempore, potius eſt iure: (a) Therefore in nie Bookes in ſtead of Remitter, ſay, That he is En ſon primer eſtate, or en ſon melior droit, or En ſon melior Eſtate, or the like.

(a) 35. *Aſſ.pl.*4. 35. *Aſſ pl.* 11.16. *E.*3.69.11. *H.*4.50.4. 42. *E.*3.17. *b. Ent. Remitter* 11. *b. E.*3.17.

¶ *Lou home ad deux Titles*. Heere this word (Titles) is taken in the largeſt ſence, including rights, for being properly taken (b) as in caſe of a condition, mortmaine, aſſent to a Baniſher,

(b) *V Sect.*429. *& 659. & c.* 34. *H.*8. *tit. Remitter Br.* 50. 44. *E.*3. *Annus.* 22.38. *Aſſ. pl.*7.

¶ REmitter ẽ vn antiẽt termẽ en la Ley, et eſt lou home ad deux titles a terres ou teñts, ſ. vn pluʒ antient title, et vn auter title pluʒ darrein, et ſil vient a la terre per le pluis darreine title, vncore la Ley luy adiudgera eins per force dl pluʒ eigne title, pur ceo q̃ le pluis eigne titl eſt le pluis ſure title, et pluis digne title. Et donque quant home eſt adiudge eins per force d̃ ſon eigne titl, ceo eſt a luy dit vn remitter, pur ceo que la ley luy mitter deſtre eins en la terre per le pluis eigne et ſure title. Sicome tenãt en l' taile diſcontinua la taile, et puis il diſſeiſiſt ſ̃ diſcontinuee, et iſſint mozuſt ſeiſie, per que les tenemẽts diſcendont a ſon iſſue ou coſine, inheritable per

REmitter is an antient terme in the Law, and is where a man hath two titles to Lands or Tenements, *viz.* one a more antient title, and another a more latter title, and if he come to the land by a latter Title, yet the Law will adiudge him in by force of the elder title, becauſe the elder title is the more ſure and more worthie Title. And then when a man is adiudged in by force of his elder title, this is ſayd a Remitter in him, for that the Law doth admit him to be in the Land by the elder and ſurer Title. As if Tenaunt in Taile diſcontinue the Taile, and after hee diſſeiſeth his Diſcontinuee and ſo dieth ſeiſed, whereby the Tenements diſcend to his Iſſue or coſine inheritable by

per force de le Taile, en ceſt caſe, ceo eſt a luy a que les Tenements diſcendont q̃ ad droit per force de le Taile, vn remitter a le Taile, pur ceo q̃ le Ley luy mitte et adiudge deſtr̃ eins p force de l' taile que eſt ſon eigne title, car ſil ſerroit eins per force de le diſcent, donques le Diſcontinuee puiſſoit auer Briefe de Entre ſur diſſeiſin en le Per, enuers luy, et recoueroit les tenemts et ſes dammages, &c. Mes entãr que il eſt eins en ſon remitter per force de le Taile, le title et le intereſt le diſcontinuee, eſt tout ouſterment anient et defeat, &c.

force of the Tayle: In this caſe this is to him to whom the Tenements diſcend, who hath right by force of the Tayle, a Remitter to the Tayle, becauſe the Law ſhall put and adiudge him to bee in by force of the Tayle, which is his elder Title: for if hee ſhould bee in by force of the diſcent, then the Diſcontinuee might haue a Writ of Entrie *Sur Diſſeiſin* in the *Per* againſt him, and ſhould recouer the Teneméts & his dammages, &c. but in as much as he is in his remitter by force of the taile, the title & intereſt of the Diſcontinuee is quite taken away and defeated, &c.

and the like, there is no remitter wrought vnto them, becauſe theſe are but bare titles of Entrie, for the which no Action is giuen, but a Remitter muſt be to a precedent right: And Lit. in this Chapter putteth all his caſes onely of Remitters, to Rights reuendable.

¶ *Et vn auter Title pluis darreine, &c.* Here is to bee obſerued, That an Eſtate muſt worke a Remitter to an antient right, for albeit two rights doe diſcend, there can be no Remitter, becauſe one right cannot worke a Remitter to another: for regularly to euerie remitter there be two incidents, viz. an antient right and a defeaſible eſtate of Freehold comming together. 19.H.6.50.78 45. 11.Entre Cong 3.Pl Com 246.a.

¶ *Le pluis eigne title eſt le pluis ſure Title, & pluis digne title.* So as the eldeſt title is worthily (as hath beene ſayd) preferred, becauſe it is the more ſure and more worthie.

¶ *Sicome Tenant en Taile diſcontinue le taile, &c.* Here our Author according to his accuſtomed manner, to illuſtrate his deſcription putteth an example of a Remitter, where the Law preferreth the antient eſtate by right, before a new Eſtate defeaſible. And this Remitter is wrought by an Eſtate caſt vpon the Iſſue in Taile by diſcent, which is an Act in Law, and the diſcent of the land in poſſeſſion, and the right of Eſtate Taile diſcend together. 19.H.6.61.62.

¶ *Eſt tout ouſterment anient & defeat, &c.* Here be two things implied and to be vnderſtood: Firſt, That this Remitter is wrought in this caſe by operation of Law vpon the Freehold in Law diſcended without any entrie. Secondly, That the Law ſo fauoureth a Remitter, (being a reſtoring to right) that if the Diſcontinuee be an Enfant or a Feme couert, and Tenant in Tayle after a Diſcontinuance diſſeiſe them and die ſeiſed, the Iſſue ſhall be remitted without any reſpect of the priuiledge of Enfancie or Couerture, and therefore our Author ſayd, Le title & intereſt le Diſcontinuee eſt tout ouſterment anient & defeat. 11.E.4.1.

¶ *Donques le Diſcontinuee, &c.* Heere is a reaſon added in this particular Caſe, that fitteth not other caſes of Remitter; for in this caſe and many other, the Law that abhorreth Suits of vexation, doth auoyd circuitie of Action, for the Rule is, Circuitus eſt euitandus. 11.E.3.tit.Aſſ.85.4.E.4.35 11.R.2.Bar.242. 30.E.3.8. 6.E.3.7. 19.H.6.63.24.E.3 70. 14.H.4.27. 10.H.7.11. F.N.B.Meſne & Waſt.

Sect. 660.

¶ Item ſi le tenãt en Tayle enfeoffa ſon fits

ALſo if Tenant in Tayle infeoffe his Sonne in Fee,

¶ Our Author hauing put one example where both the Rights diſcend together, now puts another example where the Temps E.1.Remit.13.11.E.3 Age 5.38.E.3.24.40.E.3. 43.21.E.4.19.

the Iſſue in Tayle claimeth by purchaſe in the life of Tenant in Taile, and the antient right diſcendeth after to the ſame Iſſue.

¶ *Car coment que tiel Heire fuit de pleine age al temps del mort, &c.* The reaſon is, Becauſe no folly can bee adiudged in the Infant at the time of the acceptance of the Feoffement. Therefore the Law reſpecteth the time of the Feoffement, and not the time of the death: and albeit hee might haue wained the eſtate which hee had by the Feoffement at his full age, yet here it appeareth, that the right of the Eſtate taile diſcending to him either within age, or of full age, ſhall worke a Remitter in him, for that the waiuer of the ſtate ſhould haue bin to his loſſe and preiudice.

27.H.8.c.10. of Vſes. 35.H.8 Dy.54.b.6.E.6.tit.77.1.& 2 P.&M.116.2.& 2.P.&M. 129.191.28.H.8.33.b. Pl.Com.Amy Townſhends caſe ſo. 34.H.8.tit.Remit.Br.49.

Since Littleton wrote, and after the Statute of 27. H 8. cap.10. if Tenant in Tayle make a Feoffement in Fee to the vſe of his Iſſue being within age, and his Heyres, and dyeth, and the right of the Eſtate Tayle diſcend to the Iſſue being within age, yet he is not remitted, becauſe the Statute executeth the poſſeſſion in ſuch plite manner and forme as the vſe was limited: Et ſic de ſimilibus, ſo as there is a great change of Remitters ſince Littleton wrote.

Pl.Com vb.ſup.

But if the Iſſue in Tayle in that caſe waiue the Poſſeſſion, and bring a Formedon in the Diſcender, and recouer againſt the Feoffees, hee ſhall thereby be remitted to the Eſtate Taile, otherwiſe the Lands may be ſo incumbred, as the Iſſue in Tayle ſhould be at a great inconuenience: but if no formdon be brought, if that Iſſue dieth, his Iſſue ſhall bee remitted, becauſe a ſtate in fee ſimple at the Common Law diſcendeth vnto him.

¶ *Eſteant de pleine age il charge per ſon fait,* en fee, ou ſon Coſine inheritable per force de le taile, le quel fits ou coſin al temps de feoffement eſt deins age, et puis le tenant en taile deuia, et celuy a que le feoffemēt fuit fait eſt ſon heyre per force de le Taile, ceo eſt vn remitter al heire en le taile a que le feoffment fuit fait. Car coment que durant la vie le Tenāt en le taile que fiſt le Feoffement, tiel heire ſerra adiudge eins p force de le feoffment, vncore apres la mort le tenant en le tayle, lheire ſerra adiudge eins per force de le taile, et nemy p force de le Feoffment. Car coment que tiel heire fuit de pleine age al temps de le mort de le Tenaunt en le Taile que fiſt le Feoffement, ceo ne fait aſcun matter, ſi lhī fuit deins age al tēps del feoffmēt fait a luy. Et ſi tiel heire eſteant deins age al temps de tiel Feoffement, vient al pleine age viuant le Tenāt en le Taile, que fiſt l' Feoffement, et iſſint eſteant de pleine age, il charge per ſon fait meſme la Terre oue vn

or his Coſine inheritable by force of the Taile, which Sonne or Coſine at the time of the Feoffment is within age, and after the Tenant in Taile dieth, and hee to whome the Feoffement was made is his heire by force of the Taile, this is a Remitter to the heire in taile to whom the Feoffement was made: for albeit that during the life of the Tenant in Tayle who made the Feoffement, ſuch heire ſhall bee adiudged in by force of the Feoffement, yet after the death of Tenant in Taile, the heire ſhall be adiuged in by force of the Taile, & not by force of the feoffment. For although ſuch heire were of full age at the time of the death of the Tenant in Taile who made the Feoffment, this makes no matter, if the heire were within age at the time of the feoffement made vnto him. And if ſuch heire beeing within age at the time of ſuch feoffmēt, commeth to full age, liuing the tenant in tayle that made the feoffement, & ſo being of full age he charges by his deed

vn common de paſture, ou oue vn rent charge, & puis le tenant en le taile morust, ore il ſemble que le terre eſt diſcharge del common, et de le rent, pur ceo que le heire eſt eins de auter eſtate en la terre, que il fuit al temps de le charge fait, entant que il eſt en ſon remitter per force de le tayle, & iſſint leſtate, que il auoit al temps de le charge, eſt oustermēt defeat, &c.

the ſame Land with a common paſture or with a rent charge, and after the Tenant in tayle dieth, now it ſeemeth that the Land is diſcharged of the Cōmon, and of the rent for that the heire is in of another Eſtate in the Land then hee was at the time of the charge made, in as much as hee is in his Remitter by force of the tayle, and ſo the eſtate which hee had at the time of the charge is vtterly defeated, &c.

&c. The reaſon is becauſe the Grantor had not any right of the eſtate in taile in him at the time of the grant but only the eſtate in fee ſimple gained by the feoffment, which (as Littleton here ſaith) is wholy defeated. And the ſtate of the land out of which the rent iſſued, being defeated the rent is defeated alſo.

But if Tenant in tayle make a Leaſe for life whereby he gaineth a new reuerſion in fee, ſo long as Tenant for life liueth, and he granteth a rent charge out of the Reuerſion, and after Tenant for life dieth; whereby the Grantor becommeth Tenant in tayle againe, and the Reuerſion in fee defeated, yet becauſe the Grantor had a right of the entayle in him, clothed with a defeaſible fee ſimple, & rent charge remayneth good againſt him, but not againſt his iſſue, which diuerſitie is 11.H.7.21. Edrichcaſe.

worthy of obſeruation, for it openeth the reaſon of many Caſes.

If the heire of the Diſſeiſee diſſeiſe the Diſſeiſor, and grant a rent charge, and then the Diſſeiſee dieth, the Grantor ſhall hold it diſcharged, for there a new right of entrie doth diſcend vnto him, and therefore he is remitted.

So if the father diſſeiſe the Grandfather and granteth a Rent charge, and dieth, now is the entry of the Grandfather taken away, if after the Grandfather dieth, the Sonne is remitted, and he ſhall auoid the charge. So as where our Author putteth his example of a fee tayle, it holdeth alſo in caſe of a fee ſimple.

¶ *Vn common de paſture, ou vn rent charge, &c.* Here Littleton putteth his caſe of things granted out of the Land. But what if the iſſue at full age by Deed indented, or deed poll make a Leaſe for yeares of the Land, and after by the death of Tenant in tayle he is remitted, whether ſhall he auoide the Leaſe or no. And it is holden he ſhall not, becauſe it is made of the Land it ſelfe, and the Land is become by the Leaſe in another plight, then it is in the caſe of a grant of a Rent charge, which I gather out of our Authors owne words in another place. 33.H.8.Dier 51.b. *Vide Sect.*289.

¶ *La terre eſt diſcharge del rent, &c.* Littleton doth adde theſe words materially becauſe the whole grant is not thereby auoyded, but the Land diſcharged of the Rent charge, for the Grantee ſhall haue notwithſtanding a writ of Annuitie and charge the perſon of the Grantor. *Lib.*2.*fol.*36.b. *Wadcaſe.*

Section 661.

¶ Item vn principall cauſe pur que tiel heire en les caſes auandits & auters caſes ſemblables ſerra dit en ſon remitter, eſt pur ceo que il ny ad aſcū perſon enuers que il poit ſuer ſon briefe ð

ALſo a principall cauſe why ſuch heire in the Caſes aforeſaid, & other like caſes ſhall bee ſaid in his Remitter, is for that there is not any perſon againſt whom he may ſue his writ of *Formedon*. For againſt

¶ *VN principall cauſe pur que &c.* And of this opinion is (d) Littleton in our Bookes. (d) 12.E.4.20. 41.E.3.18.11.H.4.50.

¶ *Il nad aſcun perſon enuers que, &c. ſicome il auoit loialment recouer meſme la terre vers vn auter, &c.* Here it is to be vnderſtood that regularly

Lib.3 fol.3. the Marqueſſe of Wincheſters caſe.

ly a man ſhall not bee remitted to a right remedileſſe, for the which he can haue no Action for Littleton here ſaith, that there is no perſon againſt whom the iſſue when hee commeth to the land without folly may bring his Action and ſayth alſo, that this is the principall cauſe of the Remitter, for neither an Action without a right, nor a right without an Action can make a Remitter. As if tenant in tayle ſuffer a common recouery in which there is error, and after Tenant in taile diſſeiſeth the recoueror and dieth, here the iſſue in tayle hath an Action, viz. a Writ of Error, but as long (as the recouerie remayneth in force) he hath no right, and therefore in that caſe there is no Remitter.

Formedon. Car enuers luy meſme, il ne poit ſuer, & il ne poit ſuer enuers nul auter, car nul auter eſt tenant del franktenement, et pur cel cauſe la ley luy adiudge eins en ſon remitter, ſ. & tiel plite, ſicome il auoit loialment recouer meſme la terre enuers vn auter, &c.

himſelfe he cañot ſue, and hee cannot ſue againſt any other, for none other is Tenant of the freehold; and for this cauſe the Law doth adiudge him in his Remitter, s. in ſuch plite, as if hee had lawfully recouered the ſame Land againſt another, &c.

If B. purchaſe an Aduowſon and ſuffereth an vſurpation and ſixe moneths to paſſe, and after the vſurper granteth the Aduowſon to B. and his heires, B dieth, his heire is not remitted becauſe his right to the Aduowſon was remedileſſe, viz. a right without an Action.

5.H.7.35.

Tenant in tayle of a Mannor whereunto an Aduowſon is appendant maketh a Diſcontinuance, the Diſcontinuee granteth the Aduowſon to Tenant in Tayle and his heires, Tenant in Tayle dieth, the Iſſue is not remitted to the Aduowſon, becauſe the Iſſue had no Action to recouer the Aduowſon before hee recouered the Mannor whereunto the Aduowſon was appendant. And ſo it is of all other Inheritances, regardant, appendant, or appurtenant, a man ſhall neuer bee remitted to any of them before hee recontinueth the Mannor, &c. whereunto they are regardant, appendant, or belonging.

Britton fol. 126.

Car nul ne poet claimer droit en les appurtenances ne en les acceſſories que nul droit ad en le principall.

(c) Bract. lib.4.fol.243.b.

(c) Item, exeipi poteſt, &c. quamuis ius habeat in tenemento & pertinentijs, primo recuperare debet tenementum ad quod pertinet aduocatio, & tunc poſtea præſentet & non ante, & de hac materia in Rotulo de termino Sancti Michaelis, anno Regis Henrici tertio in comitatu Norff. de Thoma Bardolfe.

8.R.2. Quare Imp.109.
2.H.4.18. 14.H.6.15.16.
8.H.6.17, 33.H.6.25.
F.N.B. 35.B. & 36.F.
24.E 3 Diſcont.16.
33.H.8. Dier 48.b.

But on the other ſide, if a man be remitted to the principall he ſhall alſo be remitted to the appendant or acceſſory albeit it were ſeuered by the Diſcontinuee, or other wrong doer. And therefore if Tenant in tayle be of a Mannor whereunto an Aduowſon is appendant, and infeoffeth A of the Mannor with the appurtenances. A. reinfeoffeth the Tenant in tayle ſauing to himſelfe the Aduowſon, Tenant in tayle dieth, his iſſue being remitted to the Mannor is conſequently remitted to the Aduowſon, although at that time it was ſeuered from the Mannor. So it is in the ſame caſe if Tenant in tayle had beene diſſeiſed, and the Diſſeiſor ſuffer an vſurpation, if the Diſſeiſee enter into the Mannor, hee is alſo remitted to the Aduowſon.

Sect. 662.

¶ Item ſi terre ſoit taile a vn home & a ſa feme, et a les heires d lour deux corps engendres, les queux ont iſſue file, et le feme deuy, et le baron prent auter feme, et ad iſſue vn auter file, & diſcontinua le tayle, & puis diſſeiſie le diſcontinuee et iſſint mozuſt ſeiſie, ozle terre diſcendera

ALſo if Land bee entailed to a man and to his wife, and to the heires of their two bodies begotten, who haue iſſue a daughter, and the wife dieth, and the husband taketh another wife, and hath iſſue another daughter, and diſcontinue the taile, and after he diſſeiſeth the Diſcontinuee and

dera a les deux files. Et en ceſt caſe quant al eigne file, que eſt inheritable per force de le tayle, ceo neſt vn remitter forſque de le moity. Et quant al auter moity el eſt mis a ſuer ſon action de Formedon enuers ſa ſoer. Car en ceſt cas les deux ſoers ne ſont pas tenants en parcenary, mes ſont tenants en common, pur ceo que ils ſont eins per diuers titles. Car lun ſoer eſt eins en ſon remitter per force de le taile quãt a ceo que a luy affiert, et lauter ſoer eſt eins quant a ceo que a luy affiert en fee ſimple per l'diſcent ſon pier, &c.

ſo die ſeiſed, now the Land ſhall diſcend to the two Daughters: And in this caſe as to the eldeſt daughter, who is inheritable by force of the tayle, this is no remitter but of the moitie. And as to the other moitie ſhee is put to ſue her action of *Formedon* againſt her ſiſter. For in this caſe the two ſiſters are not tenants in parcenarie, but they are Tenants in common, for that they are in by diuers titles. For the one ſiſter is in in her remitter by force of the entaile, as to that which to her belongeth, and the other ſiſter is in as to that to her belongeth in fee ſimple by the diſcent of her father, &c.

¶ *Eo neſt remitter forſque pur le moitie, &c.* Here Littleton putteth a caſe where the iſſue in taile ſhal be remitted to a moity, becauſe but a moitie of the Land diſcended vnto her, and there cannot be any remitter, but for ſo much as commeth to the iſſue by diſcent, or by any other meanes without his folly, and in this caſe by act in Law the Coparcenarie is defeated for the daughters are in by ſeuerall Titles, viz the eldeſt daughter is Tenant in tayle per formam doni by the remitter of the one moitie, and the youngeſt ſeiſed in fee ſimple by diſcent of the other moitie, againſt whom the other ſiſter in tayle may haue her Formedon. 44.E.3 26. 19.H.6.39.

Sect. 663.

¶ Mes ſime le manner eſt, ſi tenant en taile enfeoffa ſon heire apparant en le taile eſteant lheire deins age, et vn auter ioint tenant en fee, et le tenant e tayle mozuſt, ozel heire en taile eſt en ſon remitter quãt a lun moity, et quant a lauter moity il eſt mis a ſon briefe de Formedon, &c.

IN the ſame manner it is if tenant in taile enfeoffe his heire apparant in tayle, (the Heire beeing within age) and another ioyntenant in fee, and the Tenant in tayle dieth, now the heire entayle is in his Remitter as to the one moitie, and as to the other moitie, hee is put to his Writ of *Formedon*, &c.

¶ *Le heire, &c. eſt en ſon remitter quant a lun moitie, &c.*

Hereby it appeareth, that albeit toyntenants bee ſeiſed pro indiuiſo per my & p tout yet each of thẽ hath in iudgement of Law but a right to a moitie, & therefore the iſſue in tayle in this caſe is remitted but to a moity & is tenant in Cõmon but with the other Feoffee. And ſo it is if the Diſcontinuee after the death of Tenant in tayle make a Charter of feoffment to the iſſue in tayle being within age who hath right, and to a ſtranger in fee, and make liuerie to the Infant in name of both: the iſſue is not remitted to the whole but to the halfe, for firſt hee taketh the fee ſimple, & after the Remitter is wrought by operation of Law, and therefore can remit him but to a moitie. But of this ſufficient hath beene ſaid in the Chapter of Joyntenants. *Vide Sect.* 288.

Section 664.

¶ Item ſi teñ en taile enfeoffa ſon heire apparant, lheire eſteant de pleine age al temps de feoffment, et puis le teñ en taile mozuſt, ceo neſt remitter al heir̃, pur ceo que il fuit ſa folly que il eſteant de pleine age voile prẽdre tiel feoffment, &c. Mes tiel folly ne poit eſtre adiudge en lheire eſteãt deins age al temps del feoffment, &c.

ALſo if Tenant in taile enfeoffe his heire apparant, the heire being of full age at the time of the feoffment, and after Tenant in taile dieth, this is no remitter to the heire, becauſe it was his folly, that being of full age hee would take ſuch feoffment, &c. but ſuch folly cannot bee adiudged in the heire being within age at the time of the feoffment, &c.

10.*E.*3.44. 18.*E.*4.25. ¶ By this Feoffment albeit the heire apparant hath ſome benefit in the life of his Anceſtor, yet is he thereby (beſides his owne) ſubiect during his life to all charges and incumbrances made or ſuffered by his Anceſtor. And therefore our Author ſaith well, Que il fuit ſon folly que il eſteant de pleine age voile prender tiel feoffment, but folly ſhall not be iudged in one within age in reſpect of his tender yeares, and want of experience.

Sect. 665.

¶ HEre Littleton putteth a caſe where the huſband within age by the intermarriage may bee remitted albeit hee gaineth but a freehold during the Couerture en auter droit.

Alſo here is to bee obſerued that the eſtate which doth in this caſe worke the Remitter could not haue continuance after the deceaſe of the wife. And ſoon the other ſide, if the huſband make a Diſcontinuance and take backe an eſtate to him and his wife, during the life of the huſband, this is a Remitter to the wife preſently albeit the eſtate is not by the limitation to haue Continuance after the deceaſe of the huſband, which caſe is proued by the reaſon of the caſe which our Author here putteth. And here our Author obſerueth the diuerſity when the huſband is within age, and when he is of full age, for when hee is within age no folly can be adiudged in him, as in this Chapter hath beene often ſaid.

¶ Item ſi tenant en taile enfeoffa vn feme en fee, et mozuſt, et ſon iſſue deins age prent meſme la feme a feme, ceo eſt vn remitt̃ al enfant deins age, et la feme donqz nad rien, pur ceo que le baron et ſa feme ſont forſque come vn perſon en ley. Et en ceſt cas le baron ne poit ſuer briefe de Formedon, ſinon que il voiloit ſuer enuers luy meſm, le quel ſerroit enconuenient, et pur cel cauſe la ley adiudgera lheire en ſon remitter, pur ceo que nul folly poit eſtr̃ adiudge en luy, eſteãt deins

ALſo if Tenant in taile enfeoffe a woman in fee, and dyeth, and his iſſue within age taketh the ſame woman to wife, this is a Remitter to the infant within age, and the wife then hath nothing, for that the huſband and his wife are but as one perſon in Law. And in this caſe the husband cannot ſue a writ of *Formedon*, vnleſſe he will ſue againſt himſelfe, which ſhould be inconuenient, and for this cauſe the Law adiudgeth the heire in his Remitter, for that no folly can bee adiudged in him being

deins age al temps deſpouſels, &c. Et ſi lheire ſoit en ſon remitter per force de le taile, il enſuiſt per reaſon, q̄ la feme nad riens, &c. Car entant que le baron et ſa fem̄ ſont come vn perſon, la terre ne poit eſtre ſeuere per moities, et pur cel cauſe le baron eſt en ſon remitter de lentiertie: Mes autrement eſt ſi tiel heir̄ fuit de plein age al temps de les eſpouſels, car donques le heire nad riens forſque en droit ſa feme, &c.

within age at the time of the Eſpouſells, &c. And if the heire bee in his remitter by force of the entaile, it followeth by reaſon that the wife hath nothing, &c. for inaſmuch as the husband and wife be as one perſon the land cannot be parted by moities, and for this cauſe the huſband is in his remitter of the whole. But otherwiſe it is if ſuch heire were of full age at the time of eſpowſells, for then the heire hath nothing but in right of his wife, &c.

Here is alſo to bee noted that preſently by the marriage within age, the husband is remitted, and the freehold and inheritance of the wife vaniſhed cleane away.

¶ *Priſt meſme la feme al fem.* Here it is good to be ſeene what things are giuen to the husband by marriage. Firſt it appeareth here by Littleton, that if a man taketh to wife a woman ſeiſed in fee (f) he gaineth by the intermarriage an eſtate of freehold in her right, which eſtate is ſufficient to worke a Remitter, and yet the eſtate which the husband gaineth dependeth vpon vncertaintie, and conſiſteth in priuity, (g) for if the wife be attainted of felony, the Lord by eſcheate ſhall enter and put out the husband, otherwiſe it is if the felony be committed after the had. Alſo if the husband bee attainted of felony, the King gaineth no Freehold but a pernancie of the profits during the Couerture and the Freehold remaineth in the wife. (h) Secondly, if hee were poſſeſſed of a terme for yeares, yet he is poſſeſſed in her right, but he hath power to diſpoſe thereof by Grant or Demiſe, and if hee be Outlawed or attainted, they are gifts in Law.

(f) 13 H.4.6. Staſf 17.b. 18.E.4.5. 11.H.7.19. 10.H.6.11. 7.H.6.9.b.

Vid. Sect.58.

(g) 4. Aſſ. P.4. 4.E.3. Aſſiſe 166.

(h) Pl.Com fo.260.b. Dame Hales caſe, 50. Aſſ.5. 38.H.6.23. 21.E.4.35. 7.E.4.6. 7.H.7.2. 10.H.6.11.

(*) Upon an Execution againſt the husband for his debt, the Sherife may ſell the terme during her life: but the husband can make no diſpoſition thereof by his Laſt will. Alſo if hee make no diſpoſition or forfeiture of it in his life, yet it is a gift in Law vnto him if hee doe ſurviue his wife, but if he make no diſpoſition and die before his wife, ſhee ſhall haue it againe. And the ſame Law is of eſtates by Statute Merchant, Statuto Staple, Elegit, Wardſhips and other chattels reall in poſſeſſion.

(*) Mich. 16. & 17. Eliz. inter Anner & Ledington in Brie's de error adiudge in both Courts, lib.8.fo.96. Mar: Manning. caſe.

But if the husband charge the Chattell reall of his wife, it ſhall not binde the wife if ſhee ſurviue him.

7.H.6. fo.2.

If a Feme ſole be poſſeſſed of a Chattell reall, and be thereof diſpoſſeſſed, and then taketh husband, and the wife dieth, and the husband ſurviueth, this right is not giuen to the husband by the intermarriage, but the Executors or Adminiſtrators of the wife ſhall haue it, ſo it is if the wife hath but a poſſibility.

Vid. Sect.58.

In the ſame manner it is if the wife be poſſeſſed of Chattells reals in auter droit, as Executrix or Adminiſtratrix, or as Gardeine in Socage, &c. and ſhe intermarrieth, the Law maketh no gift of them to the husband although he ſurviueth her. In the ſame manner if a woman grant a terme to her owne vſe, taketh husband, and dieth, the husband ſurviuing ſhall not haue this truſt, but the Executors or Adminiſtrators of the wife, (i) for it conſiſteth in priuity, and ſo hath it beene reſolued by the Juſtices. Chattells reals conſiſting meerely in Action the Husband ſhall not haue by the intermarriage, vnleſſe he recouereth them in the life of the wife, albeit he ſurviue the wife, as a Writ of Right of ward, a valore maritagij, a forfeiture of marriage, and the like, whereunto the wife was intitled before the marriage.

Pl.Com.fo.394. Osbornes caſe and there fo.192.b. Wrotesleys caſe.

(i) Paſch. 32. Eliz. in Cancellar. in Witham's caſe. Hill. 38. Eliz. in Cancell. Waters houſes caſe. Wrotesleys caſe, vbi ſupra.

But Chattells reals being of a mixt nature, viz. partly in poſſeſſion, and partly in Action, which happen during the Couerture, the husband ſhall haue by the intermarriage, if hee ſurviue his wife, albeit he reduceth them not into poſſeſſion in her life time: but if the wife ſurviueth him, ſhe ſhall haue them. As if the husband be ſeiſed of a Rent ſeruice, Charge, or Seck, in the right of his wife, the rent become due during the Couerture, the wife dieth, the husband ſhall haue the arrerages; but if the wife ſurviue the husband, ſhe ſhall haue them, and not the Executors of the husband. So it is of an Aduowſon, if the Church become voyd during the Couerture, (k) he may haue a Quare impedit in his owne name, as ſome hold: but the wife ſhall

13.E.3. Quare Imp.57. 14.H.4.12. 38.E.3.35.b. 50.E.3.13. 10.H.6.11. F.N.B.121. 22.H.6.25. 29.E.3.40. 11.R.2. Account 49. 12.R.2. briefe 639. 5.E.3. Execut.99.

(k) 50.E.3.13. 28.H.6.9. 7.H.7.2.

shall haue it if she suruiue him, and the Husband, if he suruiue her, Et sic de similibus.

26.E.3.64.10.H.6.11. F.N.B.121.22.H.6.25.

But if the arrerages had become due, or the Church had fallen voyd before the marriage, there they were meerely in Action before the marriage, and therefore the husband should not haue them by the Common Law, although he suruiued her. And so it is of Reliefes, Mutatis mutandis: (l) But now by the Statute of 32.H.8.cap.37. if the husband suruiue the wife, he shall haue the arrerages as well incurred before the marriage, as after.

(l) Li.4 fo.51. in Ognels case Hil.17.El.Rot.457. in Com. Banco, Sharps case.

21.E.4.4.21.H.7.29. 11.H.7.4.26.H.8.7.43.E.3 10. 3.H.6.23.37.4.H.6.5. 14.E.2.Dot.173.5.E.2.ibid. 169.30.E.3. 48.E.3.12. 12.R.3.Bro.638.639. 16.E.4 8.16.H.6.Bro.939.

But the marriage is an absolute gift of all Chattels personalls in possession (in her owne right, whither the husband suruiue the wife or no; but if they bee in Action, as debts by Obligation, Contract, or otherwise, the husband shall not haue them vnlesse he and his wife recouer them. And of personall Goods en auter droit, as Executrix or Administratrix, &c. the marriage is no gift of them to the husband, although he suruiue his wife.

(m) If an Estrap happen within the Mannor of the wife, if the husband die before seisure, the wife shall haue it, for that the propertie was not in the wife before seisure.

(m)43.E.3.8.V.10.H.6.11

But as to personall Goods there is a diuersitie worthie of obseruation, betweene a propertie in personall goods, (as is aforesayd) and a bare possession, for if personall goods bee bayled to a Feme, or if she finde goods, or if goods come to her hands as Executrix to a Bailife, and taketh a husband, this bare possession is not giuen to the husband, but the Action of Detinue must be brought against the husband and wife.

But now let vs heare Littleton.

39.E.3.17.

¶ *Le quel serra inconuenient.* **This argument** ab inconuenienti, **our** Author hath vsed in many places.

Vi.Sect.87.&c.

Section 666.

¶ ITem si Feme seisie d certaine terre en fee prent baron, le quel aliena mesme la terre a vn auter en Fee, lalienee lessa mesme la terre al Baron et sa Feme pur terme de lour deux vies, sauant le reuersion al Lessor et a ses heires, en cest cas la Feme est eins en son Remitter, et el est seisie en Fait en son demesne come de Fee, sicome el fuit deuant, pur ceo que le repriseil del Estate serra adiudge en Ley, le Fait le Baron, et nemy le Fait la Feme, illint nul folly poit estre adiudge en la Feme, que est couert en tiel Case, et en cest case le Lessor nad rien en le Reuersion, pur ceo que la Feme est seisie en fee, &c.

ALso if a woman seised of certaine Land in Fee, taketh Husband, who alieneth the same Land to another in Fee, the Alience letteth the same Land to the husband and wife for terme of their two liues, sauing the reuersion to the Lessor and to his Heires: In this case the wife is in in her Remitter, and she is seised in Deed in her Demesne as of Fee, as she was before, because the taking back of the Estate shall be adiudged in law the fact of the Husband, and not the fact of the Wife; so no follie can be adiudged in the wife, which is Couert in such Case. And in this Case the Lessor hath nothing in the Reuersion, for that the Wife is seised in Fee, &c.

21.E.3.26. 29.E.3.43. 41.E.3.Remit.11. 19.E.3.Remit.14.35.Ass.12.38.E.3.24 39.E.3.29.30 41.E.3.17. 46.E.3.20.b. 26.E.3.69. Vi.Sect.676. 11.R.2.Remit.12.44.E.3.17.

¶ *A feme est en son Remitter.* **By this it appeareth, That albeit** there be no mixties betweene husband and wife, yet this is a Remitter presently, and standeth not vpon the suruiuor of the wife, as some haue thought, for if the Estate gained by intermarriage be a sufficient Estate to worke a Remitter, à fortiori, an Estate made to the husband and wife shall worke a Remitter in the wife. And so it is if Tenant in Taile infeoffe his Issue being within age, and his wife in Fee, and dieth, this is a Remitter to the Issue presently, by the death of Tenant in Tayle, though some haue thought the contrarie.

Here

Here alſo it appeareth, That no folly in this caſe can be adiudged in a Feme Couert, for the taking backe of the Eſtate ſhall be adiudged in Law the act of the Husband.

The Marques of Winch. caſe, vb. ſup.

Note in the caſe of the Feme Couert, ſhe may be remitted in the life of the Diſcontinuor, becauſe ſhe hath a preſent right: but in the caſe of Tenant in Taile, the Iſſue cannot bee remitted in the life of the Diſcontinuor, becauſe the Iſſue hath no right vntill his deceaſe.

Section 667.

¶ MEs en cē caſe ſi le Leſſour voile ſuer Action de Waſt vers le Baron et ſa Feme, pur ceo que le Baron auoit fait Waſt, le Baron ne poit barrer le Leſſor pur monſtre ceo que le repriſel dl eſtat fait a luy et a ſon Feme, fuit vn Remitter a ſa feme, pur ceo que le Baron eſt eſtoppe adire ceo que eſt encounter ſ̄ feoffment et ſon repriſel demeſne del eſtate p̄ terme de vie a luy et a ſa Feme. Et vncore le Leſſor nad vn Reuerſion, pur ceo que le Fee ſimple eſt en la feme. Et iſſint home poit veier vn matter en ceo caſe, q̄ home ſerra eſtoppe per vn matter en fait coment que nul Eſcripture ſoit fait per Fait indent ou auterment.

BVt in this Caſe if the Leſſor wil ſue an Action of Waſt againſt the husband and his Wife, for that the husband hath committed Waſt, the husband cannot barre the Leſſor by ſhewing this, That the taking backe of the Eſtate to him and to his wife, was a Remitter to his wife, becauſe the husband is ſtopped to ſay that which is againſt his owne Feoffement, and taking backe of the Eſtate for terme of life to him and to his Wife. And yet the Leſſor hath no reuerſion, for that the Fee ſimple is in the Wife. And ſo a man may ſee one thing in this caſe, That a man ſhall bee ſtopped by matter in Fact, though there bee no Writing by Deede indented, or otherwiſe.

¶ *Pur ceo que Baron eſt eſtoppe a dire, &c.*

¶ *Eſtoppe* commeth of the French word Eſtoupe, from whence the Engliſh word Stopped: and it is called an Eſtoppel or Concluſion, becauſe a mans owne Act or acceptance ſtoppeth or cloſeth vp his mouth to alledge or plead the truth: And Littletons caſe heere prooueth this deſcription.

1. 2. ſe. 4. b. Goddards caſe. V. Sect. 42. & 693. 695. 679.

Touching Eſtoppels, which is an excellent and curious kind of learning) it is to obſerued that there be three kind of Eſtoppels, viz. By matter of Record, By matter in Writing, and By matter in Paiis.

(a) By matter of Record, viz. By Letters Patents, Fine, Recouerie, Pleading, taking of Continuance, Confeſſion, Imparlance, Warrant of Attorney, Admittance.

(a) *43. Aſſ. 29. 8. H. 4. 7. & 22. Aſſ. 54. 15. E. 3. Eſtop. 239 4. E. 3. ib. 133.*

(b) By matter in Writing, as by Deed indented, by making of an Acquittance by Deed indented, or Deed poll, (c) by Diſcealance by Deed indented or Deed Poll.

(b) *4. H. 41. 8. H. 7. 6. 13. H. 7 24. 15. E. 4. 28. 41 E. 3 Eſtop 12 12. R. 2. ib. 212.*

(c) *8. R. 2. Eſtop. 283. 35. H. 6. 18. 3. H. 6. 16. 16. H. 7. 5 34. H. 6. 19. 14. H. 4 29.*

By matter in Paiis, as by Liuerie, by Entry, by Acceptance of Rent, by Partition, and by Acceptance of an Eſtate as heire in the caſe that Littleton putteth, whereof Littleton maketh a ſpecial obſeruation, that a man ſhall be eſtopped by matter in the Countrie, without any Writing.

To make the Reader more capable of the learning of Eſtoppels, theſe few Rules, amongſt others, are to be knowne.

(d) Firſt, That euerie Eſtoppell ought to be reciprocall, that is to bind both parties; and this is the reaſon, that regularly a Stranger ſhall neither take aduantage, nor be bound by the Eſtoppell, (e) Priuies in Bloud, as the Heire, Priuies in Eſtate, as the Feoffee, Leſſee, &c. Priuies in Law, as the Lords by Eſcheat: Tenant by the Curteſie, Tenant in Dower, the Incumbent

(d) *33. H. 6. 19. 50. 30 H. 6. 2 31. E. 3. Eſtop 200. 33 aſſ. 18. 30. aſſ. 51. 14. aſſ. 9. 18 E. 4. 1*
(e) *8. Aſſ. 33. Tr. Fines 73. 8. H. 6. 17 21. E. 3. 35. 38. E. 3 31. 20. E. 3. Eſtop. 187.*

Incumbent of a Benefice, and others that come vnder by Act in Law, or in the Poſt, ſhall bee bound and take aduantage of Eſtoppels, and that a Rebutter is a kind of Eſtoppell.

(f) 21.E.4.4. 23.*Aſſ.*14. 17.*H.*6.*Eſtop.*273. 18.*E.*3. 30.7 *H.*7.6.& 16.

(f) Secondly, That euerie Eſtoppell, becauſe it concludeth a man to alledge the truth, muſt be certaine to euerie intent, and not to be taken by argument or inference.

(g) 46.*E.*3.33. 29.*Aſſ.*38. *Pl Com.* 398.

(g) Thirdly, Euerie Eſtoppell ought to be a preciſe affirmation of that which maketh the Eſtoppell, and not be ſpoken impertonally, as if it be ſayd, Vt dicitur, quia impertonalitas non concludit, nec ligat: impertonalis dicitur, quia ſine perſona.

(h) 35.*H.*6.13. 46.*E.*3.12. 49.*E.*3.14.8.*Aſſ* 3.45.*Aſ.*5 3.*El.Dy.*196. 11.*El.ibid.*280 9.*H.*6.60.

(h) Neither doth a recitall conclude, becauſe it is no direct affirmation.

(i) 5.*E.*4.7.8.*E.*4.19. 10. *E.*4.12.22 *E.*4.38.31.*Aſ.*9 35.*H.*6.20.

(i) Fourthly, A matter alledged that is neither trauerſable nor materiall, ſhall not eſtoppe.

(k) 33.*H.*6.16. 4.*E.*3.22. 6.*H* 4.7.31.*E.*1. *Gard.*155. *F.N.B.* 142.*E.*

(k) Fiftly, Regularly a man ſhall not bee concluded by acceptance or the like, before his Title accrued.

(l) 12.*H.*7.4. 20.*H.*6.29. 3.*H.*4.9. 41.*E.*3.4 11.*H.*4. 30.

(l) Sixtly, Eſtoppell againſt Eſtoppell doth put the matter at large.

(m) 2.*R.*3.14.2.*R.*2. *Eſtoppel.*20 40.*E.*3.21.12.*E.*4.13 18.*E.*3.31.35.44.*E.*3.45. 17.*Aſſ.*27.45.*E.*3.2. 21.*H.*7.24.5.*E.*4.7.7.*E.*4. 29.3.*E.*4.11.4.*E.*3.54. 7.*E.*6.*Br.Eſtop.*162.11.*H.*4 30.30.*E.*3.21.31.*Aſſ.*14.

(m) Seuenthly, Matters alledged by way of ſuppoſall in Counts, ſhall not conclude after Non-ſuit: otherwiſe it is after iudgement giuen; and after Non-ſuit, albeit the ſuppoſall in the Count ſhall not conclude, yet the Barre, Title, Replication, or other pleading of either partie, which is preciſely alledged, ſhall conclude after Non-ſuit, and hereby are the Bookes reconciled.

(n) 18.*E.*3.31.35.44.*E.*3.45. 17.*Aſſ.*27.45.*E.*3.2. 21.*H.*7.24.5.*E.*4.7.7.*E.*4. 29.3.*E.*4.11.4.*E.*3.54. 7.*E.*6.*Br.Eſtop.*162.11.*H.*4 30.30.*E.*3.21.31.*Aſſ.*14.

Eighthly, where the veritie is apparant in the ſame Record, there the aduerſe partie ſhal not be eſtopped to take aduantage of the truth, for he cannot be eſtoppad to alledge the truth, when the truth appeareth of Record. (n) If a Fine be leuied without any originall, it is voydable, but not voyd, but if an Originall be brought, and a Recordare entred, and after that, a Concord is made, or a Fine leuied, this is voyd, in reſpect the veritie appeareth of Record.

(o) 37.*Aſſ.*17.38.*H.*6.12. 5.*El.Dy.*222.

(o) An Impropriation is made after the death of an Incumbent, to a Biſhop and his Succeſſors, the Biſhop by Indenture demiſeth the Parſonage for fortie yeares, to begin after the death of the Incumbent, the Deane and Chapiter confirmeth it, the Incumbent dieth, this Demiſe ſhall not conclude, for that it appeareth that he had nothing in the Impropriation till after the death of the Incumbent.

(p) *Brall.fo.*420.26.*Aſſ* 64. 39.*Aſſ.*10. 11.*H.*4.84. 7.*H.*6.7. 33.*Aſſ.*5. 11.*E.*3. *Eſtop.*229.21.*E.*3.39.19.*R* 2 *Eſtop.*282.3.*E.*3.*ib.*23. 33.*E.*3.*Eſtop.Stath. Leſtat.* 69.9.*H.*6.16 11.30.*H.*6.2. *Dott.& Stud.*69. 34.*H.*6.39 18.*E.*4.1.*b.*10.*E.*4.16.

(p) Plaintly, where the Record of the Eſtoppell doth run to the diſabilitie or legitimation of the perſon, there all ſtrangers ſhall take benefit of that Record, as Outlawrie, Excommengement, Profeſſion, Attainder of Præmunire, of Felonie, &c. Baſtardie, Mylitertie, and ſhall conclude the partie, though they be Strangers to the Record, Vide in Littleton, cap. Villenage, Sect. 196, 197. &c. But of a Record concerning the name of the perſon, qualitie, or addition, no eſtranger ſhall take aduantage, becauſe he ſhall not be bound by it. But note Reader, That in caſe of the Mylitertie prima facie, an Eſtranger ſhall take benefit of it, &c. But yet becauſe he may be a Mulier by the Eccleſiaſticall Law, and a Baſtard by the Common Law, therefore againſt ſuch a Certificate pleaded, the aduerſe partie may alledge the ſpeciall matter, and confeſſe the Certificate of the Biſhop according to the Eccleſiaſticall Law, and alledge further the ſpeciall matter according to the Common Law, whereunto the aduerſe party muſt anſwer, and ſo are the Books that treat of this matter, to be reconciled. But now let vs return to Littleton.

Sect. 668.

¶ L *A Femepria deſte reſceiue & ſoit reſceiue.* **Receipt,** Receptio commeth of the Latyne Verbe Recipere, ſo called becauſe the wife vpon the default of her huſband, is receiued as a Feme ſole alone, without her huſband, to defend her right, and it is alſo called Defenſio iuris: and in this caſe the wife may bee receiued by the (a) Statute, and yet (b) antient Authors who wrote before the Statute, doe ſpeake of a kind of Receit at the Common Law. The Ciuilians call Reſceit, Admiſſionem tertij pro ſuo intereſſe, which meere properly is reſembled to the receit of him in the reuerſion or remainder, that is no partie to the writ.

10.*E.*1.*Defenſionis.*

(a) *W.*2.*ca.*3.

(b) *Brall.fo.*393. *Mir.li.*3. *cap.Exceptions.*

¶ Mes ſi en action de waſt le baron fait default a le graund diſtreſſe, et la feme pria deſtre receiue et ſoit receiue el monſtra bien tout le matter, et coment el eſt en ſon Remitter, et el barrera le Leſſor de ſon Action, &c.

But if in the Action of Waſte the Huſband make default to the grand Diſtreſſe, and the Wife pray to be receiued, and is receiued, ſhee may well ſhew the whole matter, and how ſhee is in her Remitter, and ſhee ſhall barre the Leſſor of his Action, &c.

Sect.

Sect. 669.

¶ Mes en chescun cas lou feme est receiue pur default son baron, el pledera & auera ñ laduantage en plee pledant, come el fuisſoit feme ſole, &c. Et coment que lalienee fiſt le leas al baron & a ſa feme, per fait endent, vncoze ceo eſt remitter a la feme. Et auxy coment que lalienee rendiſt meſm̃ la terre al baron & a ſa feme per fine pur terme de lour vies, vncoze ceo eſt vn remitter al feme, pur ceo que feme couert que prent eſtate per fine, ne ſerra my examine per les Juſtices, &c.

FOr in euery Caſe where the wife is receiued for default of her husband, ſhee ſhall plead and haue the ſame aduantage in pleading, as ſhee were a woman ſole, &c. and albeit that the alienee made the leaſe to the husband and wife by deed indented, yet this is a remitter to the wife. And alſo albeit the alienee rendreth the ſame Land to the husband and his wife by fine for tearme of their liues, yet this is a remitter to the wife, becauſe a feme couert which takes an eſtate by fine ſhall not be examined by the Iuſtices, &c.

¶ *Come el fuiſſoit feme ſole, &c.*

In this Section foure things are to bee vnderſtood.

Firſt when a Feme couert is receiued that ſhe ſhall plead as if ſhe were ſole. And this is regularly true, yet holdeth not in all caſes, (c) for if a Feme couert bee receiued in an Aſſiſe and plead a Record and falſe, therefore ſhee ſhall not bee adiudged a Diſſeiſor as ſhee ſhould bee if ſhee were ſole, &c. So if a Feme couert only leuie a fine executorie, and a Scire facias is brought againſt her and her husband, if ſhee bee receiued vpon the default of her husband, ſhee ſhall barre the Conuſee, which if ſhee had beene ſole, ſhe could not doe, and in ſome other Caſes.

(c) 37. Aſſ. 1.

17. Aſſ. 17. 29. E. 3. 43. 5. E. 3. Voucher 178.

Secondly, that though the eſtate taken backe bee by deed indented, yet that ſhall not hinder the Remitter in caſe of a Feme couert, or an Infant. Thirdly, that though it be by fine ſur render, yet that ſhall not hinder the Remitter, becauſe a Feme couert is not to be examined vpon any fine, but when ſhee and her husband paſſe ſome eſtate or intereſt, or releaſe her right by a fine of the Lands or Tenements.

¶ *Ne ſerra my examine per les Iuſtices, &c.* The examination of a Feme Couert ought to be ſecret, and the effect is to examine her whether ſhe be content to leuie a fine of ſuch Lands (naming them particularly and diſtinctly, and the ſtate that paſſeth by the fine) of her owne voluntarie free will, and not by threats, menaces, or any other compulſarie meanes.

Fourthly, if the husband leuie a fine of his wines Lands, and the Conuſee grant and render the Land to the husband and wife, although the wife bee not partie to the originall nor to the Conuſans, and therefore ſhe ought not by the Law to take any preſent eſtate but by way of Remainder only, yet here it is proued by Littleton, that the grant and render de facto to the wife in præſenti is not void, for then it could not worke a Remitter, but voidable by writ of Error, and that auoidable eſtate doth worke a Remitter.

Trin. 27. Eliz. Inter Owen & Morgan Rot. 276. in Banco Communi.
Lib. 3. fol. 5. the Marqueſſe of Wincheſters Caſe.
7. E. 3. 64. 13. E. 3. Voucher 119.

Sect. 670.

¶ ET hic nota, que quant aſcun choſe paſſera de la fem̃ que eſt couert de baron per force dun

AND here note, that when any thing ſhall paſſe from the wife which is couert of a husband by

dun fine, ſicome le baron et la feñ feſont vn conuſance de droit a vn auter, &c. ou feſoyent vn grant & render a vn auter, ou releſſent per fine a auter, & ſic de ſimilibus, lou le droit del feñ paſſeroit del feme p force de meſme le fine, en touts tielx caſes la feme ſerra examine deuaunt q̃ la fine ſoit accept pur ceo que tiels fines concluderont tiels feñs couerts a touts iours, &c. Mes lou riens eſt moue en le fine forſque tantſolement que le baron, & la feme preignont eſtate per force de meſme le fine, ceo ne concluder la feme, pur ceo que en tiel cas el iammes ne ſerra myexamine, &c.

force of a fine. As if the husband and wife make Conuſance of right to another, &c. or make a grant & render to another, or releaſe by fine vnto another, *& ſic de ſimilibus*, where the right of the wife ſhall paſſe from the wife by force of the ſame fine, in all ſuch caſes the wife ſhall bee examined before that the fine bee taken, becauſe that ſuch fines ſhall conclude ſuch femes couerts for euer. But where nothing is moued in the fine but only that the husband and wife do take an eſtate by force of the ſaid fine, this ſhall not conclude the wife, for that in ſuch caſe ſhee ſhall not bee at all examined, &c.

¶ *Quant aſcun choſe paſſera de la feme couert, &c. per force dun fine, &c.* And of this opinion is (d) Littleton in our Bookes.

*Therefore if the husband and wife be Tenants in ſpeciall tayle, and they leaſe a fine at the Common Law, and after the husband and wife take backe an eſtate to them and their heires in this caſe the eſtate tayle is not barred, and yet againſt a fine leaſed by her ſelfe ſhe cannot be remitted, becauſe thereupon ſhe was examined: but in that caſe if the Land diſcend to her iſſue he ſhall be remitted.

(d) 15.E.4.28. 24.E.3.31. 42.E.3.6. 3.H.6.42. 20.E.3.tit. Cui in vita 10. (*) 29.E.3.43. 46.E.3.5.

Section 671.

¶ Item ſi tenant en taile diſcontinua le taile & ad iſſue file, & mozuſt, & la file eſteant de pleine age prent baron, & le diſcontinuee fait vn releas ď ceo al baron & a ſa feme pur terme ď lour vies, ceo eſt vn Remitter al feme, et la feme eſt eins per force de le taile, Cauſa qua ſupra.

Alſo if tenant in tayle diſcontinue the taile, and hath iſſue a daughter & dieth, & the daughter being of full age taketh husband and the Diſcontinuee make a releaſe of this to the husband & wife for terme of their liues, this is a Remitter to the wife, and the wife is in by force of the Tayle, *Cauſa qua ſupra, &c.*

¶ *Et la feme eſteant de plein age prent baron, &c.* Here it appeareth that her full age when ſhe tooke Baron is not materiall, but her couerture at the taking backe of the eſtate. And ſo note a diuerſitie betweene a Remitter and a Diſcent. For if a woman be diſſeiſed, and being of full age taketh husband. and then the Diſſeiſor dieth ſeiſed, this Diſcent ſhall binde the wife, albeit ſhee was couert when the Diſcent was caſt, becauſe ſhee was of full age when ſhee tooke husband, as appeareth before in the Chapter of Diſcents. But albeit the wife that hath an ancient right, and being of full age taketh a husband, and the Diſcontinuee letteth the Land to the husband and wife for their liues, this is a Remitter to the wife. For Remitters to ancient rights are fauoured in Law.

Sect.

Sect. 672.

¶ Item ſi terre ſoit done a le baron et a ſa feme, a auer et tener a eux et a les heirs de lour deux corps engendres, et puis le baron aliena la terre en fee, et reprent eſtate a luy et a ſa feſm pur terme de lour deux vies, en ceſt cas il eſt remitter en fait a le baron et a ſa feme maugre l' baron. Car il ne poit eſtr̄ vn remitter en ceſt cas a la feme, ſinon que ſoit vn remitter a le baron, pur ceo que le baron et ſa feme ſont tout vn meſme perſon en ley, coment que le baron eſt eſtoppe de claymer. Et pur ceo, ceo eſt vn remitter ē luy enconter ſon alienation et ſon repriſel demeſne, come eſt dit deuant.

ALſo if land be giuen to the husband and to his wife, to haue & to hold to them & to the heires of their two bodies begotten, and after the husband alien the land in fee, and take backe an eſtate to him and to his wife for terme of their two liues, in this caſe this is a remitter in deed to the husband and to his wife mauger the husband. For it cannot bee a remitter in this caſe to the wife, vnleſſe it bee a remitter to the husband, becauſe the husband and wife are all one ſame perſon in Law, though the husband be ſtopped to claime it, and therefore this is a remitter againſt his owne alienation and repriſel, as is ſaid before.

¶ Here it appeareth that the husband againſt his owne alienation if hee had taken the eſtate to him alone could not haue bœn remitted. But when the eſtate is made to the husband & wife, albeit they be but one perſon in Law, and no moyties betweœn them, yet for that the wife cannot be remitted in this caſe, vnleſſe the husband be remitted alſo, and for that remitters, as hath bœne often ſaid, are fauoured in Law becauſe thereby the more antient and better rights are reſtored againe, therefore in this caſe in iudgement of Law both husband and wife are remitted, which is worthy of great obſeruation.

Sect. 673.

¶ Item ſi terre ſoit done a vn feme en taile, le remainder a vn auter en taile, le remainder a le tierce en taile, le remainder al quart en fee, et la feſm prent baron, et le baron diſcontinua la terre en fee, p cel diſcontinuance touts les remainders ſont diſcontinues. Car ſi la feſm deuiaſt ſans iſſue, ceux en le remainder naueront aſcun remedie forſque de ſuer lour briefes de Formedon en le remainder quant

ALſo if land bee giuen to a woman in taile, the remainder to another in taile, the remainder to the third in taile, the remainder to the fourth in fee, and the woman taketh husband, and the husband diſcontinue the land in fee, by this Diſcontinuance all the remainders are diſcontinued, for if the wife die without iſſue, they in the remainder ſhall not haue any remedie but to ſue their writs of *Formedon* in the remainder, when

quant il auient a lour temps. Mes ſi apres tiel diſcontinuance, eſtate ſoit fait a le baron et ſa feme pur terme de lour deux vies, ou pur terme dauter vie, ou auter eſtate, &c. pur ceo que ceo eſt vn remitter al feme, ceo eſt auxy vn remitter a touts ceux en le remainder. Car apres ceo que la feme que eſt en ſon remitter morust ſans iſſue, ceux en le remainder poyent enter, &c. ſans aſcun action ſuer, &c. En meſme le maner eſt de ceux que ount la reuerſion apres tiel tailes.

it comes to their times. But if after ſuch diſcontinuance, an eſtate be made to the husband and wife for terme of their two liues, or for terme of another mans life, or other eſtate, &c. for that this is a remitter to the wife, this is alſo a remitter to all them in the remainder. For after that that the wife which is in her remitter be dead without iſſue, they in the remainder may enter, &c. without any action ſuing, &c. In the ſame manner is it of thoſe which haue the reuerſion after ſuch entailes.

¶ Littleton hauing ſpoken of Remitters to the iſſue in taile who is priuie in blood, and to the wife who is priuie in perſon, now he ſpeaketh of Remitters to them in reuerſion or remainder expectant vpon an eſtate taile who are priuie in eſtate. And this caſe proueth that the wife is remitted preſently. for the equity of the Law requireth that as the diſcontinuance of the eſtate in taile is a diſcontinuance of the reuerſion or remainder, ſo, that the Remitter to the eſtate in taile ſhould be a Remitter to them in the reuerſion or remainder.

41. *E.* 3. 17. 41. *Aſſ.* 1. 36. *Aſſ.* p. 4.

Tenant for life the remainder to A in taile, the remainder to B. in fee, Tenant for life is diſſeiſed, a collaterall Anceſtor of A. releaſeth with warrantie and dyeth, whereby the eſtate taile is barred, the Tenant for life re-entreth, the Diſſeiſor hath an eſtate in fee ſimple determinable vpon the ſtate taile, and the remainder of B. is reueſted in him, and ſo note in this caſe the eſtate for life and the remainder in fee are reueſted and remitted, and an eſtate of inheritance left in the Diſſeiſor. If a Fine be leuied ſur grant & render to one for life or in taile, the remainder in fee, if Tenant for life or in taile execute the eſtate for life or in taile, this is an execution of the remainder.

44. *Aſſ.* p. 15. 44 *E.* 3. 30.

A gift in taile is made to B. the remainder to C. in fee, B. diſcontinueth and taketh backe an eſtate in taile, the remainder in fee to the King by deed inrolled, Tenant in taile dieth, his iſſue is remitted, and conſequently the remainder as Littleton here ſaith, and the diuerſitie is (a) betweene an act in Law, for that may deueſt an eſtate out of the King, and a tortious act, or entric, or a falſe and a feyned recouery againſt Tenant for life or in taile which ſhall neuer deueſt any eſtate, remainder, or reuerſion out of the King. (b) But a recouery by good title againſt Tenant for life or in taile where the remainder is to the King by defeaſible title ſhall deueſt the remainder out of the King, and reſtore and remit the right owners.

20. *E.* 3. *Aid.* 29.

Vid. Pl. Com. 489. *Nichols caſe & fo.* 553. *in Walſinghams caſe.* 17. *Eliz. Dier* 344. 25. *E.* 3. 48. *tit. Reſceit* 28. 49. *E.* 3. 16.

(a) *Seignior Staffordi caſe, Lib.* 8. *fo.* 76. *b.*

(b) *Cholmeleys caſe, lib.* 2. 53. 7. *R.* 2. *Aide le Roy*, 61. 22. *E.* 3. 7.

*Sect.*674. 675.

¶ *Feint & faux action.* 1. Actio ficta & falſa, But hereof Littleton ſpeaketh himſelfe in this Chapter.

¶ *Quod ei deforceat*, is a writ that is giuen by (c) Statute to any Tenant for life or in taile vpon a Recouery by default againſt them in a Præcipe, and lyeth againſt the

(c) *W.* 2. *cap.* 4.

¶ Item ſi hom leſſa vn meaſe a vn feme pur terme de la vie, ſauant l' reuerſion al leſſour, et puis vn ſuiſt vn feint et faux action enuers la feme et recouerast le meaſe enuers luy per default, iſſint que la

ALſo if a man lett a houſe to a woman for terme of her life, ſauing the reuerſion to the Leſſor, and after one ſue a feyned and falſe action againſt the woman, and recouereth the houſe againſt her by default, ſo as the

la feme puit auer enuers luy vn Quod ei deforceat, ſolonque le Statute de Weſtm̃ 2. oꝛe le reuerſion le Leſſoꝛ eſt diſcontinue, iſſint que il ne poit auer aſcun action de waſt. Mes en ceſt caſe ſi la feꝛm̃ prent baron, et celuy que recouerаſt leſſa le meaſe al baron et a ſa feme pur terme de lour deux vyes, la feme eſt eins en ſon remitter per force del primer leaſe.

woman may haue againſt him a *Quod ei deforceat*, according to the Statute of Weſtm. 2. now the reuerſion of the Leſſor is diſcontinued, ſo that he cannot haue any action of waſt. But in this caſe if the woman take husband, and hee which recouereth lett the houſe to the husband & his wife for terme of their two liues the wife is in her Remitter by force of the firſt Leaſe.

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¶ ET ſi le baron et la feme font waſt, le primer leſſoꝛ auera enuers eux bꝛe de waſt, pur ceo que entant que la feme eſt en ſon remitter, il eſt remiſe a ſon reuerſion. Mes ſemble en ceſt cas ſi celuy que recouerаſt per ſ faux action, voile poꝛter auter bꝛiefe de waſt enuers le baron ⁊ ſa feme, le baron nad auter remedie enuers luy, mes de faire default a la graund diſtres, ⁊c. et cauſer la feme deſtre receiue, et de pleder cel matter enuers le ſecõd leſſoꝛ, et monſtrer coment laction per que il recouerаſt fuit faux ⁊ feint ẽ ley, ⁊c. iſſint ſ fẽe poit luy barrer, ⁊c.

AND if the husband and wife make waſt, the firſt Leſſor ſhall haue a writ of waſt againſt them, for that inaſmuch as the wife is in her remitter, he is remitted to his reuerſion. But it ſeemeth in this caſe if hee that recouereth by the falſe action will bring another writ of waſte againſt the husband & his wife, the husband hath no other remedy againſt him, but to make default to the grand diſtreſſe, &c. and cauſe the wife to be receiued, and to plead this matter againſt the ſecond Leſſor, and ſhew how the action wherby he recouered was falſe & fained in law, &c. ſo the wife may barre him.

recouerоꝛ and his heires in which caſe the particular Tenant was without remedy at the Common Law, becauſe hee could not haue a Writ of right. And it is called a Quod ei deforceat, for that they are part of the wоꝛds of that Writ, viz. Præcipe A. quod, &c. reddat B. vnum meſuagium, &c. quod clamat eſſe jus & maritagium ſuum, & quod idem A. ei iniuſte deforceat. *Bracton lib.* 4. 367. *Fleta, lib.* 5. *c.* 22. *& lib.* 6. *cap.* 14. 7. *E.* 3. 62. *F.N.B* 155.

¶ *Recouerаſt &c. per default.* There hath beene a queſtion in our bookes vpon theſe wоꝛds (By default) as foꝛ example, whether a recouery had by default in an action of waſte againſt Tenant in Dower, oꝛ by the Curteſie, a Quod ei deforceat lyeth by the ſaid Statute. And diuers hold opinion, that in that caſe no Quod ei deforceat lyeth, foꝛ that iudgement is not giuen, foꝛ notwithſtanding the default, there goeth out a Writ to enquire De vaſto facto, & quod vaſtum prædictum A. (le defendant) fecit. So as the Defendant may giue euidence, and the Iuroꝛs may finde foꝛ the Defendant, that no waſte was done: As in the Aſſiſe albeit it bee awarded by Default, yet may the Tenant giue euidence, and the Recognitoꝛs of the Aſſiſe may finde foꝛ the Tenant, and therefoꝛe in thoſe caſes, the Defendant oꝛ Tenant Non amittit per defaltam, as the Statute and Littleton ſpeaketh, and they cite F.N.B. in the point. *W.* 2. *cc.* 4. *F.N.B. fo.* 155. *E.*

Secondly, they hold that a Quod ei deforceat lyeth where the Tenant can haue no remedie by attaint, but in this caſe (ſay they) an attaint doth lye. *2. H.* 4. 2. *21. H.* 6. 56. *41. E.* 3. 8. *3. H.* 6. 29. *22. E.* 3. 19.

Thirdly, they hold, that in an Action of waſte although

though it be brought against a Tenant in Dower or Tenant by the Curtesie that haue a freehold, yet the dammages are the principall, for they were recouerable against Tenant in Dower and by the Curtesie by the Common Law, and the Statute of Glocester gaue the place wasted but for a penaltie, so as the nature of the Action (say they) remaineth still to bee personall, for that the dammages are the principall; (d) and in proofe hereof they cite diuers Authorities in Law. And if two bring an Action of waste, the release of one of them is a good bar against the other, (e) and so resolued by the whole Court; which proueth (say they) that the dammages are the principall, for if the Land were the principall, the release of one of them should not barre the other, no more then in an Assise, a Writ of Ward, an Ejectione firmæ, &c.

(d) 34.H.6.7.40.E.3.37. & 38.E.3.

(e) 9.H.5.15.

30.H.6.tit.Bar.59.

Lastly, they say, That in Actions where dammages are to be recouered, and the land is the Principall, the Demandant neuer counteth to dammages, and yet shall recouer them: but in an Action of waste the Plaintife counteth to his dammage, and if the dammages be the Principall, then clearely no Quod ei deforceat lieth.

Others doe hold the contrarie; and as to the first they say, That albeit that in the Writ of Waste iudgement is not onely giuen vpon the default, yet the default is the principall, and the cause of awarding of the Writ to enquire of the waste as an incident thereunto: and the Law alwayes hath respect to the first and principall cause, and therefore vpon such a Recouerie (*) a Writ of Deceit lieth, and that Writ lieth not but where the Recouerie is by default. So in an Action of waste against the husband and wife, vpon the default of the husband the wife shal be receiued, and yet the Statute there speaketh also, per defaltam. So vpon such a recouerie in Waste against the Baron and Feme by default, the wife shall haue a Cui in vita by the Statute, and it speaketh where the Recouerie is per defaltam. And albeit the Defendant may giue in euidence, if he knoweth it, yet when he makes default the Law presumeth hee knoweth not of it, and it may be that he in truth knew not of it; and therefore it is reason, that seeing the Statute, that is a beneficiall Statute, hath giuen it him, that he be admitted to his Quod ei deforceat, in which Writ the truth and right shall be tried. And so it is of a recouerie by default in an Assise, albeit the Recognitors of the Assise giue a verdict, a Quod ei deforceat lieth. And all this as to this poynt was resolued by the whole Court of Common Pleas, and so the doubt in 41.E.3.8. well resolued. Nota, if Tenant for life make default after default, and he in the reuersion is receiued and plead to Issue, and it is found by verdict for the Demandant, the default and the verdict are causes of the Judgement, and yet the Tenant shall haue a Quod ei deforceat.

(*) 17.E.3.58. 29.E.3.42. F.N.B.98.b.12.H.4.4. 19.E.2.Diseis 56. W.2.ca.3.3.H.4 fo.1.

W.2.ca.3.9.E.4.16.

41.E.3.8.b.2.H.4.2.21.H.6 56. 44.E.3.42. br.tit.Quod ei deforc.4. Pasch.33.El.Rot. 1125. inter Ed.Elmer & El. sa feme, ten. en Dower. demandants, & Wil. Thacker ten. in Quod ei deforceat.

As to the second obiection, That the Defendant may haue an Attaint, First it was vtterly denied of the other part, (f) that an Attaint did lie in this case, for though it be taken by the Oath of twelue men, yet it is but an Enquest of Office, whereupon no Attaint did lie on either partie, as vpon an enquirie of Collusion, although it be by one Jurie, nor vpon a Verdict in a Quale ius. Secondly, Admitting that an Attaint did lie in that case, yet it followeth not ex Consequenti, that a Quod ei deforceat did not lie, (g) for if an Assise be taken by default, a Quod ei deforceat doth lie, and yet the partie may haue an Attaint, for this is no Enquest of Office, but a Recognition by the Recognitors of an Assise, who were returned the first day, and not returned vpon the awarding of the Assise by default. And as to the second Obiection, of this opinion was the whole Court in Edward Elmers case aboue mentioned. As to the third Obiection, That the dammages should bee the principall, because they were at the Common Law, that is an argument (say the other side) that they are more antient, but not that they are more principall, and treble dammages were not at the Common Law, (for the Common Law neuer giueth more dammage than the losse amounteth vnto) but are giuen by the Statute of Glocester, but the place wasted is worthier being in the Realtie, than dammages that be in the personaltie, Et omne maius dignum trahit ad se minus dignum, quamuis minus dignum sit antiquius, & à digniori debet fieri denominatio. And it is confessed, That in an Action of waste against Tenant for life, or for yeares, the place wasted is the principall, because the Statute of Glocester doth giue the place wasted and treble dammages at one time; for no prohibition or Action of Waste lay against them at the Common Law, and in an Action of waste, if the Defendant confesse the Action, the Plaintife may haue iudgement for the place wasted, and release the dammages, which proueth (and so Fitzherbert collecteth) that the dammages are not the principall, for a man shall neuer release the principall, and haue iudgement of the accessorie: and an Action of Waste against Tenant for life, is as reall as an Action against Tenant in Dower. And as to the case of 9.H.5. cited on the other side, it was answered that it was an Action in the Tenuit, which is onely in the personaltie, and then the Release of the one doth bar both, neither could summons and seuerance lie in that case, (h) but in an Action of waste (in the Tenet) either against Tenant for life or for yeares, the release of the one doth not barre the other, and in both those cases summons and seuerance doth lie, and this poynt was also resolued accordingly in Edward Elmers Case. But when these three poynts were resolued by the Court for the Demandant, then the Counsel of the Tenant moued in arrest of iudgment another point,

(f) 33.E.3.Qd ei deforc.Tl. vlt. b.N.B.156. V.Flet.li.5.ca.21.48.E.3.19 40.Ass.23.33.H.6.25. 39.H.6.1.F.N.B 107.

(g) 17.E.2.Attaint 69. 21.H.6.56.34.H.6.12.

34.H.6.7.Waste.50.

(h) 6.E.3.47. 48.E.3.19.

viz.

viz. That the iudgement was giuen vpon a Nihil dicit, which is alwayes after apparance, and not per defaltam, and thereupon iudgement was stayed.

But to returne to Littleton. Here he openeth a secret of Law, for the cause of this remitter is, for that the Tenant for life in this case might haue a Quod ei deforceat, for so Littleton sayth. Iſſint que il poet auer Quod ei deforceat: Now it appeareth by our Bookes, That the Tenant for life at the Common Law was remedileſſe, because he could not haue (as hath beene sayd) a Writ of Right, and consequently the Feme couert in this case could not bee remitted by the taking of an Estate to her husband and her, because her right was remedileſſe, and could haue no Action. But when an Act of Parliament or a Custome doth alter the reason and cause thereof, thereby the Common Law it selfe is altered, if the Act of Parliament and Custome be pursued, for Alterata causa & ratione legis, alteratur & lex, & ceſſante causa seu ratione legis ceſſat & lex: as in this case the Statute of W.2 giuing remedie to this Feme Tenant for life, in this it giueth her abilitie to bee remitted, because her right is not now remedileſſe, but she hath an Action to recouer it.

Vide for the Cases vpon this grant. 14 *H.*7.11.*p Finenx* 27 *H* 8 4.6. *Aid* 35.*H.*6. *Garde* 2.27.*E.*3 5 *p Wiſbe Cuſtome. li* 3 *fo* 86. *Iuſtice Windhams case, a. & b.*

And Littleton warily putteth his case, That the recouerie was had against the Feme while she was sole, for there was a time when it was a question, whither a Recouerie being had by default against the husband and wife, (the wife being Tenant for life) the sayd Statute gaue a Quod ei deforceat to the husband and wife, for that the Statute gaue it against tenant in Dower and Tenant for life, &c. and here the husband is not Tenant for life, but seised in the right of his wife, and therefore out of the Statute: and of this opinion is one (g) Booke, but (apices iuris non ſunt iura, & parum differunt quæ ſic concordant) the contrarie hath beene adiudged, and so that poynt is now in peace: and the like in case of receit for him in reuersion. But if the husband and wife lose by default, & the husband die, the wife shall not haue a Quod ei deforceat, for a Cui in vita is giuen to her in that case by a former Statute, viz. W.2. cap.3. These things are worthie of due obseruation, and poynts of excellent learning; and Littleton in our Bookes speakes of another kind of Quod ei deforceat at the Common Law, vpon a Diſſeiſin, which you may read. But now let vs heare him in his Booke.

(g) 4.*E.*3.38.33.*E.*3.*Anowry* 255. 5.*E.*3.4 33.*E.*3.*Anowr* 255 *F.N.B.*155.*a.* 5.*E.*3.5.2.*E.*4.13. *F.N.B.* 156.*C.* 33.*H.*6.46.2.*E.*4.11. 19.*E.*4.2.

¶ *Le reuerſion eſt diſcontinue, iſſint que il ne poet auer Action de Waſte.*

Here it appeareth, That when the Reuersion is deuested, the Lessor cannot haue an Action of waſt, because the writ is, That the Lessee did waſt ad exhæredationem of the Lessor, and that Inheritance must continue at the time of the Action brought: And it is to bee obserued, That in an Action of waſt brought by the Lessor against the Lessee, the Lessee in respect of the priuitie cannot plead generally, Riens en le Reuerſion, viz. (h) That the Lessor hath nothing in the Reuersion, but he must shew how and by what meanes the reuersion is deuested out of him: and this holdeth (as hath beene sayd) betweene the Lessor and the Lessee; but if the Grantee of a Reuersion bringeth an Action of waſt, the Lessee may plead generally, That hee hath nothing in the reuersion. And yet in some speciall cases an Action of waſt shall lie, albeit the Lessor had nothing in the Reuersion at the time of the waſt done. As if Tenant for life make a Feoffement in Fee vpon condition, and waſt is done, and after the Lessee re-enter for the condition broken, In this case the Lessor shall haue an Action of waſt. And so if a Bishop make a Leaſe for life or yeres, & the Bishop die, the lessee, the See being voyd, doth waſt, the successor shall haue an Action of waſt. So if Lessee for life be diſſeiſed, and waſt is done, the Lessee re-enter, an Action of waſt shall be maintained against the Lessee, and so in like cases: and yet in none of these cases the Plaintife in the Action of waſt had any thing in the Reuersion at the time of the waſt made, but these especiall cases haue their seuerall and especiall reasons, as the learned Reader will easily find out.

45.*E.*3.21 44.*E.*3.34.35. *F.N.B.*60.23.*H.*8.*tit.Waſt. Br.*138.

(h) 45.*E.*3.20.*8.H.*6.13. 30.*H.*6.7.

Here note, That albeit the Action be false and feigned, yet is the recouerie so much respected in Law, as it worketh a Diſcontinuance. (i) But if Tenant for life suffer a common Recouerie, or any other Recouerie by couine and consent betweene the Tenant for life and the Recoueror, this is a forfeiture of his estate, and he in the Reuersion may presently enter for the forfeiture. Since our Author wrote, the Statute of 14.El.ca.8. hath bin made concerning this matter, which is to be considered, (k) and hath beene well construed and expounded, and needs not here to be repeated.

(i) 5.*Aſſ pl.*3. 5.*E.*3.*Entre Cong* 42.15.*F.*3.*Age* 95. 41.*E.*3.18.*p Finchden.* 22 *E.*3.2.*b. Li* 1.*fo.*15.*Sir Wil Pelhams caſe.* 14.*El.ca.*8.

(k) *Li.*3.*fo.*60. *Li.*1.*fo.*15.

And it is to be obserued, That although the Diſcontinuance groweth by matter of Record, yet the Remitter may be wrought by matter in Paiis: And of the residue of these two Sections sufficient hath beene sayd before.

Sect.

Sect. 676.

¶ Item ſi le baron diſcontinua le terre de ſa feme, et puis repriſt eſtate a luy & a ſa feme, & al tierce perſon pur term̃ de lour vies, ou en fee, ceo neſt vn remitter a la feme, forſque quant a la moity, et pur lauter moity el couient aprés la mort ſon baron de ſuer vn briefe de Cui in vita.

ALſo if the husband diſcontinue the land of his wife, and after taketh backe an eſtate to him and to his wife, & to a third perſon for terme of their liues, or in fee, this is no remitter to the wife, but as to the moity, and for the other moity ſhe muſt after the death of her husbād ſue a writ of *Cui in vita*

44 *E.*3.17. 44. *Aſſ.*2. 43. *Aſſ.*3. *Vid. Sect.*666.

¶ *Eo neſt remitter forſque quant al moity, &c.* Albeit there is Authority in our bookes to the contrary, yet the Law is taken, as Littleton here holdeth it; and as before it appeareth in the like caſe in this Chapter, and for the reaſon therein expreſſed.

Section 677.

¶ *ET puis le baron reuient & agrea, &c.* In this caſe the eſtate is in the Feme Couert preſently by the liuery before any agreement by the husband and of this opinion is Littleton in our Bookes.

15. 4. 1. *b.* 7. *H.* 4. 17. 1. *H.* 7. 16. *b.* 39. *E.* 3. 30. 27. *H.* 8. 24.

¶ *Ala ouſter le mere.* If hee had beene within the Realme, it doth not alter the caſe.

¶ *Quære en ceſt caſe ſi le baron, &c.* Here is a queſtion moued by Littleton whether the diſagreement of the Husband ſhall ouſte the wife of her Remitter. And it ſeemeth that the diſagreement ſhall not deueſt the Remitter: Firſt, becauſe the ſtate made to the wife which wrought the Remitter is vaniſhed and wholy defeated, and therefore no diſagreement of the husband can deueſt the ſtate gained by the leaſe, which by the Remitter was deueſted before.

Secondly, for that the Law hauing once reſtored her ancient and better right will not ſuffer the diſagreement of the husband to deueſt it out of her, and to reuiue the Diſ-

¶ Item ſi le baron diſcõtinue la terr̃ ſa feme, et ala ouſter le mere, et le diſcontinuee leſſa meſme la terre al feñ pur term̃ de ſa vie, & liuer a luy ſeiſin, & puis le baron reuyent, & agreea a cel liuerie de ſeiſin, c̃ eſt vn remitter a la feme, & vncore ſi la feme fuiſſoit ſole al temps de le leas fait a luy, ceo ne ſerroit a luy vn remitter. Mes entant que el fuit couert de baron al temps de la leas, & de le liuery de ſeiſin fait a luy, coment que el priſt ſolement le liuery de ſeiſin, ceo fuit vn Remitter a luy, pur ceo que feme couert ſerra adiudge

ALſo if the husband diſcontinue the land of his wife, and goeth beyond ſea, and the Diſcontinuee let the ſame Land to the wife for tearme of her life, and deliuer to her ſeiſin, and after the husband commeth backe, and agreeth to this Liuery of ſeiſin, this is a Remitter to the Wife, and yet, if the Wife had beene ſole at the time of the leaſe made to her, this ſhould not bee to her a Remitter, but in as much as ſhe was couert baron at the time of the Leaſe, and liuery of ſeiſin made vnto her, albeit ſhee taketh only the liuery of ſeiſin, this was a Remitter

ſcome

ſicome enfant deins age en tiel cas, &c. Quære en ceſt cas ſi l' barõ quant il reuiēt, voil diſagree a l' leas & liuery de ſeiſin fait a ſon feme en ſon abſence, ſi ceo ouſtera ſon feme de ſon Remitter, ou nemy, &c.

to her becauſe a Feme couert ſhall bee adiudged as an Infant within age in ſuch a caſe, &c. *Quære* in this caſe if the Husband when hee comes backe will diſagree to the leaſe and liuery of ſeiſin made to his wife in his abſence, if this ſhall ouſte his wife of her Remitter, or not, &c.

of the eſtates ſhee will. As if Lands bee giuen to the Husband and wife and their heires, the husband make a feoffment in fee, the feoffee giueth the Land to the husband and wife and the heires of their two bodies, the husband dieth. In this caſe the wife may elect which of the eſtates ſhe will, for both eſtates are waiueable, and her time of election and power of wayuer accrewed to her firſt after the deceaſe of her husband. If Lands bee giuen to a man and the heires females of his bodie, and hee maketh a feoffment in fee, and take backe an eſtate to him and his heires, and dieth hauing iſſue a daughter leauing his wife groſſement enſeint with a ſonne and dieth, the daughter is remitted, and albeit the Sonne be afterward borne, hee ſhall not deueſt the Remitter. 18.Eliz.Dier 351.

continuance and reueſt the wrongfull eſtate in the Diſcontinuee.

Thirdly, for that Remitters tending to the aduancement of ancient Rights are fauoured in Law. 41.E.3.18.

And ſo it is for the ſame cauſes if the wife ſuruiue her husband ſhe cannot claime in by the purchaſe made during the couerture but the Law adiudgeth her in her better right. But if both eſtates be waiueable, there albeit the wife prima facie is remitted, yet after the deceaſe of her husband, ſhee may elect which

Sect. 678.

ITem ſi le baron diſcontinua les tenements ſon feme, & le diſcõtinuee eſt diſſeiſie, & puis le diſſeiſour leſſa meſmes les tenements a l' baron & a ſon feñ pur terñ de vie, ceo eſt vn remitter a la feme. Mes ſi le baron et ſon feme fueront de couin & conſent que l' diſſeiſin doit eſte fait donques il neſt Remitter a ſon feñ pur ceo que el eſt diſſeiſereſſe: Mes ſi l' baron fuit de couin & conſent a le diſſeiſin, et nemy la feme, donq;

ALſo if the Husband diſcontinue the Lands of his wife, and the diſcontinuee is diſſeiſed, and after the Diſſeiſor letteth the ſame lands to the husband and Wife for tearme of life, this is a Remitter to the wife. But if the husband & his Wife were of couin and conſent that the diſſeiſin ſhould be made, then it is no remitter to his Wife becauſe ſhe is a Diſſeiſereſſe. But if the husband were of couin & conſent to the Diſſeiſin, and not the Wife

¶ *ET puis le diſſeiſor leſſa meſme les tenements, &c.* Note ſo much are remitters fauoured in law, that the ſtate made by the Diſſeiſor (which commeth to the Land by wrong, and vpon whom the entry of the Diſcontinuee is lawfull) doth remit the wife, and deueſteth all out of the Diſcontinuee, albeit hee hath a Warrantie of the Land. 18.E.4.2.b.

¶ *Mes ſi le baron & feme fuer' de couin & conſent, &c.* Here it appeareth that couin and conſent of the husband and wife doth hinder the remitter of the wife, for couine and conſent in many caſes to doe a wrong doth choake a meere right, and the ill manner doth make a good matter vnlawfull. 18.E.4.vbi ſupra.

¶ *Couin.* Couina commeth of the French word Couvine, & is a ſecret aſſent (t) Pl.Com.546. in Wimbiſhes caſe.

determined in the hearts of two or more to the defrauding and preiudice of another.

44.E.3 46. 11.H.4.60. 44.Ass.29. 19.H.8.12. 18.H.8.5. 11.E.4.2. 7.H.7.11.

A woman is lawfully intitled to haue dower, and shee is of counte and consent, that one shall disseise the Tenant of the Land against whom shee may recouer her lawfull Dower all which is done accordingly, the Tenant may lawfully enter vpon her, and auoid the recouery in respect of the counte. But if a Disseisor, Intrudor, or Abator doe endow a woman that hath lawfull title of Dower, this is good, and shall bind him that right hath, if there were no such counte or consent before the Disseisin, Abatement, or Intrusion.

tiel leas fait al feme est vn remitter, pur ceo que nul default fuit en la feme.

then such Lease made to the wife is a Remitter, for that no default was in the wife.

41.Ass.p.28. 25.Ass.pl. 27.Ass.74. 15.E.4.4 a. 12. Ass.p.20.

And so it is in all cases where a man hath a rightfull and iust cause of Action, yet if he of counte and consent doe raise vp a Tenant by wrong against whom he may recouer, the counte doth suffocate the right, so as the recouery though it be vpon a good title shall not bind, or restore the demandant to his right.

11.E.4.2. 15 E.4 23. 14.H.8.13. 33.H.6.5. 12.E.4.21.b.

If Tenant in taple and his issue disseise the discontinuee to the vse of the Father, and the Father dieth, and the Land discendeth to the issue, he is not remitted against the Discontinuee in respect he was privy and partie to the wrong, but in respect of all others he is remitted, and shall deraigne the first warrantie. And so note a man may be remitted against one, and not against another.

A. and B. Joyntenants be intitled to a reall Action against the heire of the Disseisor, A. cause the heire to be disseised, against whom A. and B. recouer and sue execution. B. is remitted for that he was not partie to the counte, and shall hold in common with A, but A. is not remitted for the reason that Littleton here sheweth.

F.N.B.179.g. 12.E.4.9. 35.Ass.5. 44.E.3.9.23.13.Ass.1. Temps E.1.Waste 128. 16.Ass.p.7. 21.E.4.53. 21.H.7.35. 3.H.4.17.

¶ *Par ceo que el est disseisoresse.* Nota, It is regularly true that a Feme Couert cannot be a Disseisoress by her commandement or procurement precedent, nor by her assent or agreement subsequent, but by her actuall entry or proper act she may bee a Disseisoresse. And therefore some doe hold that Littleton must be intended that the husband and wife were present when the Disseisin was done, and others doe hold that Littleton is good Law albeit she were absent, for that if her procurement or agreement bee to doe a wrong to cause a Remitter vnto her in this speciall case she shall faile of her end, and remitted she shall not bee, but in this speciall case she shall be holden as a Disseisoresse by her counte and consent quatenus to hinder the Remitter. And here it appeareth, that albeit the husband bee of counte and consent, &c. yet if the wife were not of counte and consent also, she shall be remitted, because as Littleton saith, there was no default in the wife.

Sect. 679.

¶ **Item si tiel discontinuee fesoit estate de franktenemēt al baron & a son feme per fait endent. sur condition, s. reseruant al discontinuee vn certaine rent, & pur default de payment vn re-entry, & pur ceo que le rent est aderere, le discontinuee enter, donques de cel entrie le feme auera vn Assise de** Nouel disseisin, **apres la mort son baron enuers le discontinuee, pur ceo que le condition fuit tout ousterment aniente, entant que la feme fuit en ſ remitter, vncore le baron ouesque sa feme**

ALso if such discontinuee make an estate of freehold to the husband and wife by Deed indented vpon condition, s. reseruing to the discontinuee a certain rent and for default of payment a re-entrie, and for that the rent is behind the discontinuee enter, then for this entry the wife shall haue an Assise of *Nouel disseisin*, after the death of her Husband against the Discontinuee, because the condition was altogether taken away, inasmuch as the Wife was in her Remitter, yet the husband with his wife can-

feme ne poient auer Aſſiſe, pur ceo que le baron eſt eſtoppe, &c.

not haue an Aſſiſe becauſe the husband is eſtopped,&c.

IT is hereby to be obſerued, that the wife is preſently remitted, and that the conditions and rents and all other things annexed to or reſerued vpon the ſtate (that is baniſhed and defeated by the Remitter) are defeated alſo.

Pl. Com. in Amy Townesends caſe. 12. R. 2. tit. Remitter 12.

Sect. 680. & 681.

¶ Item ſi le baron diſcontinua les tenements ſa feme, & repriſt eſtate a luy pur terme de ſa vie, le remainder apres ſon deceaſe a ſa feme pur terme de ſa vie, en ceſt cas ceo neſt vn remitter a la feme durant la vie le baron, pur ceo que durant la vie le baron, la feme nad riens en le franktenement. Mes ſi en ceo cas la feme ſuruesquiſt le baron, ceo eſt vn remitter a la feme, pur ceo que vn franktenement en ley eſt iect ſur luy maugre le ſoen. Et entant que el ne poit auer action enuers nul auter perſon, & enuers luy meſme el ne poit auer action, pur ceo el eſt en ſ̃ Remitter. Car en ceſt cas, coment que la feme ne entra pas en les tenements, vncore vn eſtrange que ad cauſe de auer action, poit ſuer ſon action enuers la feme de meſmes les tenements, pur ceo que el eſt tenant en ley, coment que el ne ſoit tenant en fait.

ALſo if the Husband diſcontinue the tenements of his wife, and take back an eſtate to him for life, the remaynder after his deceaſe to his wife for tearme of her life, in this caſe this is no Remitter to the Wife during the life of the husband, for that during the life of the Husband the Wife hath nothing in the freehold. But if in this caſe the wife ſuruiueth the Husband, this is a Remitter to the Wife becauſe a freehold in Law is caſt vpon her againſt her will. And in as much as ſhee cannot haue an action againſt any perſon, and againſt her ſelfe ſhee cannot haue an Action, therefore ſhee is in her remitter. For in this caſe although the Wife doth not enter into the tenements, yet a ſtranger which hath cauſe to haue an Action, may ſue his Action againſt the Wife for the ſame tenements, becauſe ſhee is Tenant in Law, albeit that ſhe bee not Tenant in Deed.

Sect. 681.

¶ CAr ſ̃ de franktenement en fait eſt celuy, q̃ ſil ſoit diſſeiſie de franktenement, il poit auer Aſſiſe. Mes tenant de franktenement en ley deuant ſon entre en fait, nauera my aſſiſe. Et ſi home ſoit ſeiſie de certeine terre, et ad iſſue fits quel prent feme

FOr tenant of freehold in deed is he, who, if hee bee diſſeiſed of the freehold, may haue an Aſſiſe, but tenant of freehold in Law before his entrie in deed, ſhall not haue an Aſſiſe. And if a man bee ſeiſed of certaine Land, and hath iſſue a ſonne who taketh wife, and

feme, & le pier deuie ſeiſie, et puis le fits deuie deuant aſcun entrie fait per luy en la terre, le feme le fits ſerra endowe en le terre, et vncore il nauoit nul franktenement en fait, mes il auoit vn fee & franktenement en ley. Et iſſint nota, que Præcipe quod reddat poit auxybien eſtre maintenus enuers celuy que ad franktenement en ley, ſicome enuers celuy que ad le franktenement en fait.

the father dieth ſeiſed, and after the ſonne dies before any entrie made by him into the land, the wife of the ſonne ſhall be endowed in the land, and yet he had no freehold in Deed, but he had a fee and freehold in Lawe. And ſo note, that a *Præcipe quod reddat* may as well bee maintained againſt him that hath the freehold in Law, as againſt him that hath the freehold in deed.

THere fiue things are to be obſerued; Firſt, that a remainder expectant vpon an eſtate for life worketh no Remitter, but when it fall in poſſeſſion: for before his time he can haue no action, and no free hold is in him. Secondly, though the woman might waiue the remainder, yet becauſe ſhe is preſently by the death of the huſband Tenant to the Præcipe, it is within the rule of Remitter, and her power of waiuer is not materiall. Thirdly, that a freehold in Law being caſt vpon the woman by act of Law without any thing done or aſſented to by her, doth remit her, albeit ſhe be then ſole and of full age. Fourthly, that a Præcipe lyeth againſt one that hath but a freehold in Law. Fiftly, that a woman ſhall bee endowed where the huſband hath the inheritance and but a freehold in Law, as hath beene ſaid in the Chapter of Dower.

18.H.8.3.

*Vid.Sect.*44.7. *Bracton lib.*4.*fol.*206.237. *Britton* 83.6. *Flet. lib.*3.*cap.*15.

Sect. 682.

ITem ſi tenant en taile ad iſſue deux fits de pleine age, et il leſſa la terre taile al eigne fits pur terme de ſa vie, le remainder al fits puiſne pur term de ſa vie, et puis le tenant en taile mozuſt, en ceſt cas leigne fits neſt pas en ſon Remitter, pur ceo que il prent eſtate de ſon pier. Mes ſi leigne fits mozuſt ſauns iſſue de ſon cozps, donque ceo eſt vn remitter al puiſne frere, pur ceo que il eſt heire en le taile, et vn franktenement en le ley eſt eſcheate, et iecte ſur luy per force de le remainder, et il y ad nul enuers que il poit ſuer ſon action.

ALſo if Tenant in taile hath iſſue two ſonnes of full age, and he letteth the land tailed to the eldeſt ſonne for terme of his life, the remainder to the younger ſonne for terme of his life, and after the Tenant in taile dieth, in this caſe the eldeſt ſonne is not in his remitter, becauſe he tooke an eſtate of his father, but if the eldeſt die without iſſue of his body, then this is a remitter to the younger brother, becauſe hee is heire in taile, and a freehold in lawe is eſcheated & caſt vpon him by force of the remainder, and there is none againſt whō he may ſue his action.

(a) 12.E.4.20.
(b) *Sect.*684.685.

TOf this opinion is (a) Littleton in our bookes, and of this ſufficient hath beene ſaid in the next Section before. See hereafter (b) ſome explanation hereof.

Sect.

Section 683.

¶ E a meſme le maner eſt, lou home ſoit diſſeiſie, & le diſſeiſor mozuſt ſeiſie, et les tenſts diſcendont a ſon heire, et lheire le diſſeiſor fait vn leas a vn hõe de meſmes les tenements pur terme de vie, le remainder a le diſſeiſee p̃ terme d̃ vie, ou in taile, ou en fee, le tenant a terme de vie mozuſt, oze ceo eſt vn remitter al diſſeiſee, &c. Cauſa qua ſupra, &c.

¶ IN the ſame manner it is, where a man is diſſeiſed, and the diſſeiſor dieth ſeiſed, and the tenements diſcend to his heire, and the heire of the diſſeiſor make a leaſe to a man of the ſame tenements for terme of life, the remainder to the diſſeiſee for terme of life, or in taile, or in fee, the tenant for life dieth, now this is a remitter to the diſſeiſee, &c. *Cauſa qua ſupra, &c.*

¶ AND this ſtandeth vpon the ſame reaſon that the caſes in the two Sections pzecedent doe. See the next Section following.

Sect. 684.

¶* NOta, ſi tenant en taile enfeoffa ſon fits et vn auter per ſon fait de la terre taile en fee, et liuery d̃ ſeiſin eſt fait a lauter accozdant al fait, & le fits rien conuſant de ceo agreea a le feoffment, & puis celuy que pziſt le liuery de ſeiſin deuy, & le fits ne occupia la terre, ne pzent aſcun pzofit del terre durant la vie le pier, & puis le pier mozuſt, oze ceo eſt vn remitter al fits, pur ceo que le franktenement eſt iect ſur luy per le ſuruiuoz: Et nul default fuit en luy, pur ceo que il ne vnque a-

NOte if Tenant in taile infeoffe his ſonne and another by his deed of the land intailed, in fee, and liuery of ſeiſin is made to the other according to the Deed, and the ſon not knowing of this agreeth to the feoffment, and after hee which tooke the liuery of ſeiſin dieth, and the ſonne doth not occupie the land, nor taketh any proffit of the land during the life of the father, and after the father dieth, now this is a remitter to the ſonne, becauſe the freehold is caſt vpon him by the ſuruiuor. And no default was in

¶* IT ſhould ſeem by this marke that this was an addition to Littleton, but it is of Littletons owne woꝛke, and agreeth with the oꝛiginall, ſauing the oꝛiginall begun this Section thus, Itẽſi tenãt en taile, &c.

¶ *Per ſon fait, &c.* Here Littleton materially addeth by his Deed, foꝛ if a man intendeth to (b) make a feoffment by parol to A. and B, and he and B. come vpon the land, A. being abſent, and make Liuery to B. in the name both of B. & A. & to their heirs this ſhall enure only to B, foꝛ neither can a man abſent take Liuery noꝛ make Liuery without Deed.

(b) *Temps H.8. Feoffments. Br.72. 40.E.3.41. 10.E.4.1.a. 15.E.4.18. 18.E.4.12. 22.H.6.22.*

¶ *Et liuery de ſeiſin eſt fait a lauter accordant al fait, &c.* Note Liuery being made to one accoꝛding to the Deede, enureth to both, becauſe the Deede whereunto the Liuery referreth is made to both, foꝛ the rule is, That Verba relata hoc maxime operantur per referentiam vt in eis ineſſe videntur.

¶ *Et le fits nient conuſant de ceo, ne agreea a le Feoffement.* Here it appeareth, That if the ſon be Conuſant, and agreeth to the Feoffement, &c. this is no Remitter to him. And therefore if the Feoffement were made by Deed indented, and the ſon with the other ſealeth the Counterpart, and then the feoffor maketh liuerie to the other according to the Deed, and the other dieth, the ſonne is not remitted, becauſe he was Conuſant of the Feoffement, and agreed to the ſame, and Littleton ſaith in the Caſe that he putteth, That there was no default in the ſonne, becauſe hee agreed not to the Feoffement in the life of the Father: And ſo it ſeemeth, That if A. be ſeiſed in Taple, and haue Iſſue two ſonnes, and by Deed indented betweene him of the one part, and the ſonnes of the other part, maketh a Leaſe to the eldeſt for life, the remainder to the ſecond in Fee, and dieth, and the eldeſt Sonne dieth without Iſſue, the ſecond ſonne is not remitted, becauſe he agreed to the remainder in the life of the Father, or if the like Eſtate had beene made by Parol, if in the life of the father the Tenant for life had beene impleaded, and made default, and he in the remainder had beene receiued, and thereby agreed to the remainder, after the death of the father and the eldeſt ſonne without Iſſue, the ſecond ſonne ſhould not bee remitted, becauſe he agreed to the remainder in the life of the father, all which is well warranted by the reaſon yelded by our Author in this Section.

greea, &c. en la vie ſon pier, et il ad nul enuers que il poit ſuer Briefe de Formedon, &c.

him, becauſe hee did neuer agree, &c. in the life of his Father, and hee hath none againſt whom hee may ſue a Writ of *Formdon*, &c.

*Vide Sect.*682.

Sect. 685.

¶ CAr ſi home ſoit diſſeiſie de certaine terre, et le Diſſeiſor fait vn Fait de Feoffment, per que il infeoffa B. C. et D. et le liuerie de ſeiſin eſt fait a B. et C. mes D. ne fuit al Liuerie de ſeiſin, ne vnq̃ agreea a le Feoffment, ne vnque voile prender les profits, &c. et puis B. et C. deuieront, et D. eux ſuruesquiſt, et le Diſſeiſee port ſon Briefe Sur diſſeiſin en le Per, enuers D. il monſtra tout le matter, coment il ne vnques agreea a le Feoffment, et iſſint il diſchargera luy de damages, iſſint que le Demandant ne recouera aſcuns dammages enuers luy, coment que il ſoit Tenant del franketenement del tre. Et vncore le ſtatute de Glouceſter cap. 1. voit, que le Diſſeiſee recouera damages en briefe de Entre, foundue ſur Diſſeiſin vers celuy que eſt troue tenant. Et ceo eſt vn proofe en lauter caſe, que entant que

FOr if a man bee diſſeiſed of certaine land, and the Diſſeiſour make a Deed of Feoffement, whereby hee infeoffeth B. C. and D. and Liuerie of ſeiſin is made to B. and C. but D. was not at the Liuerie of Seiſin, nor euer agreed to the feoffment, nor euer would take the profits, &c. and after B. and C. die, and D. ſuruiue them, and the Diſſeiſee bringeth his Writ vpon Diſſeiſin in the *Per* againſt D. hee ſhall ſhew all the matter, how he neuer agreed to the feoffement, and hee ſhall diſcharge himſelfe of Dammages, ſo as the Demaundant ſhall recouer no dammages againſt him, although he be Tenant of the freehold of the Land. And yet the Statute of *Glouceſter cap.* 1. will, That the Diſſeiſee ſhall recouer dammages in a Writ of Entrie founded vpon a Diſſeiſin againſt him which is found Tenant. And this is a proofe in the other Caſe,

que liſſue en le Taile auient à le Franktenement, et nemy per ſon Fait, ne per ſon agreement, mes apres la mort ſon pier, ceo eſt vn Remitter a luy, entant que il ne poit ſuer Action ō Formedon, enuers nul auter perſon, &c.

that for as much as the Iſſue in taile came to the Freehold, and not by his Act, nor by his Agreement, but after the death of his father, therefore this is a Remitter to him, in as much as he cannot ſue an Action of *Formedon* againſt any other perſon, &c.

¶ THis caſe ſtandeth vpon the ſame reaſon that the next precedent caſe doth.

¶ *Mes celuy que eſt troue Tenant, &c.* Here it appeareth, that Acts of Parliament are to be ſo conſtrued, as no man that is innocent or free from iniurie or wrong, be by a literall conſtruction puniſhed or indammaged: and therefore in this caſe albeit the letter of the Statute is generally to giue dammages againſt him that is found Tenant, and the Caſe that Littleton here putteth, D. being ſeruitor is conſequently found tenant of the Land; yet becauſe he waiued the Eſtate, and neuer agreed to the Feoffement, nor tooke any profits, he ſhall not be charged with the dammages.

Section 686.687.

ITem ſi vn Abbe aliena la fre de ſon meaſon a vn auter en fee, et Alienee per ſon Fait charge la terre oue vn rent charg̃ en Fee, et puis lalienee infeoffa Labbe oue licence, a auer et teñ al Abbe et a ſes ſucceſſors a touts iours, et puis Labbe morust, et vn auter eſt eſlieu, et fait Abbe: en ceſt caſe Labbe que eſt le ſucceſſor, et ſon Couent, ſont ẽ lour Remitter, et tiendront la terre diſcharge, pur ceo que meſme Labbe ne poit auer aſcun Actiõ, ne Briefe Dentre ſine aſſenſu Capituli, de meſme la terre enuers nul auter perſon.

ALſo if an Abbot alien the lād of his houſe to another in Fee, and the Alienee by his Deed charge the land with a Rent-charge in Fee, and after the Alienee infeoffe the Abbot with Licence, To haue and to hold to the Abbot and to his ſucceſſors for euer, and after the Abbot die, and another is choſen and made Abbot: in this caſe the abbot that is the ſucceſſor, & his Couent, are in their remitter, & ſhal hold the lād diſcharged, becauſe the ſame Abbot cannot haue an Action, nor a writ of *Entre ſine aſſenſu Capituli*, of the ſame Land, againſt any other perſon.

Sect. 687.

¶ EN meſme le maner eſt, lou vn Eueſque, ou vn Dean, ou auters tiels Perſons aliena, &c. ſans aſſent, &c. et Alienee charge la terre, &c. et puis Leueſque repriſt eſtate de meſme la terre per Licence, a luy et a ſes ſuc-

IN the ſame manner is it, where a Biſhop or a Deane, or other ſuch perſons alien, &c. without aſſent, &c. and the Alienee charge the land, &c. and after the Biſhop takes backe an eſtate of the ſame land by Licence, to him and his Succeſ-

Successors, et puis Leuesque deuie, son Successor est en son Remitter, come en droit de son Esglise, et defeatera le charg̃, &c. Causa qua supra, &c.

fours, and after the Bishop dieth; his Successour is in his Remitter as in right of his Church, and shall defeat the Charge, &c. *Causa qua supra.*

COvr Author having spoken of Remitters to singular or naturall persons, as Issues in Taile, and to Feme Coverts, and to their Heires, and to them in Reuersion or Remainder, and their Heires; now he speaketh of Remitters to Bodies politique and incorporate, as to Abbots, Bishops, Deanes, &c. And as Discents doe remit the heire which comes in the Per, so succession doth remit the Successor, albeit he commeth in the Post. And so in other cases where the Issue in Taile of full age shall be remitted, there in the like case shall the Successor be remitted also, and defeat all meane charges and incumbrances.

¶ *Oue Licence, &c.* That is, of the King and the Lords immediate and mediate, to dispence with the Statutes of Mortmaine, whereof see more before, Sect. 140.

Sect. 688.

¶ Item si home suist faux action enuers le Tenant en Taile, sicome home voile suer enuers luy vn Briefe Dentre en le Post, supposant per s̃ briefe que le tenant en taile nad pas entre, sinon per A. de B. que disseisist layel le demandant, et ceo est faux, et il recouer enuers le Tenant en le Taile per default, et suist execution, et puis l'Tenant en taile mourust, son Issue poit auer Briefe de Formedon enuers luy que recouera, et sil voile pleader le recouerie enuers le Tenãt en taile, lissue poit dire que le dit A. de B. ne disseisist poynt layel celuy que recoueraſt, en le maner come son Briefe suppose, et issint il fauxera le recouerie. Auxy posito, que ceo fuit voyer, que le dit A. de B. disseisist layel le demandant que recoueraſt, et que apres le disseisin le demandant, ou son Pier, ou son ayel per vn fait auoient releſſe al tenant en Taile, tout le droit que il auoit en la Terre, &c. et ceo nient contristeant

ALso if a man sue a false Action against Tenant in Taile, as if one will sue against him a Writ of Entrie in the *Post*, supposing by his Writ, That the Tenant in Tayle had not his entrie, but by A. of B. who disseised the Graundfather of the Demaundant, and this is false, and he recouereth against the Tenant in Taile by default, and sueth Execution, and after the Tenant in Tayle dieth, his Issue may haue a Writ of *Formedon* against him which recouereth, and if hee will plead the Recouerie against the tenant in taile, the Issue may say, That the said A. of B. did not disseise the Grandfather of him which recouered in mãner as his writ suppose, and so he shall falsefie his recouery. And admit this were true, That the sayd A. of B. did disseise the Graundfather of the Demaundant which recouered, and that after the Disseisin, the Demandant, or his father, or his Grandfather by a deed had released to the Tenant in Taile all the right which hee had in the

ant il ſuiſt vn Briefe Dentre en le Poſt enuers le Tenant en Taile, en le manner come eſt auauntdit, et le Tenaunt en Taile pleda a celuy, Que le dit A. de B. ne diſſeiſiſt pas ſon ayel, en le manner come ſon Briefe ſuppoſa, et ſur ceo ſont a Iſſue, et liſſue eſt troue pur le Demandant, per que il ad iudgement de recouer, et ſuiſt execution, et puis le Tenant en le Taile morust, ſon Iſſue poit aũ vn Briefe de Formedon enuers celuy que recouera, et ſil voile plead le recouerie per laction trie enuers ſon pier, que fuit Tenant en Taile, donque il poit monſtrer et pleader le Releaſe fait al ſon pier, et iſſint laction que fuit ſue, feint en Ley.

land, &c. and notwithſtanding this hee ſueth a Writ of Entrie in the *Poſt*, againſt the Tenant in Taile, in manner as is aforeſayd, and the Tenant in Taile plead to him, That the ſayd A. of B. did not diſſeiſe his Grandfather, in ſuch manner as his Writ ſuppoſe, and vpon this they are at Iſſue, and the Iſſue is found for the demandant, wherby he hath iudgement to recouer, and ſueth execution, & after the Tenant in Taile dieth, his Iſſue may haue a Writ of *Formdon* againſt him that recouered, and if he will plead the recouery by the Action tried againſt his father who was Tenant in taile, then he may ſhew and plead the Releaſe made to his father, & ſo the Action which was ſued, feint in Law.

¶ *Il recouera enuers le tenant en taile per default.* Littleton addeth (by default) becauſe if the (c) recouery paſſed vpon an iſſue tried by verdict, hee ſhall neuer falſifie in the point tryed, becauſe an attaint might haue bœne had againſt the Iurors, and albeit all the Iurors be dead, ſo as the attaint doe faile, yet the iſſue in taile ſhall not falſifie in the point tried, which, vntill it be lawfully anoyded, pro veritate accipitur. As if the Tenant in tayle be impleaded in a Formedon, and he trauerſeth the gift, and it is tryed againſt him, and thereupon the Demandant recouer. In this caſe the iſſue in tayle ſhall not falſifie in the point tryed [redacted] but he may falſifie the recouery by any other matter: as that the Tenant in tayle might haue pleaded a collaterall warrantie, or a Releaſe, as Littleton here putteth the caſe, or to confeſſe & auoid the point tried. And Littletons caſe holdeth not only in a recouery by default, whereof he ſpeaketh, but alſo vpon a nihil dicit, or Confeſſion or Demurrer.

(c) 12.E.4.19. 13.E.4.3. 11.H.4.89. 7.H.4.17. 14.H.7.11.28. *Aſſ.*32.52. 34.*Aſſ.*7. 10.H.6.5. 21.H.6.13 *b.* *Brooke tit. Fauxifier de Recouerie* 55.

Sect. 689.

¶ Et il ſemble que feint action eſt autant adire en Engliſh, a fained action, ceſtaſcauoir, tiel action, que coment que les parolx de le briefe ſont voyers, vncore pur certaine cauſes il nad cauſe ne title per la ley de recouer pur meſme laction. Et faux action eſt, lou les parolx de briefe ſont faux. Et en les deux caſes auantdits, ſi le cas fuit tiel, que apres tiel recouery & execution ent

AND it ſeemeth that a faint action is aſmuch to ſay in Engliſh, *a fained action*, that is to ſay ſuch an Action as albeit the words of the Writ bee true, yet for certain cauſes he hath no cauſe nor title by the Law to recouer by the ſame action. And a falſe action is, where the wordes of the Writ bee falſe. And in theſe two Caſes aforeſaid, if the caſe were ſuch that after ſuch recouery, and execution

ent fait, le tenant en taile vſt diſ-
ſeiſie celuy que recouera, et ent
morust ſeiſie, per que la terre diſ-
cendiſt a ſon iſſue, ceo eſt vn re-
mitter al iſſue, & iſſue eſt eins per
force de le taile, & pur cel cauſe
ieo aye mis les deux caſes prece-
dents, pur enformer toy, mon
fits, que iſſue en taile per force
dun diſcent fait a luy apres vn
recouery & execution fait enuers
ſon auncеſter poit eſtre auxy bien
en ſon remitter ſicome il ſerroit
per le diſcent fait a luy apres vn
diſcontinuance fait per ſon aun-
ceſter de les terres tailes, per
feoffement en pais, ou auter-
ment, &c.

thereupon done the tenant in tayle
had diſſeiſed him that recouered,
and thereof died ſeiſed whereby
the Land deſcended to his iſſue,
this is a Remitter to the iſſue,
and the iſſue is in by force of the
taile, and for this cauſe I haue put
theſe two cãſes precedent, to en-
forme thee (my Sonne) that the
iſſue in tayle by force of a diſcent
made vnto him after a recouerie
and Execution made againſt his
Anceſtor, may be aſwell in his re-
mitter as he ſhold be by the diſcẽt
made to him after a Diſcontinu-
ance made by his Anceſtor of the
entayled lands by feoffment in the
Countrie or otherwiſe, &c.

THere Littleton explayneth what a faint action is, and what a falſe action is, which is plaine and perſpicuous. And hereit is to bee obſerued, that a Remitter may bee had after a recouery vpon a faint action by a diſſeiſin and a diſcent, aſwell as by a diſcent after a diſcontinuance by a feoffment, &c.

Section 690.

28. *Aſſ.*32.34. *Aſſ. Pl.*7. 15. *E.*3. *Age* 95. 11. *H.*4. 8 9 7. *H.*4. 17. 33. *E.*3. *Entre cong.* 31. 21. *H.*6. 13. 10. *H* 5. 6. 12. *E.*4. 20. 14. *H.*7. 11. 23. *Eliz. Dier* 376. *lib.*1. *fol. Sheltons caſe. Pl. Com.*55.

THere it appeareth, that if a iudgemẽt be giuẽ againſt a tenãt in tayle vpon a faint or falſe action, and Tenant in tayle die before execution, no execution can bee ſued againſt the iſſue in tayle. But if in a common recouery iudgement bee had againſt Tenant in tayle where hee voucheth, and hath iudgement to recouer o-uer in value, albeit the Te-nant in Tayle dieth before execution, yet the recoueror ſhall execute the iudgement a-gainſt the iſſue in tayle in re-ſpect of the intended recom-pence, and for that it is the common aſſurance of the Realme, and is well warran-ranted (d) by our Bookes, and was not inuented by Juſtice Choke who was a graue and learned Iudge in the time of E 4. (as ſome hold by tradition) but it may bee

*See hereafter Sect.*709. 15. *E.*3. *briefe* 324. 42. *E.*3. 53. 44 *E.*3. 21. 48. *E.*3. 11. 1. *E.*4. 5. 5. *E.*4. 2.

(d) 12. *E.*4. 20. *Dier* 23. *Eliz.* 376. *lib.*10. *fol.*37. 38. *In Mary Portingtons Caſe.*

¶ Item ẽ les caſes auantdits, ſi le cas fuit tiel, que apres ceo que le de-mandant auoit iudgẽ-ment de recouer en-uers l' tenant ẽ taile, & meſme le tenant en taile morust deuaunt aſcun execution eſtre enuers luy p que les tenements diſcendõt a ſon iſſue, et celuy q̃ recouera ſuiſt vn Sci-re facias hors de le iudgement dauer ex-ecution de le iudge-ment enuers iſſue en taile, iſſue pledera le matter

ALſo in the caſes a-foreſaid, if the caſe were ſuch, that after that the Demandant haue iudgement to re-couer againſt the Te-nant in tayle, and the ſame Tenant in tayle dieth before any exe-cution had againſt him whereby the Tene-ments diſcẽd to his iſ-ſue, & he who recoue-reth ſueth a *Scire facias* out of the iudgement to haue execution of the iudgement againſt the iſſue in taile, the iſ-ſue ſhal plead the mat-ter as aforeſaid, and ſo

matter come auaunt eſt dit: Et iſſint proua que le dit recouery fuit faux, ou feint en ley, & iſſint luy barrera dauer execution de le iudgement.

proue that the ſaid recouery was falſe or faint in Law, and ſo ſhall barre him to haue execution of the iudgment.

that it was vpon former Authorities and opinions of Iudges diſcouered by him, aſſented vnto by the reſt of the Iudges.

If a recouery bee had againſt Tenant for life without conſent or Coulne, though it be without title, and Execution bee had, and Tenant for life dieth, the reuerſion or remainder is diſcontinued, ſo as he in the reuerſion or remainder cannot enter, but if ſuch a recouery be had by agreement and Coulne betweene the Demandant and the Tenant for life, then, as hath beene ſaid, it is a forfeiture of the eſtate for life, and he in the reuerſion or remainder may enter for the forfeiture. So it is if the Tenant for life ſuffer a common recouery at this day, it is a forfeiture of his eſtate, for a common recouery is a common conueyance or aſſurance, whereof the Law taketh knowledge. Since Littleton wrote there were two Statutes (e) made for preſeruation of Remainders and Reuerſions expectant vpon any manner of eſtate for life, the one in 32.H.8. the other in 14.Eliz. but 32.H.8. extended not to recoueries when Tenant for life came in as Vouchee, &c. and therefore that act is repealed by 14.Eliz. and full remedie prouided for preſeruation of the entrie of them in reuerſion or remainder. But the Statute of 14.Eliz. extendeth not to any recouery, vnleſſe it bee by agreement or Coupne. Secondly, (f) if there be Tenant for life, Remainder in taile, the Reuerſion or remainder in fee, if Tenant for life be impleaded by agreement, and he vouche Tenant in taile, and he vouch ouer the common Vouchee, this ſhall barre the Reuerſion or Remainder in fee, although hee in the reuerſion or remainder did neuer aſſent to the recouery, becauſe it was not the intent of the act to extend to ſuch a recouerie in which a Tenant in taile was vouched, for he hath power by common recouery, if he were in poſſeſſion, to cut off all reuerſions and remainders. And ſo if Tenant for life had furrendred to him in Remainder in taile, hee might haue barred the remainders and reuerſions expectant vpon his eſtate. Thirdly, where the prouiſo of that act ſpeaketh of an aſſent of Record by him in reuerſion or remainder, it is to bee vnderſtood, that ſuch aſſent muſt appeare vpon the ſame Record either vpon a Voucher, Aid prier, receite, or the like, for it cannot appeare of Record, vnleſſe it be dont in courſe of Law, and not by any extraiudiciall entrie, or by Memorandum.

5.Aſſ.3. 5.E.3.entre Cong. 42. lib 1.fo.15.16. Sir.William Pelhams caſe.

(e) 32.H.8.ca.31. 14.Eliz.ca.8.

(f) Lib.3.fo.60.61. Lincolne Colledge caſe.

Section 691.

¶ Item ſi tenant en taile diſcontinua le taile, et mozuſt, et ſon iſſue pozt ſon briefe ð Formedon enuers le diſcontinuee (eſteant tenant de franktenement del terre) et le diſcontinuee pleda q̄ il neſt tenant, mes ouſtermēt diſclaima de le tenancy en la terre, en ceſt cas le iudgement ſerra, que le tenant alaſt ſans iour, et apres tiel

ALſo if Tenant in taile diſcontinue the taile, & dieth, and his iſſue bringeth his writ of *Formedon* againſt the diſcontinuee (being tenant of the freehold of the land) and the Diſcontinuee plead that he is not tenant, but vtterly diſclaymeth from the tenancy in the land. In this caſe the iudgement ſhall bee that the Tenant goeth without day, and after ſuch

¶ HEre it appeareth that vpon the plea of non-tenure, or of a diſclaimer of the tenant in a Formedon in the Diſcender, albeit the expreſſe iudgement be that the tenant ſhall goe without day, yet in iudgement of Law the Demandant may enter according to the title of his writ, and bee ſeiſed in taile notwithſtanding the Diſcontinuance. And here Littleton ſaith the Demandant ſhalbe adiudged in his Remitter, where he taketh Remitter in a large ſence, for in this caſe the Demandant hath not two rights, but hath only one ancient right, and is reſtored to the ſame by courſe of Law, and ſo Remitter here is taken for a recontinuance of the right.

5.E.4.1. 36.H.6.29. 6.E.3.8. 4.E.4.38.

Non-tenure Vid Bracton lib.fol.331 432 & 414. Britton cap.84.

¶ *Ou le demandant ne recouera damages.* Here is to bee obſerued that in ſuch a Præcipe where the Demandant is to recouer damages, if the Tenant pleade non-tenure or diſclaime, (f) there the Demandant may auerre him to be tenant of the land, as his Writ ſuppoſe for the benefit of his damages, which otherwiſe hee ſhould loſe, or pray iudgement & enter. (g) But where no damages are to be recouered, as in a Formedon in the Diſcender, and the like, there hee cannot auerre his tenant, but pray his Iudgement and enter, for thereby hee hath the effect of his ſuite Et fruſtrà fit per plura, quod fieri poteſt per pauciora.

(f) 13.H.7.28. 36.H.6.29. 22.H.6.44 4.E.4.38. 5.E.4.1. 6.E.3.8.

(g) 8.E.3.434. 24.E.3.9. 11.H.4.16. & 7.H.6.17.

5.E.4.1.

¶ *Auerrer.* To auerre or auouch, or verifie, verificare, whereof commeth verificatio an auerment, and is ſo ſaid as well in Engliſh as in French. And is two-fold, viz. generall and particular. A generall auerment, which is the concluſion of euery plea to the Writ, or in barre of replications and other pleadings (for Counts or Anſwers in nature of Counts need not bee auerred) containing matter affirmatiue, ought to be auerred, & hoc paratus eſt verificare, &c. Particular auerments are, as when the life of Tenant for life, or Tenant in taile are auerred, and there, though this word (verificare) be not vſed, but the matter auouched and affirmed, it is vpon the matter an auerment. And an auerment containeth aſwell the matter as the forme thereof.

¶ *Que le tenant alaſt ſans iour.* Quod tenens eat ſine die. This is the entrie of the iudgement in that caſe, that the Tenant ſhall goe without day, that is to be diſcharged of further attendance, and this is ſome-

iudgement liſſue en le taile que eſt demãdant, poit entrer en la terre, nyent contriſteant le diſcontinuance, et per tiel entrie il ſerra adiudge eins en ſon Remitter. Et la cauſe eſt, pur ceo que ſi aſcun hõe ſuiſt Præcipe quod reddat, enuers aſcun tenant de franktenement, en quel action le demandant ne recouera damages, et le tenant pledaſt nontenure, ou auterment diſclaima en le tenancy, le demandant ne poit auerrer ſon briefe, et dirra q̃ il eſt tenãt cõe le briefe ſuppoſe. Et pur cel cauſe le demãdant apres ceo que iudgement eſt done q̃ le tenant alaſt ſans iour, poit entrer ẽ les tenemẽts demands, le quel ſerra auy graund aduantage a luy en ley, ſicome il auoit iudgement õ recouerer enuers le tenant, et per tiel entrie il eſt en ſon remitter per force del taile. Mes lou le demand recouera damages enuers le tenant, la le demandant poit auerrer, que il eſt tenãt come le briefe ſupp̃, & ceo pur laduantage del

iudgement the iſſue in the taile that is demandant may enter into the land notwithſtanding the diſcontinuance, and by ſuch entry hee ſhall be adiudged in his Remitter. And the reaſon is for that if any man ſue a *Præcipe quod reddat* againſt any tenant of the freehold in which action the demandant ſhall not recouer damages, and the tenant pleads nontenure, or otherwiſe diſclaime in the tenancie, the demandant cannot auerre his writ, and ſay that hee is tenant as the writ ſuppoſeth. And for this cauſe the demandãt after that that iudgemẽt is giuen that the tenant ſhall goe without day, may enter into the tenements demanded, the which ſhall bee as great an aduantage to him in law, as if he had iudgement to recouer againſt the tenant, and by ſuch entrie hee is in his remitter by force of the entaile. But where the demandant ſhall recouer damages againſt the tenãt, there the demandant may auerre that he is tenant, as the writ ſuppoſeth and that for the aduan-

del demandant pur recouer ſes damags, ou autermẽt il ne recoueroit ſes damages, queux ſont ou fueront a luy dones per la ley.

tage of the demandant to recouer his damages, or otherwiſe hee ſhall not recouer his damages, which are or were giuen to him by the law.

time ſhall for that action whereof Littleton here putteth an example, & ſometime temporarie, whereof Littleton also hath put an example, as when excommengement is pleaded in diſability of the Plaintife or demandant, there the award is, that the Tenant or Defendant ſhall goe without day, and yet *Vid. Sect.* 101.

when the Demandant or Plaintife haue purchaſed his Letters of abſolution, vpon ſhewing them to the Court, he may haue a reſommons or reattachement to recontinue the cauſe againe. But it is to be knowne, that when iudgement is giuen againſt the Tenant or Defendant vpon a plea in barre, or to the writ, &c. the iudgement is all one, viz. Quod tenens or defendens eat inde ſine die, and ſhall haue reference to the nature and matter of the plea, and ſo bee taken either to goe in barre, or to the writ. So on the other ſide when iudgement is giuen againſt the Plaintife either in barre of his action or in abatement of his writ, &c. the iudgement is all one, viz. Nihil capiat per breue, and it appeareth by the Record whether the plea did goe in barre or to the writ. And the cauſe of the iudgement is neuer entred in the Record in any caſe, for that vpon conſideration had of the Record it appeareth therein. *3.H.42.11.*

Section 692.

¶ Item ſi home ſoit diſſeiſie, & le diſſeiſor deuy, ſon heire eſteant eins per diſcent, ore lentrie de le diſſeiſee eſt tolle, et ſi le diſſeiſee porta ſon briefe dentrie ſur diſſeiſin en le Per, enuers iheire, et iheire diſclaime en l'tenancy, &c. le demandant poit auerrer ſon briefe que il eſt tenant come le briefe ſuppoſe ſil voyt, pur recouerer ſes damages, mes vncore ſil voyt relinquiſher le auerment, &c. il poit loialment entrer en la terre per cauſe del diſclaimer, nient obſtant que ſon entry adeuant fuit tolle, et ceo fuit adiudge deuant mon maſter ſir R. Danby tades Chief Juſtice de la common banke & ſes compagnions, &c.

ALſo if a man be diſſeiſed, and the diſſeiſor die his heire being in by diſcent, now the entrie of the diſſeiſee is taken away, and if the diſſeiſee bring his Writ of entrie *Sur diſſeiſin* in the *Per* againſt the heire, and the heire diſclaime in the tenancie, &c. the Demandant may auerre his writ that hee is tenant as the writ ſuppoſe, if he will, to recouer his damages, but yet if he will relinquiſh the auerment, &c. he may lawfully enter into the land becauſe of the diſclaimer, notwithſtanding that his entrie before was taken away, and this was adiudged before my Maſter Sir *R. Danby* late chiefe Iuſtice of the Common place and his Companions, &c.

¶ *Item ſi home ſoit diſſeiſie, &c.* Albeit in this caſe and in the caſe before the entrie of the Demandant is his owne act, and the Demandant hath no expreſſe iudgement to recouer, yet ſhall he be remitted, becauſe he in iudgement of the Law ſhall be in according to the title of his writ, and by his entrie defeate the Diſcontinuance, and conſequently is remitted to his ancient eſtate. *36.H.6 fo.29.*

¶ *Sir Robert Danbye* Knight was a Gentleman of an ancient and faire diſcended family, and chiefe Iuſtice of the Court of Common pleas, a graue, reue- *5.E.4.41. 4.E.4.38.*

rend & learned judge, of whom our author speaketh here with very great reuerence, as you may perceiue. And here is to be noted how necessarie it is, after the example of our Author, to obserue the iudgements, and resolutions of the Sages of the Law.

Sect. 693.

29.Ass.p.36.43.Ass.p.3. 13.H.7.20.3.H.6.19. 40.E.3.43.

THere appeareth a diuersitie betweene a right of entrie, and a right of Action; for if a man of full age hauing but a right of Action, taketh an Estate to him, hee is not remitted: but where hee hath a right of Entrie, and taketh an Estate, he by his entry is remitted, because his entry is lawfull. And if the Disseisor infeoffe the Disseisee and others, the Disseisee is remitted to the whole, for his entry is lawfull: otherwise it is if his entrie were taken away.

¶ Item lou lentry dun home est congeable, coment que il prent estate a luy quaunt il est de pleine age pur terme de vie, ou en taile, ou en fee, ceo est vn Remitter a luy, si tiel prisel de estate ne soit per fait indent, ou per matter de record, que concludera ou estoppera. Car si hõe soit disseisie, et reprẽt estate de le Disseisor sans fait, ou per fait polle, ceo est vn remit al disseisee, &c.

ALso where the entrie of a man is congeable, although that he taks an estate to him when he is of full age, for terme of life, or in Taile, or in Fee, this is a Remitter to him, if such taking of the Estate be not by Deed indented, or by matter of Record, which shal cõclude or estop him: for if a man be disseised, and takes backe an Estate from the Disseisor without Deed, or by deed pol, this is a remitter to the Disseisee, &c.

¶ Lou le'ntrie est congeable. A. is dis-

8.R.2.Quer.im.195. 19.H.6.30.8.H.6.17. 21.H.6.2.3.H.4.8.14.H.6. 15.16.37.H.6.18. 26.H.8.4.F.N.B.36.f.& 35.b.

seised of a Mannor, whereunto an Aduowson is appendant, an Estranger vsurpe to the Aduowson, if the Disseisee enter into the Mannor, the Aduowson is recontinued againe, which was seuered by the vsurpation. And so it is if Tenant in Tayle be of a Mannor, whereunto an Aduowson is appendant, the Tenant in Tayle discontinueth in Fee, the Discontinuee granteth away the Aduowson in Fee, and dieth, the Issue in Tayle recontinueth the Mannor by recouerie, he is therby remitted to the Aduowson, and in both cases he that right hath shall present when the Church becommeth voyd.

22.Ass.p. en le case de Theobald Grimsile.

The Patron of a Benefice is outlawed, and the Church becommeth voyd, an Estranger vsurpeth, and sixe moneths passe, the King doth reconer in a Quare impedit, and remoue the Incumbent, &c. the Aduowson is recontinued to the rightfull Patron. And so note a diuersitie betweene a Recontinuance and a Remitter, for a Remitter cannot be properly vnlesse there be two tities, but a recontinuance may be where there is but one.

13.H.4.5.3.H.4.17.8.H.4. 8.12.H.4.19.35.Ass.8. 17.Ass 3.29.Ass.53.43.E.3 17. Parkers case.44 E.3.Estop.10 21.H.6.2. & Paston.8.H.6. 17.& Celismere.

¶ Per fait indent, &c. Here it appeareth, That if the Disseisor by Deed indented make a Lease for life, or a gift in Taile, or a Feoffement in fee, whereunto Liuerie of Seisin is requisite, yet the Deed indented shall not suffer the Liuerie made according to the forme and effect of the Indentnre, to worke any remitter to the Disseisee, but shall estoppe the Disseisee to claime his former estate: and if the Disseisor vpon the Feoffment doth reserue any rent or condition, &c. the rent or condition is good: and the reason wherefore a deed indented shall conclude the taker more than the Deed polle, is, for that the Deed poll is onely the Deed of the Feoffor, Donor, and Lessor, but the Deed indented is the Deed of both Parties, and therefore as well the taker as the giuer is concluded.

¶ Ou per Record. As by Fine, Deed indented, and inrolled, and the like.

Sect. 694.

¶ Item ſi home leſſa terre pur terme de vie a vn auter, le quel aliena a vn auter en fee, et lalienee fait eſtate a le Leſſour, ceo eſt vn Remitter al Leſſor, pur ceo que ſon entrie fuit congeable, &c.

ALſo if a man let land for terme of life to another, who alieneth to another in Fee, and the Alienee make an Eſtate to the Leſſour, this is a Remitter to the Leſſour, becauſe his Entrie was congeable, &c.

This is euident enough vpon that which hath beene ſayd.

Section 695.

¶ Item ſi home ſoit diſſeiſie, et le Diſſeiſor leſſa la terre al diſſeiſee per fait pol, ou ſans fait pur terme des ans, per que l' diſſeiſee entra, ceſt entre eſt vn Remitter a le diſſeiſee. Car en tiel caſe lou lentre dun home eſt congeable et vn Leaſe eſt fait a luy, coment que il claima p parolx en pais, que il ad eſtate per force de tiel leaſe, ou dit ouertment que il ne claima riens en la terre ſinon per force de tiel leaſe, vncore ceo eſt vn remitter a luy, car tiel diſclaimer en le pais neſt riens a purpoſe. Mes ſil diſclaimer en court de Record que il nad eſtate forſque per force de tiel leaſe, et nemy autrement, donqs il ẽ conclude, &c.

ALſo if a man be diſſeiſed, and the Diſſeiſor let the Land to the Diſſeiſee by deed pol, or without Deed, for terme of yeares, by which the Diſſeiſee entreth, this entrie is a Remitter to the diſſeiſee. For in ſuch caſe where the entrie of a man is congeable, and a Leaſe is made to him, albeit that he claimeth by words in *Paijs*, that hee hath eſtate by force of ſuch Leaſe, or ſaith openly, That hee claimeth nothing in the Land but by force of ſuch leaſe, yet this is a Remitter to him, for that ſuch diſclaimer in *Paijs* is nothing to the purpoſe. But if he diſclaime in court of Record, that hee hath no eſtate but by force of ſuch Leaſe, and not otherwiſe, then is hee concluded, &c.

¶ HEre appeareth a Diuerſitie betweene a Claime in Paijs of an Eſtate, and a Claime of Record, for a Claime in Paijs ſhall not hinder a Remitter. Otherwiſe it is of a claime of Record, becauſe that doth worke a Concluſion.

Sect. 696.

¶ Item ſi deux Joyntenaunts ſeiſie de certain tenements en Fee, lun

ALſo if two Ioyntenants ſeiſed of certaine Tenements in Fee, the one being of

¶ HEere note a diuerſitie worthy the obſeruation, that where Joyntenants or Copartcenes haue one and the ſame remedie, if the one enter, the

the other ſhall enter alſo: but where remedies bee ſeuerall, there it is otherwiſe. As if two Ioyntenants or Coparceners ioyne in a reall Action, where their entrie is not lawfull, and the one is ſummoned and ſeuered, and the other purſueth and recouereth the moitie, the other Ioyntenant or Coparcener ſhall enter and take the profits with her, becauſe their remedie was one and the ſame. But where two Coparceners bee, and they are diſſeiſed, and a Diſcent is caſt, and they haue iſſue and die, if the Iſſue of the one recouer her moitie, the other ſhall not enter with her, becauſe their remedies were ſeuerall, and yet when both haue recouered, they are Coparceners againe. So here in this Caſe that Littleton putteth, the two Iointenants haue not equal remedie, for the Infant hath a right of entrie and the other a right of Action; and therefore the Infant beeing remitted to a moitie, the other ſhall not enter and take the profits with her.

10 H.6.10. 19.H.6.45. 31.H.6.tit.Entr.cong.

eſteant de pleine age, lauter deins age ſont diſſeiſies, &c. et l' diſſeiſor morust ſeiſie, et ſon iſſue entra, lun de les Iointenants eſteant adonqz deins age, et apres que il vient al pleine age, heire le diſſeiſor leſſa les Tenements a meſmes les Ioyntenants pur terme de lour deux vies, ceo eſt vn remitter (quāt al moitie) a celuy que fuit deins age, pur ceo que il eſt ſeiſie de ceſt moitie que affiert a luy en fee, pur ceo que ſon entre fuit congeable. Mes lauter Iointenaunt nad en lauter moity forſque eſtate pur terme de ſa vie, per force de le leaſe, pur ceo que ſ̄ entre fuit tolle, &c.

full age, the other within age, bee diſſeiſed &c. and the Diſſeiſor die ſeiſed, and his Iſſue enter, the one of the Ioyntenants being then within age, and after that he commeth to full age, the heire of the Diſſeiſor letteth the Tenements to the ſame Ioyntenants for terme of their two liues, this is a Remitter (as to the moitie) to him that was within age, becauſe hee is ſeiſed of the moitie which belongeth to him in fee, for that his entry was congeable. But the other Iointenant hath in the other moity but an eſtate for terme of his life by force of the leaſe, becauſe his entry was taken away, &c.

If A. and B. Iointenants in Fee, be diſſeiſed by the father of A. who dieth ſeiſed his ſonne and heire entreth, he is remitted to the whole, and his Companion ſhall take aduantage thereof. Otherwiſe heere in the Caſe of Littleton, for that the aduantage is giuen to the Infant more in reſpect of his perſon, than of his right, whereof his Companion ſhal take no aduantage. But if the Grandfather had diſſeiſed the Ioyntenants, and the Land had diſcended to the father, and from him to A. and then A. had died, the entrie of the other ſhould be taken away by the firſt diſcent, and therefore he ſhould not enter with the heire of A.

V.35.Aſſ.Pl.Vltimo.

But here in the caſe of Littleton, if after the diſcent the other Ioyntenant had died, and the Infant ſuruiued, ſome ſay that he ſhould haue entred into the whole, becauſe he is now in iudgment of Law, ſolely in by the firſt Feoffement, and he claimeth not vnder the Diſcent.

Chap.13. Of Warrantie. Sect.697.

Cil eſt communement dit. Here by the opinion of Littleton, Communis opinio is of authoritie, and ſtands with the rule of Law, A communi obſeruātia non eſt recedendum:

V.Sect.288.338.

Cil eſt communement dit, Que trois Garranties y ſont, ſ̄, Garrantie lineal, Garrantie

It is commonly ſaid that there be three Warranties, *ſcilicet*, Warrantie Lineall, Warrantie Co-

rantie collaterall, et Garrantie que commence per diſſeiſin. Et eſt aſcauoir, que deuant leſtatute de Glouc̃, touts Garranties queux diſcendont a eux queux ſont heires a eux que ſeſoyent les Garranties, fueront barres a meſmes les heires a demander aſcuns terres ou tenements encounter les Garranties, forepriſe les garranties que commencerent per diſſeiſin, car tiel Garrantie ne fuit vnque barre al heire, pur ceo que le Garrantie commence per tort, &. per diſſeiſin.

laterall, and Warrantie that commence by diſſeiſin. And it is to bee vnderſtood, that before the Statute of Glouc'. all Warranties which diſcended to them which are heires to thoſe who made the Warranties, were barres to the ſame heires to demand any Lands or Tenements againſt the warranties, except the Warranties which commence by diſſeiſin. For ſuch warranty was no barre to the heire, for that the Warrantie commẽced by wrong, *viz.* by diſſeiſin.

and againe, Minime mutanda ſunt quæ certam habuerunt interpretationem.

Here our Author beginneth this Chapter with an exact diuiſion of Warranties. A Warrantie is a Couenant reall annexed to Lands or Tenements whereby a man and his heires are bound to warrant the ſame, and eyther vpon voucher or by iudgement in a Writ of Warrantia cartæ to yeild other lands and Tenements (which in olde Bookes is called in excambio) to the value of thoſe that ſhall be euicted by a former Title, or elſe may be vſed by way of Rebutter. *Bract. lib.2.fol.37.lib.5.fol. 380.381.&c. Glanvil.lib.3. cap.1.2.3. Lib.7.cap2.3 lib. 9.cap.4.Britton cap.105 fol. 249.250.&c. & fol 88.106. b.196.197. Fleta lib.5.cap. 15.Lib.6.cap.23. Mirror cap.2.§.17.*

¶ *Rebouter* is a French word, and is in Latine repellere, to repell or bar, that is in the vnderſtanding of the Common Law, the action of the heire by the warranty of his Anceſtor, and this is called to Rebutte or repell. (c) Britton ſaith, Garranter en vn ſence ſignifie a defender ſon tenant en ſa ſeiſin, & en auter ſence ſignifie que ſi il ne defende que le garrant luy ſoit tenue a eſ- *38.E.3.21. 45.E.3.18.* *(c) Britton.fol.197.b.*

changes, & de faire ſon gree a la vaillaunce. (d) Bracton ſayth, Warrantizare nihil aliud eſt, quam defendere & acquietare tenentem qui Warrantum vocauit in ſeiſina ſua. (e) Fleta ſaith, Warrantizare nihil aliud eſt quam poſſidentem vocantem defendere & acquietare in ſua ſeiſina vel poſſeſſione erga petentem, &c. & tenens de re Warranti excambium habebit ad Valentiam. *(d) Bracton lib.5.fol.380.* *(e) Fleta lib.5.cap.15.*

It is to be obſerued that there be two kind of Warranties, that is to ſay Warrantia expreſſa, & tacita, vulgarly ſaid Warrantie in deed, becauſe they be expreſſed, & Warranties in law, becauſe the law doth tacitely imply them. And this diuiſion of Warranties that Litt. here ſpeaketh of, he intendeth of Warranties in deed. And of Warranties in Law more ſhall bee ſaid hereafter in this Chapter. As for promiſes or Contracts annexed to Chattels reall or perſonall they are not intended by our Author in his ſaid diuiſion, but only Warranties concerning Freeholds and Inheritances. *Lib.4.fol.81. Nokes Caſe.* *Vide Sect.733.*

¶ *Deuant le ſtatute de Glouc.* This Statute was made at a Parliament holden at Gloceſter in the firſt yeare of the raigne of King E.1. and therefore it is called the Statute of Gloceſter. *Glouc.cap.3. Vide Sect.724.725.& 727.&c.*

¶ *Sont barres a meſmes les heires a demander aſcuns terres, &c.* For the Statute, as hath beene ſaid, being made in 6.E.1. (was before the Statute of Donis conditionalibus which was enacted 13.E.1.) when all ſtates of Inheritance were fee ſimple. But after the Statute of 13.E.1. the heire in tayle is not barred by the warrantie of his Anceſtor vnleſſe there be Aſſets, as ſhall be ſaid hereafter more largely in this Chapter. *Bracton lib.4.fol.321.b. Fleta lib.5.cap.34. 7.E.3.Garr.47.*

By the Statute of Gloceſter foure things are enacted.

Firſt, that if a Tenant by the curteſie alien with warrantie and dieth, that this ſhall bee no barre to the heire in a Writ of Mordanceſter without Aſſets in fee ſimple. And if Lands or Tenements diſcend to the heire from the Father hee ſhall bee barred hauing regard to the value thereof.

Secondly, That if the heire, for want of Aſſets at that time diſcended, doth recouer the lands of his Mother by force of this Act, and afterwards Aſſets diſcend to the heire from the Father, then the Tenant ſhall recouer againſt the heire the Inheritance of the Mother by a Writ of Iudgement, which ſhall iſſue out of the Record, to reſommon him that ought to warrant, as it hath beene done in other Caſes, where the heire being vouched commeth into the Court, and pleadeth that he hath nothing by diſcent.

Thirdly, That the iſſue of the Sonne ſhall recouer by a Writ of Coſinage, Aiel and Beſaiel.

And laſtly, that the heire of the wife after the death of the Father and Mother ſhall be barred of his Action to demand the Heritage of the Mother by Writ of Entrie, which his Father aliened in the time of his Mother, whereof no fine was leuied in the Kings Court.

Concerning the firſt, there be two points in Law to be obſerued.

(c) 11.E.2.*Fit.Garr.*83. 4.E.3. *Garr.*63. 18.E.3.51. *Pl.Com.*110. 7.E.3.53. *Temps E.*1.*Garr.*87.

Firſt, Albeit the Statute in this Article name a Writ of Mordanceſter, and after Writs of Coſinage, Aiell and Beſaiel (c) yet a Writ of Right, a Formedon, a Writ of Entry Ad Communem Legem, and all other like Actions are within the purview of this Statute, for theſe Actions are put but for examples.

27.E.3.89. 14.E.4.*Garr.*5. *Diers quarto Mar.*148.a.

Secondly, Where it is ſaid in the ſaid Act, (if the Tenant by the curteſie alien) yet his releaſe with Warranty to a Diſſeiſor, &c. is within the purview of the Statute, for that it is in equall miſchiefe, and if that caſion might take place, the Statute ſhould haue beene made in vaine.

22.*Aſſ.*9.& 37. *Temps E.*1.*Garr.*86. (o) 11.*H.*7.*cap.*20.

If Tenant by the curteſie be of a Seigniorie, and the Tenancie eſcheate vnto him, & after he alieneth with Warrantie, this ſhall not bind the iſſue, vnleſſe Aſſets diſcend, for it is in equall miſchiefe. But notwithſtanding this Statute, if Feme Tenant in Dower had aliened in fee with Warranty and died, the Warranty had bound the heire vntill the Statute (o) of 11.H. 7. ſince our Author wrote. By which Statute the heire may enter notwithſtanding ſuch warrantie.

18.E.3.9.

But note there is a diuerſitie betweene a warranty on the part of the Mother, and an eſtoppell. For an eſtoppell of the part of the Mother ſhall not bind the heire, when hee claimeth from the Father. As if Lands bee giuen to the huſband and wife; and to the heires of the huſband, the huſband make a gift in taple, and dieth, the wife recouereth in a Cui in vita againſt the Donee ſuppoſing that ſhe had fee ſimple, and make a feoffment and dieth, the Donee dieth without iſſue, the iſſue of the Huſband and Wife bring a Formedon in the Reuerter againſt the Feoffee, and notwithſtanding that he was heire to the Eſtoppell, and the Mother was eſtopped, yet for that he claymed the Land as heire to his Father, hee was not eſtopped. More, that Warranties are fauoured in Law being part of a mans aſſurance, but eſtoppels are odious.

21.*E.*2.*Iudgement* 263.

If a feme heire of a Diſſeiſor infeoffeth me with Warrantie, and marrieth with the Diſſeiſee, if after the Diſſeiſee bring a Præcipe againſt me, I ſhall rebut him, in reſpect of the Warrantie of his wife, and yet hee demandeth the Land in another right. And ſo if the Huſband and wife demand the right of the wife, a Warranty of the collaterall Anceſtor of the Huſband ſhall barre.

If a woman had beene Tenant for life, the remaynder or Reuerſion to her next heire, and the woman had aliened in fee and died, this Warranty had barred her heire in Remaynder or Reuerſion, but this is partly holpen by the ſaid Act of 11.H.7. viz. where the woman hath any eſtate for life of the Inheritance or Purchaſe of her Huſband, or giuen to her by any of the Anceſtors of the Huſband, or by any other perſon ſeiſed to the vſe of her Huſband or of any of his Anceſtors, there her Alienation, Releaſe, or Confirmation with Warranty ſhall not bind the heire.

11.*H.*7.*cap.*20. *Vide Sect.*595. *See this Statute of* 11.*H.*7.*cap.*20. *well expounded. Lib.*1.*fol.*176. *in Sir Anth. Mildmayes Caſe.* 3.& 4.*Ph.& Mar.Dier.*146 *Lib.*3.*fol* 50. 60. 61. 62. *Lincolne Coll.Caſe. Pl.Com. fol.*56. 20.*Eliz. Dier* 362. *Doct.& Student.* 8.*Eliz. Dier* 248. 19.*Eliz. Dier* 354 21.*Eliz. ibid.*362. *lib.*3. *fol.*50.51. *Sir George Brownes Caſe Lib.*5.*f.*79. *Smiths Caſe.* 27.*H.*8.23.

To the Authorities quoted in the margent which may ſerue as Commentaries vpon the ſaid Statute, I will only adde two caſes, the one was, (f) A man ſeiſed of Lands in fee leuied a fine to the vſe of himſelfe for life, and after to the vſe of his Wife, and of the heires males of her bodie by him begotten for her Joynture, and had Iſſue male, and after he and his wife leuied a fine and ſuffered a common recouery, the Huſband and Wife died, and the Iſſue male entred by force of the ſaid Statute of 11.H 7. And it was holden by the Iuſtices of Aſſiſe (the caſe comming downe to be tryed by Niſi prius) that the entry of the Iſſue male was lawfull, and yet this caſe is out of the Letter of the Statute, for ſhee neither leuied the fine, &c. being ſole, or with any other after-taken Huſband, but is by her ſelfe with her Huſband that made the Joynture. Sed qui hæret in litera hæret in cortice, and this caſe being in the ſame miſchiefe is therefore within the remedy of the Statute by the intendement of the makers of the ſame to auoyd the diſherſon of heires who were prouided for by the ſaid Joynture, and eſpecially by the Huſband himſelfe that made the Joynture, which (as it was ſaid) is a ſtronger caſe then the examples ſet downe in the Statute. The other was, (g) A man is ſeiſed of

(f) *Mich.*13. *Iac. inter Harley & Weſt in ejectione firmæ in Communi Banco. Lincolo.*

(g) *Taſth.*17. *Eliz. in*

Lands

Lands in the right of his Wife, and they two leuy a fine, and the Conuſee grant and rendreth the Land to the Huſband and Wife in ſpeciall tayle, the remaynder to the right heires of the Wife, they haue iſſue, the Huſband dieth, the Wife taketh another Huſband, and they two leuie a fine in fee, and the iſſue entreth, this is directly within the Letter of the Statute, and yet it is out of the meaning, becauſe the ſtate of the Land moued from the Wife, ſo as it was the purchaſe of the Huſband in letter, and not in meaning. But where the woman is Tenant for life by the gift or conueyance of any other, her alienation with warranty ſhall bind the heire at this day. So if a man bee Tenant for life (otherwiſe then as Tenant by the curteſie) and alien in fee with warranty, and dieth, this ſhall at this day bind the heire that hath the Reuerſion or Remaynder by the Common Law not holpen by any Statute. But all this is to be vnderſtood, vnleſſe the heire that hath the Reuerſion or Remaynder doth anoide the eſtate ſo alienen in the life of the Anceſtor, for then the eſtate being anoyded, the warranty being annexed vnto the eſtate is anoyded alſo, whereof more ſhall be ſaid in this Chapter in his proper place. And therefore it is neceſſary for the heire in ſuch caſes to make an entry as ſoone as hee hath notice or probable ſuſpition of ſuch an alienation.

Com. Banc. Lattons Caſe which I my ſelfe heard and obſerued.

Sect. 725.

As to the ſecond clauſe of the Statute of Gloceſter. There are two points of Law to bee obſerued.

Firſt, That by the expreſſe purueiw of the Statute, if Aſſets doe after diſcend from the Father, then the Tenant ſhall haue recouery or reſtitution of the Lands of the Mother. But in a Formedon if at the time of the warranty pleaded no Aſſets be diſcended, whereby the Demandant recouereth, if after Aſſets diſcend, there the Tenant ſhall haue a Scire facias for the Aſſets, and not for the Land intayled. And the reaſon hereof is, that if in this caſe the Tenant ſhould be reſtored to the Land intayled, then if the Iſſue in Tayle aliened the Aſſets, his Iſſue ſhould recouer in a Formedon, and therefore the Sages of the Law to preuent future occaſions of ſuits reſolued the ſaid diuerſitie in the Caſes aboueſaid vpon conſideration and conſtruction of the Statute of Gloceſter, and of the Statute De donis conditionalibus.

Pl. Com. Fulmerſtons caſe 110. a. Lib. 8. fol. 53. Syms Caſe.

Secondly, It is to be obſerued, that after Aſſets diſcended, the recouerie ſhall be by Writ of iudgement which ſhall iſſue out of the Rolle of the Juſtices, &c. And here two things are to be declared and explayned. Firſt, by what Writ, &c. and that is cleere, viz. by Scire facias. But the ſecond is more difficult, and that is vpon what manner of iudgement the Scire facias is to be grounded: for explanation whereof it is to be vnderſtood, that if the Tenant will haue benefit of the Statute he muſt plead the warranty, and acknowledge the title of the demandant, and pray that the aduantage of the Statute may be ſaued vnto him. And then if after Aſſets diſcend, the Tenant vpon this Record ſhall haue a Scire facias. And if Aſſets diſcend but for part, he ſhall haue a Scire facias for ſo much. But if the Tenant plead the warranty, and plead further that Aſſets diſcended, &c. and the Demandant taketh iſſue that Aſſets diſcended not, &c. which iſſue is found for the Demandant, whereupon hee recouereth, the Tenant albeit Aſſets doe after diſcend, ſhall neuer haue a Scire facias vpon the ſaid Iudgement, for that by his falſe plea he hath loſt the benefit of the ſaid Statute.

Lib. 8. fol. 53. 54. Syms Caſe. Ibid. 134. Mary Shipleys caſe.

Touching the third ſufficient hath beene ſpoken before. For the laſt it is to bee obſerued, That if the Huſband be ſeiſed of Lands in the right of his Wife, and maketh a feoffment in fee with warranty, the Wife dieth and the Huſband dieth, this warranty ſhall not binde the heire of the Wife without Aſſets, albeit the Huſband be not Tenant by the curteſie. But of this you ſhall reade more hereafter.

8. E. 2 tit. Garr. 81. 18. E. 3. 51.

In the meane time know this that the learning of Warranties is one of the moſt curious and cunning Learnings of the Law, and of great vſe and conſequence.

Vide Sect. 725.

¶ *A demander aſcuns terres ou tenements.* **A Warrantie may not** only be annexed to Freeholds or Inheritances corporeall which paſſe by Liuery, as Houſes and Lands, but alſo to Freeholds or Inheritances incorporeall which lie in grant as Aduowſons, and to Rents, Commons, Eſtoners, and the like, which iſſue out of Lands or Tenements. And not only to Inheritances in eſſe, but alſo to Rents, Commons, Eſtoners, &c. newly created. As a man (ſome ſay) may grant a Rent, &c. out of Land for life, in tayle, or in fee with warranty, for although there can bee no title precedent to the Rent, yet there may be a title precedent to the Land, out of which it iſſueth before the grant of the Rent, which Rent may bee anoyded by the recouery of the Land, in which caſe the Grantee may helpe himſelfe by a Warrantia cartæ vpon the eſpeciall matter. And ſo a Warrantie in Law may extend to a Rent, &c. newly created, and therefore if a Rent newly created bee granted in Exchange for an Acre of Land, this Exchange is good, and euery Exchange implyeth a warranty in Law. And ſo a Rent newly created may bee granted for owelties of partition.

2. H. 4. 13. 30. H 8. Dier 42.

Temps E. 1. admeaſurement 16. 32. E. 1. Voucher 294. 30. E. 1. Exchange 16. 9. E. 4. 15. E. 4. 9. 29. Aſſ. 13.

Vid.Sect.741.
45.E.3.Voucher 72.
9.E.3.78. 18.E.3.55.
30.E.3.30. 21.H.7.9.
3.H.7.4.7.H.4.17.
10.E.4 9.b. 21.E.4.26.
14.H.8.6. 30.H.8.Dier 42.

A man seised of a Rent secke issuing out of the Mannor of Dale taketh a wife, the husband releaseth to the Terre tenant & warranteth Tenementa prædicta and dyeth, the wife bringeth a writ of Dower of the rent, the Terre tenant shall vouche, for that albeit the release enured by way of extinguishment, yet the warranty extended to it, and by warranting of the land all rents, &c. issuing out of the land, that are suspended or discharged at the time of the Warrante created, are warranted also.

Sect. 698.

¶ *Garranty que cõmence per disseisin, &c.* It is called a Warranty that commenceth by Disseisin, because regularly the conueyance whereunto the Warranty is annexed doth worke a Disseisin.

In this Section Littleton putteth fiue examples of a Warranty commencing by Disseisin, viz. of a feoffment made with Warranty by Tenant for yeares, by Tenant at will, by Tenant by Elegit, by Tenant by Statute Merchant, and by Tenant by Statute Staple: all these and the other examples that Littleton putteth of this kinde of Warranties in the succeeding Sections haue foure qualities.

7.E.3.41. 43.E.17.
50.E.3.12. Vid Sect.641.

First, that the Disseisin is done immediately to the heire that is to be bound, and yet if the father be Tenant for life, the remainder to the son in fee, the father by Coupn & consent maketh a Lease for yeares, to the end that the Lessee shall make a feoffment in fee to whom the father shal release with warranty, and all is executed accordingly, the father dieth, this Warranty shall not binde, albeit the Disseisin was not done immediately to the sonne, for the feoffment of the Lessee is a disseisin to the father, who is particeps criminis. So it is if one brother make a gift in tails to another, and the vncle disseise the Donee, and infeoffeth another with warranty, the vncle dieth and the Warranty discendeth vpon the Donor, and then the Donee dieth without

Lib.5.fo.79.b. Eu[habert]eas.

31.E.3.tit.Garrantie 28.

¶ Garranty q̃ cõmence p disseisin est en tiel forme, sicome lou il est pier et fits, et le fits purchase terre, &c. et lessa mesme la terre a son pier pur terme dans, & pier per son fait ent enfeoffa vn auter en fee, & oblige luy & ses heires a garranty, et le pier deuy, per que l' garranty discendist al fits, ceo garranty ne barrera my le fits, car nient obstant cel garrantie, le fits poit bien enter en la terre, ou auer vn assise enuers lalienee sil voit, pur ceo que l' garranty commence per disseisin, car quant le pier que nauoit estate forsque pur terme des ans, fist vn feoffment en fee, ceo fuit vn disseisin al fits del franktenemẽt que adonqz fuist en le fits. En mesme le maner est, si le fits lessa a le pier la terre a tener a volunt, & puis le pier fait vn feoffment oue garrantie,

WArrantie that commence by disseisin is in this manner, As where there is father and son, and the sonne purchaseth land, &c. and letteth the same land to his father for terme of years, and the father by his deed thereof infeoffeth another in fee, and binde him and his heires to Warranty, and the father dies, whereby the warranty discendeth to the son, this warranty shall not barre the son, for notwithstanding this warranty the sonne may well enter into the land, or haue an Assise against the Alience if he will, because the Warranty commenced by disseisin, for when the father which had but an estate for term of yeares made a feoffment in fee, this was a disseisin to the son of the freehold which then was in the sonne. In the same manner it is if the son letteth to the fa-

garrantie,&c. Et ſi come eſt dit de pier, iſſint poit eſtre dit de cheſcun auter auncester,&c. En meſme le maner eſt, ſi tenaunt per Elegit, tenant per Statute Merchant, ou tenant per Statute de le Staple fait feoffment en fee oueſque garranty, ceo ne barrera my lheire que doit auer la terre, pur ceo que tiels garranties cõmencerent per diſſeiſin.

ther the land to hold at will, & after the father make a feoffment with warranty, &c. And as it is ſaid of the father, ſo it may be ſaid of euery other anceſter &c. In the ſame mãer is it, if tenant by *Elegit*, tenant by Statute Merchant or tenant by Statute ſtaple make a feoffment in fee with warranty, this ſhall not bar the heire which ought to haue the land, becauſe ſuch warranties cõmence by diſſeiſin.

ſme, albeit the diſſeiſin was done to the Donee and not to the Donor, yet the warranty ſhall not binde him. The father, the ſonne and a third perſon are iointenants in fee, the father maketh a feoffment in fee of the whole with warranty, and dyeth, the ſonne dyeth, the third perſon ſhall not only auoide the feoffment for his owne part, but alſo for the part of the ſonne, and hee ſhall take aduantage that the warranty commenced by Diſſeiſin, though the Diſſeiſin was done to another.

The ſecond quality appearing in Littletons examples is, that the warranty and Diſſeiſin are ſimul & ſemel both at one and the ſame time. (y) And yet if a man commit a Diſſeiſin of intent to make a feoffment in fee with Warrantie, albeit he make the feoffment many yeares after the diſſeiſin, notwithſtanding becauſe the Warranty was done to that intent and purpoſe, the Law ſhall adiudge vpon the whole matter, and by the intent couple the Diſſeiſin and the Warranty together.

(y) 19.H.8.12. lib.5. fo 79.b. Fitzh.caſe.

The third quality is that the warranty that commenceth by Diſſeiſin by all theſe examples (if it ſhould binde) ſhould binde as a Collaterall Warranty, and therefore commencing by Diſſeiſin ſhall not binde at all.

¶ *Ne barrera my le heire,&c.* For by the Authority of our Author himſelfe a Leſſee for yeares may make a feoffment, and by his feoffment a fee ſimple ſhall paſſe, ſo as albeit as to the Leſſor it worketh by diſſeiſin, yet betweene the parties the Warranty annexed to ſuch eſtate ſtandeth good: vpon which the Feoffee may vouche the Feoffor or his heires as by force of a lineall Warranty. And therefore if a Leſſee for yeares or Tenant by Elegit, &c. or a Diſſeiſor incontinent make a Feoffment in fee with Warranty, if the Feoffee be impleaded, he ſhall vouche the Feoffor, and after him his heire alſo, becauſe this is a Couenant reall, which binde him and his heires to recompence in value, if they haue aſſets by diſcent to recompence, for there is a Feoffment de facto, and a Feoffment de iure: (*) And a Feoffment de facto made by them that haue ſuch intereſt or poſſeſſion, as is aforeſaid, is good betweene the parties, and againſt all men, but only againſt him, that hath right. And therefore if the Lord be Gardeine of the land, or if the Tenant maketh a Leaſe to the Lord for yeares, or if the Lord be Tenant by Statute Merchant or Staple, or by Elegit of the tenancie, and make a Feoffment in fee, he thereby doth extinguiſh his Seigniory, although hauing regard to the Leſſor it is a Diſſeiſin.

Vid.Sect.611.699. Bracton fo.216.223.224. Fleta lib.4 ca.17.1.2. Britton cap.Diſſeiſin. 50 E.3.12 b. 8.H.7.5. 7.E.3.11. 14.E.3. Feoffments on Faits 67. 18.E.3. Iſſue 36. 4.E.2.briefe 790. 19.E.2.Aſſ.402. 43.E.3.5. 17.E.3.41. 43.E.3.Diſſ.5. 3.E.4.17. 12.E.4.12. 10.E.4.18. F.N.B.201. Lib.3.fo.78. in Fermors caſe.

(*) *Termes E.1. Counterplee de Voucher 126. 50.E.3.Ibidem 124. Vid W.1.cap.48. in the ſecond part of the Inſtitutes.*

The fourth quality is a Diſſeiſin, but that is put for an example, and the rather for that it is moſt vſuall and frequent, but a Warranty that commenceth by abatement or intruſion (that is when the abatement or intruſion is made of intent to make a Feoffment in fee with Warrantie) ſhall not binde the right heire, no more then a Warrantie that commenceth by Diſſeiſin, becauſe all doe commence by wrong. And ſo it is if the Tenant dyeth without heire, and an Anceſtor of the Lord enter before the entry of the Lord, and make a Feoffment in fee with Warranty, and dyeth, this warranty ſhall not binde the Lord, becauſe it commenceth by wrong, being in nature of an Abatement, Et ſic de ſimilibus.

Sect. 699.

¶ Item ſi gardein en Chiualrie, ou gardein en Socage fait

Alſo if Gardeine in Chiualrie or Gardeine in Socage make

fait un feoffement en fee, ou en fee taile, ou pur terme de vie ouesque garranty, &c. tiels garranties ne sont pas barres a les heires, as queux les terres serront discendus, pur ceo que ils commence per Disseisin.

a Feoffement in Fee, or in Fee taile, or for life, with Warrantie, &c. such Warranties are not barres to the Heyres to whome the Lands shall bee discended, because they commence by Disseisin.

16.E.3.Gar.20.8.Ass.2. 43.E.3.7. and the Books above sayd. Vi.Sect.698.

Here Littleton addeth the Case of Gardeine in Chivalrie; and Gardein in Socage, and Gardeine because of Nurture is also in the same case.

Sect. 700.

Item si le pier et le fits purchase certaine Terres ou tenements, a auer et tener a eux iointment, &c. et puis le pier alien lentier a un auter, et oblige luy et ses heires a garrantie, &c. et puis le pier deuie, cel Garrantie ne barrera my le fits de le moitie que a luy affiert de les dits terres ou tenements, pur ceo que quaunt a cel moitie que affiert a le fits, le Garranty commence per Disseisin, &c.

Also if Father and Sonne purchase certaine Lands or Tenements, To haue and to hold to them iointly, &c. and after the Father alien the whole to another, and binde him and his Heyres to Warrantie, &c. and after the Father dieth, this Warrantie shall not barre the sonne of the moitie that belongs to him of the said Lands or Tenements, because as to that moitie which belongs to the Sonne, the warrantie commences by Disseisin, &c.

13.Ass.8. 13.E.3. Gar.24. 25.37.22.H.6.51.8.H.7.6.

Auer & tener a eux iointmēt, &c. This is to be intended of a ioynt purchase in fee, for if the purchase were to the father and the sonne, and the heyres of the sonne, and the father maketh a Feoffement in Fee with warrantie, if the sonne entreth in the life of the Father, and the Feoffee re-enter, the father dieth, the sonne shal haue an Assise of the whole, and so is the Booke of 22 H.6. to be understood. But if the sonne had not entred in the life of the father, then for the fathers moitie it had beene a bar to the sonne, for that therein he had an estate for life, and therefore the warrantie as to that moitie, had beene collaterall to the sonne, and by Disseisin for the sonnes moitie, and so a warrantie defeated in part, and stand good in part. And this appeareth by the example that Littleton hath put. But if the purchase had been to the father & sonne, and to the heires of the Father, then the entrie of the sonne in the life of the father, as to the avoydance of the warrantie, had not auailed him, because his father lawfully conueyed away his moitie.

Temps E.1.Vouch.207.39.E.3. 26.John Londons case.14.H.6

If a man of full age and an Infant make a Feoffement in Fee with warrantie, this warrantie is not voyd in part, and good in part, but it is good for the whole against the man of full age, and voyd against the Infant: for albeit the Feoffement of an Infant passing by Liuerie of Seisin bee voydable, yet his warrantie which taketh effect onely by Deed, is meerely voyd.

Section 701.

¶ ITem ſi A. ô B. ſoit ſeiſie dun meſe, et F. de G. que nul droit ad dentrer en meſme le meaſe, claimaunt meſme le meaſe, a tener a luy et a ſes Heires, entra en meſme le meaſe, mes le dit A. de B. adonque eſt continualmẽt demurrant en meſme le meaſe: En ceſt cas le poſſeſſion ô frank-tenement ſerra tout temps adiudge en A de B. et nemy en F. de G. pur ceo que en tiel caſe lou deux sõt en vn meaſe, ou auters Tenements, et lun claima per lun title, et lauter p lauter title, la Ley adiudgera celuy en poſſeſſion que ad droit dauer le poſſeſſion de meſmes les Tenements. Mes ſi en le caſe auantdit, F dit F. de G. fait vn Feoffment a certaine Barrettors et extorcioners en le païs, p̃ maintenance de eux auer, de meſme le meaſe per vn fait de Feoffement oue garrantie, per force de quel le dit A. de B.

ALſo if A. of B. bee ſeiſed of a Meſe, and F. of G. that no right hath to enter into the ſame Meſe, claiming the ſayde Meſe to hold to him and to his heires, entreth into the ſayd Meſe, but the ſame A. of B. is then continually abiding in the ſame Meaſe: In this Caſe the poſſeſſion of the Free-hold ſhall bee alwayes adiudged in A. of B. and not in F. of G. becauſe in ſuch Caſe where two bee in one Houſe or other Tenements, and the one claimeth by one Title, and the other by another Title, the Law ſhal adiudge him in poſſeſſion, that hath right to haue the poſſeſſion of the ſame tenements. But if in the Caſe aforeſayd, the ſayde F. of G. make a Feoffement to certaine Barrettors and Extortioners in the Countrie, to haue maintenance from thẽ of the ſayd houſe, by a Deed of Feoffment with Warrantie, by force whereof the ſaid

¶ *Lou deux ſont en vn meſe, &c. & lun claima per lun title, & lauter per auter title, &c.* **For the rule is,** Duo non poſſunt in ſolido vnam rem poſſidere. *19.H.6.fo.28.b. & Nexten.*

Theſe words of our Author be ſignificant and materiall: (h) for if a man hath iſſue two daughters Baſtard eigne and Muller puiſne, and die ſeiſed, and they both enter generally, the ſole poſſeſſion ſhal not be adiudged onely in the Muller, becauſe they both claime by one and the ſame title, and not one by one title, and the other by another title, as our Author here ſaith. (h) *17.E.3.59.11.Aſſ.*

(i) If the Tenaunt in an aſſiſe of an houſe deſire the Plaintife to dine with him in the houſe, which the Plaintif doth accordingly, and ſo they be both in the houſe, and in truth one pretendeth one title, and the other another title, yet the Law in this caſe ſhall not adiudge the poſſeſſion in him that right hath, becauſe our Author here ſaith, he claimed not his right, and it ſhould be to his preiudice if the Law ſhould adiudge him in poſſeſſion; and a Treſpaſſer he cannot be, becauſe he was inuited by the Tenant in the Aſſiſe. (i) *Pl.Com.91. the Parſon of Honylanes caſe.*

¶ *Barretors.* A Barrettor is a common mouer and exciter or maintainer of ſuits, quarrells, or parts, either in Courts or elſewhere in the Countrie. In Courts, as in Courts of Record, or not of Record, as in the Counte, Hundred, or other inferiour Courts. In the Countrie in three manners, Firſt, in diſturbance of the Peace. Secondly, in taking or keeping of poſſeſſions of lands in controuerſie, not only by force, but alſo by ſubtilitie *See the Inditement of a common Barrettor. W.1.ca 18. & 32 40.E.3.33. Li.8.fo.36.b. Caſe de Barretry.*

tis and a deceit, and moſt commonly in ſuppreſſion of truth and right. Thirdly, by falſe inuentions, and ſowing of calumniations, rumors, and reports, whereby diſcord and diſquiet may grow betweene neighbours.

33 E.1.Stat.de Conſpiracie. Li.8.vb.ſup.

¶ *Barrettor* is deriued of this word (Barret) which ſignifieth not onely a wrangling ſuit, but alſo ſuch brawles and quarrels in the Countrie, as are aforeſayd.

ne oſaſt pas demurrer en le Weaſe, mes alaſt hors de le meaſe, ceſt garranty commence per Diſſeiſin, pur ceo que tiel Feoffement fuit la cauſe que le dit A. de B. relinquiſt le poſſeſſion de meſme le Weaſe.

A. of B. dare not abide in the Houſe, but goeth out of the ſame, this Warrantie commenceth by Diſſeiſin, becauſe ſuch Feoffement was the cauſe that the ſayde A. of B. relinquiſhed the poſſeſſion of the ſame Houſe.

Pl.Com fo.64. Li.10 fo.101.102. Beaufage Caſe.

¶ *Extortioners.* Extortion in his proper ſence is a great miſpriſion by wreſting or vnlawfully taking by any Officer by colour of his Office any money or valuable thing of or from any man, either that is not due, or more than is due, or before it be due, Quod non eſt debitum, vel quod eſt vltra debitum, vel ante tempus quod eſt debitum: For this it is to be knowne, that it is prouided by the (l) Statute of W.1. That no Sheriffe nor any other Miniſter of the King, ſhall take any reward for doing of his Office, but onely that which the King alloweth him, vpon paine that he ſhall render double to the partie, and be puniſhed at the Kings pleaſure. And this was the antient Common Law, and was puniſhable by fine and impriſonment, but the Statute added the aforeſayd penaltie. But ſome latter Statutes hauing permitted them to take in ſome caſes, by colour thereof the Kings Officers and Miniſters, as Sheriffes, Coroners, Eſcheators, Feodaries, Gaolers, and the like, doe offend in moſt caſes; and ſeeing this Act yet ſtandeth in force, they cannot take any thing but where, and ſo farre as latter Statutes haue allowed vnto them. But yet ſuch reaſonable Fees as haue beene allowed by the Courts of Juſtice of antient time to inferiour Miniſters and Attendants of Courts for their labour and attendance, if it bee aſked and taken of the Subiect, is no extortion.

(l) W.1.c.26. & W.1.c.10 4 E.3.5.27. Aſſ.14. Pl.Com.68.

25.H.6 ca.10.33.H.6.22. 21.H.7.17.Staſ.49. 3.E.3.Cor.372.

And all this was reſolued (n) by the whole Court of Kings Bench, betweene Shurley Plaintife, and Packer Deputie of one of the Sheriffes of London, in an Action vpon the Caſe in the Kings Bench.

(n) Hil.13.Ia.Rot.

See the Statute of 21.H.8. cap. 5. ſetting downe the Fees of Ordinaries, Regiſters, and other Officers, in certaine Caſes, and many other Statutes, as for example the Statute of 19.H.7.cap.8. againſt taking of Shewage (that is, taking of any thing for ſhewing of wares and Merchandiſes that be truly cuſtomed to the King before) and the like.

Pl.Com.in Dine & Manningbams caſe. Mir.ca.5.§.1.

Of this crime it is ſayd, That it is no ther othan Robberie: And another ſaith, That it is more odious than Robberie, for Robberie is apparant, and hath the face of a crime; but Extortion puts on the viſure of Vertue, for expedition of Juſtice, and the like, and it is euer accompanied with that grieuous ſinne of periurie.

7.E.4.21.

But largely Extortion is taken for any oppreſſion by extort power, or by colour or pretence of right, and ſo Littleton taketh it in this place. Extortio is deriued from the Verbe Extorquere, and it is called Crimen expilationis or concuſſionis: And here Barrettors and Extortioners are put but for examples, for if the Feoffement bee made to any other perſon or perſons, the Law is all one.

¶ *Pur maintenance de eux auer.* Maintenance, Manutenentia is deriued of the Verbe Manutenere, and ſignifieth in Law, a taking in hand, bearing vp or vpholding of quarrels and ſides, to the diſturbance or hinderance of common right; Culpa eſt rei ſe immiſcere ad ſe non pertinenti, and ſo is two fold, One in the Countrie, and Another in the Court. For quarrells and ſides in the Court (k) the Statutes haue inflicted grieuous puniſhments. But this kind of maintenance of quarrells and ſides in the Countrie, is puniſhable onely at the ſuit of the King, (r) as it hath beene reſolued. And this Maintenance is called Manutenentia, or Manutentio ruralis, for example, as to take poſſeſſions, or to keep poſſeſſions, whereof Littleton here ſpeaketh, or the like.

(k) 1.E.3.ca.14. 20.E.3.ca.4.5.

(r) Mich.7.Ia. in the Starre-Chamber.

The other is called Curialis, becauſe it is done pendente placito, in the Courts of Juſtice, and this was an Offence at the Common Law, and is threefold.

First, To maintaine, to haue part of the Land, or any thing out of the Land, or part of the Debt, or other thing in Plea or Suit, and this is called Cambipartia, Champertie.

33.E.1.Stat.2.in fine. Regiſt.183. 6.E.3.33.22.H.6.7. 2.H.7.22.

The ſecond is, When one maintaineth the one ſide, without hauing any part of the thing in

Plea

Plea or Suit, and this maintenance is two-fold, generall maintenance, and ſpeciall maintenance, whereof you ſhall reade at large in our Bookes, which were too long here to be inſerted.

30. *Aſſ.*5. 19. *E.*4.3. 20. *H.*6.12. 34. *H.*6.2. 11. *H.*6.11. 8. *H.*5.8. 10. *E.*4.19. *W.*1 *ca.*25.28. *W.*2. *cap.*49. *Artic ſuper Cart. cap.*11. *F.N.B.*171. 172. *Mirror cap.*1. §.5.

The third is when (u) one laboureth the Jurie, if it bee but to appeare, or if hee inſtruct them, or put them in feare, or the like, he is a mayntainer, & hee is in Law called an Embracer, and an Action of Mayntenance lyeth againſt him, and if hee take monie a decies tantum may be brought againſt him. And whither the Jury paſſe for his ſide or no, or whither the Jurie giue any verdict at all, yet ſhall he be puniſhed as a Mayntainer or Embracer or eyther at the ſuite of the King or party.

(u) 13. *H.*4.16. *b. F.N.B.* 171. 11. *H.*6.10. 37. *H.*6.38

Here in this caſe that Littleton putteth the feoffment is void by the Statute (a) of 1. *R.*2. for thereby it is enacted, that feoffments made for Mayntenance ſhall bee holden for none, and of no value, ſo as Littleton putteth his caſe at the Common Law, for hee ſeemeth to allow the feoffment where he ſaith, tiel feoffment fuit le cauſe, &c. but ſome haue ſaid that the feoffment is not void betweene the Feoffor and Feoffee, but to him that right hath.

(a) 1. *R.*2. *cap.*9. *Vid.* 27. *H.*8. *fol.*23.

Now ſince Littleton wrote there is a notable Statute (b) made in ſuppreſſion of the cauſes of vnlawfull mayntenance (which is the moſt dangerous enemie that Juſtice hath) the effect of which ſtatute is.

(b) 32. *H.*8. *cap.*9.

Firſt, That no perſon ſhall bargaine, buy or ſell, or obtaine any pretenſed Rights or Titles.

Secondly, Or take, promiſe, grant, or couenant to haue any Right, or Title of any perſon in or to any Lands, Tenements, or Hereditaments, but if ſuch perſon which ſo ſhall bargaine, &c. their Anceſtors, or they by whom hee or they clayme the ſame haue beene in poſſeſſion of the ſame, or of the Reuerſion or Remaynder thereof, or taken the Rents or Profits thereof by the ſpace of one whole yeare, &c. vpon paine to forfeit the whole value of the Lands, &c. and the buyer or taker, &c. knowing the ſame, to forfeit alſo the value.

Thirdly, Prouided that it ſhall be lawfull for any perſon being in lawfull poſſeſſion by taking of the yeerely Farme, Rents or Profits to obtaine and get the pretenſed Right, or Title, &c. of any Lands whereof he or they ſhall be in lawfull poſſeſſion.

For the better vnderſtanding of which Statute, you muſt obſerue, that title or right may be pretenſed two manner of wayes.

Firſt, when it is meerely in preſence or ſuppoſition, and nothing in veritie.

Secondly, when it is a good right or title in verity, and made pretenſed by the act of the partie, and both theſe are within the ſaid Statute; for example, If A bee lawfull Owner of Land and is in poſſeſſion, B that hath no right thereunto granteth to or contracteth for the land with another, the Grantor and the Grantee (albeit the grant bee meerely void) are within the danger of the Statute. For B hath no right at all but only in pretence. If A bee diſſeiſed in this caſe A. hath a good lawfull right, yet if A being out of poſſeſſion granteth to or contracteth for the Land with another, hee hath now made his good right of entrie pretenſed within the Statute, and both the Grantor and Grantee within the danger thereof. A fortiori of a right in action. Quod nota.

Pl. Com. fol. 80. *b. Partridges Caſe*

It is further to bee knowne, that a right or title may bee conſidered three manner of wayes.

Firſt, As it is naked and without poſſeſſion. Secondly, when the abſolute right commeth by Releaſe or otherwiſe to a Wrongfull poſſeſſion, and no third perſon hath eyther Ius proprietatis, or Ius poſſeſſionis. The third, when he hath a good right, and a Wrongfull poſſeſſion. As to the firſt, ſomewhat hath beene ſaid, and more ſhall bee ſaid hereafter. As to the ſecond, taking the former example, if A be diſſeiſed, and the Diſſeiſee releaſe vnto him, hee may preſently ſell, grant, or contract for the Land, and need not tarrie a yeare, for it is a rule vpon this Statute, that whoſoeuer hath the abſolute Owner ſhip of any Land, Tenements, or Hereditaments (as in this caſe the Diſſeiſor hath) there ſuch Owner may at his pleaſure bargaine, grant, or contract for the Land, for no perſon can thereby be preiudiced or grieued. And ſo if a man morgage his Land, and after redeeme the ſame, or if a man recouer Land vpon a former title, or be remitted to an ancient right, he may at any time bargaine, grant, or contract for the Land for the reaſon aforeſaid. As to the third, if in the caſe aforeſaid the Diſſeiſor dieth ſeiſed, and A the Diſſeiſee entreth, and diſſeiſe the heire of the Diſſeiſor, albeit he hath an ancient right, yet ſeeing the poſſeſſion is vnlawfull, if hee bargaine or contract for the Land before hee hath beene in poſſeſſion by the ſpace of a yeare, hee is within the danger of the Statute, becauſe the heire of the Diſſeiſor hath right to the poſſeſſion, and he is thereby grieued, & ſic de ſimilibus, and albeit he that hath a pretenſed right (and none in deede) getteth the poſſeſſion wrongfully, yet the Statute extendeth vnto him, as well as where he is out of poſſeſſion.

Pl. Com. Partridges caſe vbi ſupra. 6. E.6. Brook Tit. Maintenance. 38.

Note the words of the Statute be (any pretenſed right) therefore a Leaſe for yeares is within the Statute, for the Statute ſaith not (the right) but any right) and the offendor ſhall forfeit the whole value of the Land. And where the Statute ſpeaketh of rights in the plural number, yet any one right is within the Statute. (a) But yet if a man make a leaſe for yeeres to another to the intent to try the title in an ejectione firme that is out of the Statute,

23. *Eliz. Dier* 374. *Pl. Com. Partridges caſe f.*87 (a) *Mich.*30. & 31. *Eliz.* 2811. *inter Finch & Corkham in Cõs Banco.*

becauſe it is in a kind of courſe of Law, but if it be made to a great man, or any other to ſway or countenance the cauſe, that is within this Statute.

(b) Lib.4.fol.26. Copihold Caſes.

Alſo the Statute ſpeaks (of any right or title to any Land, &c.) (b) A cuſtomarie right or a pretence thereof to Lands holden by Copie is within this Statute.

6.E.6.tit.maintenance Brooke 38.

The ſaid prouiſo (which is rather added for explanation then of any neceſſitie) extendeth only to a pretenſed right or title, and to a good and cleare right, and therefore without queſtion, any that hath a iuſt and lawful eſtate may obtaine any pretenſed right by releaſe or otherwiſe; for that cannot bee to the preiudice of any, nay, as hath beene ſaid, a Diſſeiſor that hath a wrongfull eſtate may obtaine a releaſe of the Diſſeiſee, and that is not within the body of the Act, and conſequently ſtandeth not in need of any prouiſo to protect him.

(c) 34.H.8.Dier 52.

And therefore (c) if there be Tenant for life, the Remaynder in fee by lawfull and iuſt title, he in the Remaynder may obtaine and get the pretenſed right or title of any ſtranger, not only for that the particular Eſtate and the Remaynder are all one, but for that it is a meane to extinguiſh the ſeeds of troubles and ſuites, and cannot be to the preiudice of any, as hath beene ſaid. And where the Statute ſaith, (being in lawful poſſeſſion by taking the yearly Rent, &c.) thoſe words are but explanatorie, and put for example, for howſoeuer hee be lawfully ſeiſed in poſſeſſion, Reuerſion, or Remaynder, it ſufficeth though hee neuer tooke profit. But the matter obſeruable vpon this Prouiſo, which is worthy of obſeruation, is, that if a Diſſeiſor make a Leaſe for life, liues, or yeares, the Remaynder for life, in tayle, or in fee, hee in Remaynder cannot take a Promiſe or Couenant, that when the Diſſeiſee hath entred vpon the Land or recouered the ſame, that then hee ſhould conuey the Land to any of them in Remaynder thereby to auoid the particular eſtate, or the intereſt or eſtate of any other, for the words of the Prouiſo be, (buy, obtaine, get or haue by any reaſonable way or meane) and that is not by promiſe or couenant to conuey the Land after entry or recouery, for that is neyther lawfull being againſt the expreſſe purview of the bodie of the Act, and not reaſonable, becauſe it is to the preiudice of a third perſon. But the reaſonable way or meane intended by the Statute is by Releaſe or Confirmation, or ſuch Conueyances as amount to as much, and this agreeth with the letter of the Law, viz the pretenſed Right or Title of any other perſon, and Rights and Titles are by Releaſe or Confirmation, as by reaſonable wayes and meanes lawfully tranſferred and extinct, and the words of Promiſe or Couenant, &c. which are prohibited by the body of the Act, are omitted in the Prouiſo.

¶ *Relinquiſt le poſſeſſion, &c.* This muſt bee vnderſtood, that before liuery of ſeiſin vpon the feoffment, A de B departed out of the houſe, for otherwiſe the liuery and ſeiſin ſhould be void, becauſe A de B was in poſſeſſion. And Littleton here ſaith, Per vn fait de feoffment, ſo as albeit the Deed were made before the departure it is not materiall, but the departure muſt be before the liuery of ſeiſin, for that doth worke the diſſeiſin. And yet that which Littleton ſaith is true, that the feoffment was the cauſe that he relinquiſhed his poſſeſſion, for otherwiſe he would not haue done it.

But admit that A de B had departed for any other cauſe, yet if F de G enter and enfeoffe certaine Warretors or Extortioners, or any other with warrantie, this is a warrantie that commenceth by diſſeiſin, for that the feoffment worketh a diſſeiſin.

Sect. 702.

See before in the Chapter of Releaſes.

¶ This doth explane that which hath beene ſaid before. And albeit Littleton vſeth the words (and incontinently thereof make a Feoffment) and that in this caſe of Littleton the Diſſeiſin & Feoffment were made quaſi vno tempore) yet if the Diſſeiſin were made to the intent to make a feoffment with warranty, albeit the Feoffment be long after, this (as hath beene ſaid) is a warranty

46.E.3.6.

¶ Item ſi hom̃ que nul droit ad dentrer en auters tenements, entra en meſmes les tenements, & incontinẽt ẽt fait vn feoffment as auters per ſon fait oue garranty, & deliuer a eux ſeiſin, cel garranty commence per diſſeiſin

ALſo if a man which hath no right to enter into other tenements enter into the ſame tenements, & incontinently make a feoffment therof to others by his deed with warranty & deliuer to them ſeiſin, this warranty comence

ſin, pur ceo que le diſſeiſin et le feoffment fueront faits quaſi vno tempore. Et q̃ ceo eſt ley, poiez veier en vn plee M.11.Ed.3. en vn briefe de Formedon en le reuerter.

by diſſeiſin, becauſe the diſſeiſin and feoffment were made as it were at one time. And that this is lawe you may ſee in a plee *M.*11 *E.*3. in a writ of *Formedon* in the reuerter.

that commenceth by Diſſeiſin.

¶ *Mich.* 11. *E.*3. This is miſtaken and ſhould be (d) 31.E.3. and ſo is the originall, which caſe you ſhall ſee in Maſter Fitzherberts Abridgement, for there is no booke at large of that yeare, Hereby you may perceiue that learned men looke not only to the caſes reported, but vnto Records, as you may ſee Littleton did, for Fitzherb. put this caſe in print long after, as elſewhere hath beene ſhewed. (d) 31.*E.*3.*tit.Garr.*28.

Sect. 703.

¶ Warranty lineal eſt, lou home ſeiſie de terres en fee, fait feoffment per ſon fait a vn auter, et oblige luy et ſes heires a garrantie, et ad iſſue et mozuſt, et le garrantie diſcendiſt a ſon iſſue, ceo eſt lineal garranty. Et la cauſe pur ceo q̃ eſt dit lineal garrantie, neſt pur ceo que le garranty diſcendiſt de le pier a ſon heire, mes la cauſe eſt pur ceo que ſi nul tiel fait oue garranty fuiſſoit fait per le pier, donque le droit ô les tenemẽts diſcenderoit al heire, et lheire conueyeroit le diſcent de ſon pier, &c.

WArranty lineall is where a man ſeiſed of lands in fee, maketh a feoffment by his Deed to another, & bindes himſelfe & his heires to warranty, and hath iſſue and die, and the Warranty diſcend to his iſſue, this is a lineal warranty. And the cauſe why this is called lineall warranty is not becauſe the warrãty diſcendeth from the father to his heire, but the cauſe is for that if no ſuch deed with warranty had beene made by the father, then the right of the tenements ſhould diſcend to the heire, and the heire ſhould conuey the diſcent frõ his father, &c.

¶ *Warranty lineal, &c.* A Warranty lineall is a Couenant reall annexed to the land by him which either was owner, or might haue inherited the land, and from whom his heire lineall or collaterall might by poſſibility haue claimed the land as heire from him that made the Warranty, whereof Littleton himſelfe putteth diuers caſes, which ſhall bee explained in their proper places. And in this caſe put in this Section Littleton (once for all) ſheweth, that the reaſon of the example here put, is becauſe if no ſuch alienation with Warranty (for ſo is Littleton to be intended) had beene made, the very lands had diſcended to the heire, ſo as the caſe being put of lands in fee ſimple, the alienation without the Warranty had barred the heire. And note that it is called a lineall Warranty, not becauſe it muſt diſcend vpon the lineall heire, for bee the heire lineall or collaterall, if by poſſibility he might claime the land from him that made the Warranty, it is lineall, hauing regard to the Warrantie, and title of the land. And alſo it is called lineall, in reſpect that the warranty made by him that had no right or poſſibility of right to the land is called Collaterall, in regard that it is collaterall to the title of the land. And it is alſo to be obſerued, that in all the caſes that Littleton hath put or ſhall put the lineall or collaterall Warranty doth binde the heire, and therefore the ſucceſſor claiming in another right, ſhall not be bound by the Warranty of any naturall Anceſtor. For which cauſe (c) in a Iuris vtrum brought by a Parſon of a Church, the collaterall warranty of his Anceſtor is no barre, for that hee demandeth the land in the right of his Church in his politique capacitie, and the Warrantie deſcendeth on him in his naturall capacitie. (d) But ſome haue holden that if a Parſon bring an Aſſiſe, that a Collaterall Warranty of his

35.*E.*3.*Garr.*73.

(c) 27.*H.*6.*Garr.*48.

(d) 34.*E.*3.*Garr.*72.

his Anceſtor ſhall binde him, and their reaſon is, for that the Aſſiſe is brought of his poſſeſſion and ſeiſin, and he ſhall recouer the meane profits to his owne vſe. But ſeeing he is ſeiſed of the freehold, whereof the Aſſiſe is brought in jure Eccleſiæ, which is in another right, then the Warranty, it ſeemeth that it ſhould not be any barre in the Aſſiſe. The like Law is of a Biſhop, Archdeacon, Deane, Maſter of an Hoſpitall, and the like, of their ſole poſſeſſions, and of the Prebend, Vicar, and the like.

(*) 45. Aſſ. 6. 6.E.3.56. Plcom. 234. & 553. 554.

¶ *Et oblige luy & ſes heires.* * King H.3. gaue a Mannor to Edmund Earle of Cornwall, and to the heires of his body, ſauing the poſſibility of Reuerter, and dyed, The Earle before the ſtatute of W.2.cap.1. De donis conditionalibus by Deede gaue the ſaid Mannor to another in fee with warranty in exchange for another Mannor, and after the ſaid Statute in the 28. yeare of E.1. dyeth without iſſue, leauing Aſſets in fee ſimple. which warranty and Aſſets deſcended vpon King E.1. as Coſin germaine, and heire of the ſaid Earle, viz. ſonne and heire of King Henry the third, brother of Richard Earle of Cornwall, father of the ſaid Earle Edmund. And it was adiudged, that the King as heire to the ſaid Earle Edmund, was by the ſaid Warranty and Aſſets barred of the poſſibility of Reuerter, which he had expectant vpon the ſaid gift, albeit the Warranty and Aſſets deſcended vpon the naturall body of King E.1. as heire to a ſubiect, and King E.1. claymed the ſaid Mannor, as in his Reuerter in jure Coronæ in the capacity of his body politique, in which right he was ſeiſed before the gift. In this caſe how by the death of the ſaid Earle Edmund without iſſue, the Kings title by Reuerter, and the warranty, and Aſſets came together, and that the Warranty was collaterall, yet the King ſhall not be barred without Aſſets as a ſubiect ſhall be, and many other things are to be obſerued in this caſe which the learned reader will obſerue.

Vid. 27.H.6.Garr.48. 34.E.3.Garr.71.

Vid. Sect. 711.712.

*Sect.*704.705.

¶ Car ſi ſoit pier & fits & le fits purchaſe terres en fee, et le pier de ceo diſſeiſiſt ſon fits, et aliena a vn auter en fee per ſon fait: et per meſme le fait oblige luy et ſes heires a garranter meſmes les tenements, &c. et le pier mozuſt, oze eſt le fits barre dauer les dits tenements, car il ne poit per aſcun ſuit, ne per auter meane de la ley, auer meſmes les terres per cauſe del dit garranty, et ceo eſt vn collateral garranty, et vncoze le garranty diſcendiſt lynealment de le pier a le fits.

FOr if there be father and ſonne, and the ſonne purchaſe lands in fee, and the father of this diſſeiſeth his ſonne and alieneth to another in fee by his Deede, and by the ſame deed binde him and his heires to warrant the ſame tenements, &c. and the father dieth, now is the ſon barred to haue the ſaid tenements, for hee cannot by any ſuite, nor by other meane of law haue the ſame lands by cauſe of the ſaid warranty. And this is a collaterall Warranty, and yet the Warranty diſcendeth lineally from the father to the ſonne.

*Sect.*705.

¶ Mes pur ceo que ſi nul tiel fait oue garr̃ vſt eſtre fait, le fits en nul maner puiſſoit conueyer le title que il ad a les tenements de ſon pier a luy, entant que ſon pier nauoit aſcun eſtate

BVt becauſe if no ſuch Deed with Warranty had beene made, the ſonne in no manner could conuey the title which hee hath to the tenements from his father vnto him, inaſmuch as his fa-

eſtate en droit en les tenements, pur ceo tiel garrantie eſt appel collateral garranty, entant que celuy que fiſt le garranty eſt collateral a le title de les tenemẽts, et ceo eſt a tant adire que ceſtuy a que le garranty diſcendiſt, ne puiſſoit a luy conueier le title que il ad de les tenements per my ceſtuy que fiſt le garrantie en cas que nul tiel garrantie fuit fait.

ther had no eſtate in right in the lands, wherefore ſuch Warranty is called Collaterall warranty, inaſmuch, as he that maketh the warranty is collateral to the title of the tenements, and this is as much to ſay, as hee to whom the warranty deſcendeth, could not conuey to him the title which hee hath in the tenements by him that made the warranty, in caſe that no ſuch warranty were made.

HEre Littleton putteth an example, proouing that it is not called Lineall, because it deſcendeth lineally from the father to the ſonne, for in this caſe the warranty deſcendeth lineally, and yet is a collaterall warranty. In this example you muſt intend that the Diſſeiſin was not of intent to alien with warranty to barre the ſonne, but here the Diſſeiſin being done to the ſonne, without any ſuch intent, the alienation afterwards with warranty doth barre the ſonne, becauſe that albeit the Warranty doth lineally diſcend, yet ſeeing the title is Collaterall, that is, that the ſonne claymeth not the land as heire to his father, therefore in reſpect of the title it is a Collaterall Warranty. And thus doth Littleton agree (c) with the Authority of our bookes. So as the diuerſities doe ſtand thus. Firſt, where the Diſſeiſin and feoffment are vno tempore, and where at ſeuerall times. Secondly, where the Diſſeiſin is with intent to alien with warranty, and where the Diſſeiſin is made without ſuch intent, and the alienation with warranty afterwards made.

5.E.3.14. 46.E.3.6. 19.H.8.11. 8.R.2.Gar.100. *Vid.Sect.*716.

(c) 46.E.3.6. 5.E.3.14. 19.H.8.12.

Sect. 706.

¶ Item ſi ſoit aiel, pier, et fits, et le aiel ſoit diſſeiſie, en que poſſeſſion le pier releas p ſon fait oue garrantie, &c. et moruſt, et puis laiel moruſt, ore le fits eſt barre dauer les tenements per le garranty del pier. Et ceo eſt appel lineal garrantie, pur ceo que ſi nul tiel garranty fuit, le fits ne puiſſoit conueyer le droit de les tenements a luy, ne monſtre coment il eſt heire al Aiel forſ-

ALſo if there bee grandfather father and ſon, and the grandfather is diſſeiſed, in whoſe poſſeſſion the father releaſeth by his Deed with warranty, &c. and dieth, and after the grandfather dieth, now the ſon is barred to haue the tenements by the warranty of the father. And this is called a lineal warranty, becauſe if no ſuch warranty were the ſon could not conuey the right of the tenements to him, nor

HEre Littleton putteth an example where the ſon muſt clayme the land as heire to his grandfather, and yet becauſe hee cannot make himſelfe heire to his grandfather but by his father, it is lineall.

1.H.4.33. 35.H.3.Gar.73.

And it is to bee obſerued that the warranty in this caſe deſcended vpon the ſon, before the diſcent of the right, which happened by the death of the grandfather in whom the right was, vide Littleton cap. de Releaſes, and after in this Chapter, Sect. 707. & 741.

¶ *Pier releaſe per ſon fait oue garranty.*

(f) It is to be knowne that vpon euery conueyance of Lands, Tenements, or Hereditaments, as vpon Fines, Feoffments, Gifts, &c. Releaſes and Confirmations made to the Tenant of the land,

(f) 14.E.3.number 108. 16.E.3.ibid.87. 18.E.3.ibid.6. 10.E.3.52. 21.E.3.27. 11.H.4.22. 44.E.3.Cent.de Voucb.22. 11.H.7.1. *Vid.Sect.*733.738.745.

land, a Warrantie may bee made, albeit he that makes the Releafe 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 Warrantie cannot be made to the Aſſignee.

que per meane del pier.

ſhew how hee is heire to the grandfather but by means of the father.

Sect. 707.

¶ Item ſi home ad iſſue deux fits & eſt diſſeiſie, & leigne fits releſſa al diſſeiſor per ſon fait oue garranty, &c. & mozuſt ſans iſſue, & apres ceo le pier mozuſt, ceo eſt vn lineall Garrantie al puiſne fits, pur ceo que coment q̃ leigne fits mozuſt en la vie le pier, vncoze pur ceo que per poſſibilitie, il puiſſoit eſtre q̃ il puiſſoit conueier a luy le title oĩ terre per ſon eigne frere, ſi nul tiel Garrantie fuiſſoit. Car il puiſſoit eſtre que apres la mozt le pier, leigne frere entroit en les tenements & moruſt ſans iſſue, & donque le puiſne fits conueyera a luy le title per leigne fits. Mes en tiel cas ſi le puiſne fits releſſe oue Garrantie a le diſſeiſor, et mozuſt ſans iſſue ceo eſt vn collaterall Garrantie al eigne fits, pur ceo que de tiel terre que fuit al pier, leigne per nul poſſibility poit conueyer a luy le title per meane de le puiſne fits.

ALſo if a man hath iſſue two ſonnes, and is diſſeiſed, and the eldeſt ſonne releaſe to the diſſeiſor by his deed with Warranty, &c. and dies without iſſue, and afterwards the father dieth, this is a lineall warrantie to the younger ſonne, becauſe albeit the eldeſt ſonne died in the life of the father, yet by poſſibility it might haue beene, that hee might conuey to him the Title of the Land by his elder brother, if no ſuch Warranty had beene. For it might bee that after the death of the father the elder brother entred into the Tenements and died without iſſue, and then the yonger ſonne ſhall conuey to him the title by the elder ſon. But in this caſe if the yonger ſon releaſeth with warr' to the diſſeiſor, & dieth without iſſue, this is a collateral waꝛ. to the elder ſon, becauſe that of ſuch lãd as was the fathers, the elder by no poſſibility can conuey to him the title by meanes of the yonger ſonne.

35.E.3.Gar.73.11.H.433. ¶ HEre Litl. putteth an example, where the heire that is to be barred by the Warranty, is not to make his diſcent by him that made the Warrantie, as in the caſe before; and yet becauſe by poſſibilitie he might haue claimed by the eldeſt ſonne, if hee had ſuruiued the father, & died without iſſue, & ſo the yonger brother might by poſſibilitie haue bẽn heire to him, the Warrantie is lineall.

And here it is to be noted, that the Warrantie of the eldeſt ſonne diſcended before the right diſcended, whereof more ſhall be ſayd 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. ¶ *Mes en tiel caſe le puiſne fits releaſe oue Garrantie, &c.* This warrantie in this caſe is collaterall to the eldeſt ſonne, and to the Iſſues of his bodie: but if the eldeſt ſonne dieth without Iſſue of his bodie, then the Warrantie is lineall to the Iſſues of the bodie of the youngeſt: and ſo the Warrantie that was collaterall to ſome perſons, may become lineall to others.

Sect. 708.

¶ Item ſi Tenant en le taile ad iſſue trois fits, et diſcontinue le Taile en fee, et le mulnes fits releſſa per ſon fait al Diſcontinuee, et oblige luy et ſes heirs a garrantie, &c. et puis le tenant en le Tayle mozuſt, et le mulnes fits mozuſt ſans iſſue, oze leigne fits eſt barre dauer aſcun recouerie per Briefe de Formedon, pur ceo que le garrantie del mulnes frere eſt collaterall a luy, entant que il ne poit per nul manner conueyer a luy per foꝛce del taile aſcun diſcent per le mulnes, et pur ceo cẽ vn colateral garrantie. Mes en cẽ Cas ſi leigne Fits deuie ſans iſſue, oze le puiſn̄ frere poit bien auer vn briefe de Formdon en le diſcender, et recouers meſme le fre, pur ceo que le Garrantie del mulnes eſt lineal al fits puiſne, pur ceo que il puiſſoit eſtre que p poſſibilitie le mulnes puiſſoit eſtre ſeiſie p foꝛce ol taile apꝛes la mozt ſon eigne frere, et

ALſo if Tenaunt in Taile hath iſſue three ſonnes, and diſcontinue the Tayle in fee, and the middle ſon releaſe by his Deed to the Diſcontinuee, and bind him and his heirs to warrantie, &c. and after the tenant in taile dieth, and the middle ſonne dieth without iſſue, now the eldeſt Son is barred to haue any recouerie by writ of *Formedon*, becauſe the Warrantie of the middle brother is collaterall to him, in as much as he can by no meanes conuey to him by force of the Tayle any diſcent by the middle, and therefore this is a collateral warrantie. But in this caſe if the eldeſt ſonne die without iſſue, now the yongeſt brother may well haue a writ of *Formdon* in the diſcender & ſhal recouer the ſame land, becauſe the Warrantie of the middle is lineall to the yongeſt ſonne, for that it might bee that by poſſibilitie the middle might be ſeiſed by force of the taile after the death of his eldeſt

¶ Hereby it alſo appeareth, That a Warranty that is collaterall in reſpect of ſome perſons, may afterwards become lineall in reſpect of others. Whereupon it followeth, * That a Collateral Warrantie doth not giue a Right, but bindeth onely a Right ſo long as the ſame continueth: but if the Collaterall Warrantie be determined, remooued, oꝛ defeated, the Right is reuiued; (f) And yet in an Aſſiſe the Plaintife hath made his title by a Collateral Warrantie.

8.R.2.Gar.101.

* 43.Aſſ.44.24.H.8.tit.Taile Br. 7.H.5.6.tit.Aſſ 359. 34.E.3.Droit 29.19.H.6 59 21.H.7.40.5.H.7.29. 3.H.7.9.b.

(f) 16.Aſſ.p.16.27.Aſſ.74. 29.Aſſ.50.43.Aſſ.8. 14.H.4.13.19.H.6.60.

¶ *Barre* is a woꝛd common as well to the Engliſh as to the French, of which cõmeth the noun, a bar Barra. It ſignifieth legally a deſtruction foꝛ euer, oꝛ taking away foꝛ a time of the Action of him that right hath. And Barra is an Italian woꝛd, and ſignifieth Barre, as we vſe it, and it is called a Plea in Barre, when ſuch a Barre is pleaded. Here Littl. putteth an example of a barre of an eſtate taile by a Collaterall Warrantie. It is to be obſerued, That in ſome Caſes an Eſtate taile may be barred by ſome Acts of Parliament made ſince Littleton woꝛte, and in ſome caſes an Eſtate taile cannot be barred, which might when Littleton woꝛte haue bene barred. Foꝛ example, If Tenant in Tayle leuie a Fine with Proclamations according to the ſtatute, this is a barre to the Eſtate taile, but not to him in reuerſion oꝛ remainder, if hee maketh his claime, oꝛ purſue his Action within fiue yeares after the ſtate Taile ſpent.

4.H.7.ca.24.& 32.H.8.c.36

(b) If a gift be made to the eldeſt ſonne, and to the heires of his bodie, the remainder to the father and to the heires of his bodie, the father dieth, the eldeſt ſonne leuieth a Fine with proclamations, & dieth with-

(b) Daliſon 2.El.& 7.El. Vi.li.3.fo.84.le caſe de Fines.

without iſſue, this ſhal barre the ſecond ſonne for the remainder deſcended to the eldeſt.

donque le puiſne freſt puiſſoit conueyer ſon title de diſcent per le mulnes.

brother, and then the yoũgeſt brother might conuey his title of diſcent by the middle brother.

If tenant in taile bee diſſeiſed, or haue a right of action, and the Tenant of the land leuy a fine with proclamations, and fiue yeares paſſe, the right of the eſtate taile is barred.

(b) 26.H.8.ca.13 33.H.8.ca.20. 5.E.6.ca.11. Stanf.Pl.Coron.18.

(b) If Tenant in taile in poſſeſſion, or that hath a Right of entrie bee attainted of high treaſon, the eſtate taile is barred, and the land is forfeited to the King; and none of theſe were barres when Littleton wrote. A lineall Warrantie and Aſſets was a barre to the eſtate tayle when Littleton wrote, whereof more ſhall be ſaid hereafter.

(c) 12.E.4.19. Taltarums caſe. (d) Vid.donant Sect.690. Vid.lib.3.fo.5. Cuppledikes caſe, & fo.94.97.106. Lib.1.fo.62. Capells caſe. Lib.2 fo.16.52.74 77. Lib.6.fo.41.32. lib 10 fo.37. Mary Portingtons caſe.

(c) A common recouery with a Voucher ouer, and a Iudgement to recouer in value was a barre of the eſtate taile when Littleton wrote. (d) And of Common recouerles there be two ſorts, viz. one with a ſingle Voucher, and another with a double Voucher, and that is more common and more ſafe: there may be more Vouchers ouer.

(e) 33.H.8.taile Br.41. Pl.Com.fo.555. 29.H.8.D.or 52. (f) 34.H.8 ca.20.

(e) If the King had made a gift in taile, and the Donee had ſuffered a Common recouery, this ſhould haue barred the eſtate taile in Littletons time, but not the reuerſion or remainder in the King. And ſo if ſuch a Donee had leuied a fine with Proclamations after the Statute of 4.H.7. this had barred the eſtate taile, although the reuerſion was in the King. (f) But ſince Littleton wrote a Common recouery had againſt Tenant in taile of the Kings gift, or ſuch a fine leuied by him, the reuerſion continuing in the Crowne, is no barre to the eſtate taile by the Statute of 34. H, 8. And where the words of the Statute bee (whereof the reuerſion or remainder at the time of ſuch recouery had ſhall be in the King) theſe Ten things are to be obſerued vpon the conſtruction of that act.

(g) Trin.23.Eliz.inter Druly & Aſhton reſolued in the Court of Wards. Lib.2.fol.15. & 16.in Wiſemans caſe.

Firſt, that the eſtate taile muſt be created by a King, and not by any ſubiect, albeit the King be his heire to the reuerſion, for the Preamble ſpeakes of gifts made to ſubiects, and none can haue ſubiects but the King. And alſo in the Preamble it is ſaid (for ſeruice done to the Kings of the Realme) and the body of the act referreth to the Preamble. (g) And therefore if the Duke of Lancaſter had made a gift in taile, and the reuerſion deſcended to the King, yet was not that eſtate tayle reſtrained by that Statute, and ſo of the like.

Lib 8.fol.77.78. The Lord Staffords caſe.

Secondly, If the King grant ouer the Reuerſion, then a recouery ſuffered will barre the ſtate tayle, becauſe the King had no Reuerſion at the time of the recouery.

Lib.2.fol.15.16.Wiſemans caſe. Lib.2.fol.52.Cholmeleis Caſe.

Thirdly, If the King make a gift in tayle, the remaynder in tayle, or grant the Reuerſion in tayle, keeping the Reuerſion in the Crowne, a recouery againſt Tenant in tayle in poſſeſſion ſhall neyther barre the eſtate tayle in poſſeſſion by the expreſſe purview of the Statute, nor by conſequence the ſtate in Remaynder or Reuerſion, for that the Reuerſion or Remaynder cannot be barred, but where the Eſtate tayle in poſſeſſion is barred.

Fourthly, If a ſubiect make a gift in tayle, the Remaynder to the King in fee, albeit the words of the Statute be, (whereof the Reuerſion or Remaynder of the ſame, &c.) yet ſeeing the eſtate in tayle was not created by a King, as hath beene ſaid, the eſtate tayle may be barred by a common recouery.

Fiftly, If Prince Henry Sonne of Henry the Seuenth, had made a gift in tayle, the Remaynder to Henry the Seuenth in fee, which Remaynder by the death of Henry the Seuenth had diſcended to Henry the Eighth, ſo as he had the Remaynder by diſcent, yet might Tenant in tayle, for the cauſe aforeſaid, barre the eſtate tayle by a common recouery.

Lib.2.fol.16.Wiſemans caſe

Sixtly, The word (Remaynder) in the Statute is a braine word, for the words of the preamble be, The King hath giuen or granted or otherwiſe prouided to his Seruants and Subiects. The word (Reuerſion) in the body of the Act hath reference to theſe words (giuen or granted) and (Remaynder) hath reference to theſe words (otherwiſe prouided.) As if the King in conſideration of Money, or of aſſurance of Land, or for other conſideration by way of prouiſion, procure a Subiect by Deed indented and inrolled to make a gift in tayle to one of his Seruants and Subiects for recompence of ſeruice, or other conſideration, the Remaynder to the King in fee, and all this appeare of Record, this is a good prouiſion within the Statute, and the Tenant in tayle cannot by a common recouery barre the eſtate tayle. So it is, if the Remaynder be limited to the King in tayle: but if the Remaynder be limited to the King for yeares, or for life, that is no ſuch Remaynder, as is intended by the Statute, becauſe it is of no Remaynder of continuance, as it ought to bee, as it appeareth by the preamble, and it ought to haue ſome affinitie with a Reuerſion, wherewith it is ioyned.

Seuenthly, Where a common recouery cannot barre the ſtate tayle by force of the ſaid Statute, there a fine leuied in fee, in tayle, for liues, or yeares with Proclamations according to the Statutes, ſhall not barre the ſtate tayle, or the iſſue in tayle where the Reuerſion or Re-

maynder

maynder is in the King, as is aforeſaid, by reaſon of theſe words in the ſaid Act, (the ſaid recouery or any other thing or things hereafter to be had, done, or ſuffered by or againſt any ſuch Tenant in tayle to the contrary notwithſtanding) which words include a fine leuied by ſuch a Donee, and reſtrayneth the ſame.

So reſolued Paſch. 31. *Eliz. Rot.* 1645. *in Nottleys caſe in Communi Banco.*

Eightly, But where a common recouery ſhall barre the eſtate tayle, notwithſtanding that Statute, there a fine with Proclamations ſhall barre the ſame alſo.

Ninthly, where the ſaid latter words of the Statute be (had, done, or ſuffered by or againſt any ſuch Tenant in tayle) the ſenſe and conſtruction is, where Tenant in tayle is partie or priuie to the Act, be it by doing or ſuffering that which ſhould worke the barre, and not by meere permiſſion he being a ſtranger to the Act.

As if Tenant in tayle of the gift of the King, the reuerſion to the King expectant, is diſſeiſed, and the Diſſeiſor leuie a fine, and fiue yeares paſſe, this ſhall barre the eſtate tayle: and ſo if a collaterall Anceſtor of the Donee releaſe with warrantie, and the Donee ſuffer the warranty to diſcend without any entry made in the life of the Anceſtor, this ſhall bind the Tenant in tayle, becauſe hee is not partie or priuie to any Act, either done or ſuffered by or againſt him.

So holden Trin. 39. *Eliz. Rot.* 1914. *inter Stratford & Dower in Communi Banco.*

Tenthly, Albeit the preamble of the Statute extend only to gifts in tayle made by the Kings of England before the Act (viz. hath giuen and granted, &c.) and the bodie of the Act referreth to the preamble (viz that no ſuch feined recouerie hereafter to be had againſt ſuch Tenant in tayle) ſo as this word (ſuch) may ſeeme to couple the bodie and the preamble together, yet in this caſe (ſuch) ſhall be taken for ſuch in equall miſchiefe, or in like caſe, and by diuers parts of the Act it appeareth, that the makers of the Act intended to extend it to future gifts, and ſo is the Law taken at this day without queſtion.

A recouery in a Writ of Right againſt Tenant in tayle without a Voucher is no barre of any gift in tayle.

33. E. 3. iudgement 252.
3. H. 6. 55. 10 H. 6 c.
14. E. 4. 5. b. 15. E. 4 8.
F. N. B. 134. b. Pl. Com 237.
18. E. 3. 95. F. N. B. 28. I.

If Tenant in tayle the remaynder ouer in fee ceſſe, and the Lord recouer in a Ceſſauit, this ſhall not barre the eſtate tayle, for the iſſue ſhall recouer in a Formedon: neither were eyther of theſe barres when Littleton wrote. But let vs now heare Littleton.

Section 709.

¶ Item ſi Tenant en taile diſcontinua le taile, & ad iſſue & deux, & luncle del iſſue releſſa al diſcontinuee oue Garrantie, &c. & mozust sans iſſue, ceo eſt collateral Garrantie al iſſue en tayle, pur ceo que le Garrantie diſcendist sur iſſue, le quel ne poit soy conueyer a le tayle per meane de son vncle.

ALſo if tenant in tayle diſcontinue the taile and hath iſſue and dieth, and the Vncle of the iſſue releaſe to the Diſcontinuee with Warrantie, &c. and dieth without iſſue, this is a collaterall Warrantie to the iſſue in tayle, becauſe the Warrantie diſcendeth vpon the iſſue, that cannot conuey himſelfe to the entayle by meanes of his vncle.

¶ The reaſon wherefore the Warrantie of the Vncle hauing no right to the Land entailed ſhall barre the iſſue in tayle is for that the Law preſumeth that the Vncle would not vnnaturally diſherit his lawfull heire being of his owne bloud, of that right which the Vncle neuer had, but came to the heire by another meane, vnleſſe hee would leaue him greater aduancement. Nemo præſumitur alienam poſteritatem ſuæ prætuliſſe. And in this caſe the Law will admit no proofe againſt that which the Law preſumeth. And ſo it is of all other Collaterall Warranties for no man is preſumed to doe any thing againſt nature.

Pl. Com. fol. 307. *a. in Shelſingeons caſe.*

(k) And the like holdeth in ſome other Caſes, as if a Rent be behind for twenty yeares, and the Lord make an Acquittance for the laſt that is due, all the reſt are preſumed to bee paid, and the Law will admit no proofe againſt this preſumption. (l) So if a man bee within the foure Seas, and his wife hath a child, the Law preſumeth that it is the child of the husband, and againſt this preſumption the Law will admit no proofe.

(k) *21. H. 4. 35. 10. Rich. Dier* 271.

(l) *7. H. 4. 9.*

(m) If a man that is innocent bee accuſed of Felony, and for feare flieth for the ſame, al-

(m) *3. E. 3. Coron Stanf.*

beit he iudicially acquitteth himſelfe of the Felonie, yet if it be found that he fled for the Felony, he ſhall notwithſtanding his innocencie forfeit all his Goods and Chattels, Debts and Duties, for as to the forfeiture of them the Law will admit no proofe againſt the preſumption in Law grounded vpon his flight: and ſo in many other Caſes. But yet the generall rule is, Quod ſtabitur preſumptioni donec probetur in contrarium. But as you ſee it hath many exceptions.

Bracton lib.1. cap.9.

(n) It hath beene attempted in Parliament, that a Statute might bee made, that no man ſhould be barred by a Warrantie collaterall, but where Aſſets diſcend from the ſame Anceſtor: but it neuer tooke effect, for that it ſhould weaken common Aſſurances.

(n) *Rot. Parliament. 50.E.3.num.77.*

Sect. 710.

¶ A *Diſſue deux files.* If husband and wife Tenants in especiall tayle haue issue a Daughter, and the wife die, the husband by a second wife hath issue another daughter, and diſcontinueth in fee and dieth, a collateral Anceſtor of the Daughters releaſeth to the diſcontinuee with warrantie and dieth, the warrantie diſcendeth vpon both daughters, yet the iſſue in taile ſhall be barred of the whole, for in iudgement of Law the entire warrantie diſcendeth vpon both of them.

5.E.2.Garr.78.lib.8.fol.41. Eyms Caſe.

¶ *Et leigne enter en lentiertie & ent fait vn feoffement, &c.* Here it is to bee vnderſtood, that when one Coparcener doth generally enter into the whole, this doth not deueſt the eſtate which diſcended by the Law to the other, vnleſſe ſhe that doth enter claymeth the whole, and taketh the profits of the whole, for that ſhall deueſt the freehold in Law of the other Parcener.

See before in the Chapter of Diſcent. Sect.398.

Otherwiſe it is after the Parceners be actually ſeiſed, the taking of the whole profits or any clayme made by the one cannot put the other out of poſſeſſion without an

¶ Item ſi le tenant en taile ad iſſue deux files & moruſt, et leigne entra en le entierty & ent fait vn feoffment ẽ fee oue garrantie, &c. et puis leigne file moruſt ſans iſſue, en ceſt cas le puiſne file eſt barre quant al vn moity, et quant al auter moity el neſt pas barre. Car quant a la moity que affiert a le puiſne file, el eſt barre, pur ceo que quant a cel part el ne poit conueyer le diſcent per my le maine de ſon eigne ſoer et pur ceo quant a cel moity, ceo eſt vn collaterall Garranty. Mes quant al auter moity que affiert a ſon eigne ſoer, le Garranty neſt pas barre a le puiſne ſoer, pur ceo q̃ el poit conueyer ſ̃ diſcent, quant a cel moity que affiert a ſon eigne ſoer per meſne le eigne ſoer, iſſint quant a ceſt moity que affiert al eigñ ſoer, le Garranty

Alſo if the Tenant in tayle hath iſſue two daughters and dieth, and the elder entreth into the whole, and thereof maketh a feoffment in fee with warrantie, &c. and after the elder daughter dieth without iſſue. In this caſe the yonger daughter is barred as to the one moitie and as to the other moitie ſhe is not barred. For as to the moitie which belõgeth to the yonger daughter, ſhee is barred, becauſe as to this part ſhee cannot conuey the diſcent by means of her elder ſiſter, and therefore as to this moitie, this is a collaterall Warrantie. But as to the other moitie, which belongeth to her elder ſiſter, the Warrantie is no bar to the younger ſiſter becauſe ſhe may conuey her diſcent as to that moitie which belongeth to her elder ſiſter by the ſame elder ſiſter, So as to this moitie which be-

ty eſt lineall al puiſne ſoer.

longeth to the elder ſiſter the Warrantie is lineal to the yonger ſiſter.

Sect. 711.

¶ E ¶ nota q̄ quant a celuy que demanda fee ſimple per aſcun ō ſes auncesters, il ſerra barre per Garranty lineall que diſcendiſt ſur luy, ſinon que ſoit reſtraine per aſcun eſtatute.

AND note, that as to him that demandeth fee ſimple by any of his Anceſtors he ſhall be barred by Warrantie lineall which diſcendeth vpon him, vnleſſe he be reſtrained by ſome Statute.

Sect. 712.

¶ M Es il que demaunde fee taile per briefe de Formedon & diſcender, ne ſerra my barre per lineall Garrantie, ſinon que il ad aſſets per diſcent & fee ſimple per meſm̄ launceſter que fiſt le Garranty. Mes collateral Garranty eſt barre a celuy que demanda fee, et auxy a celuy que demaunda fee tayle ſans aſcun auter diſcent de fee ſimple, ſinon en caſes queux ſont reſtraines per les eſtatutes, & auters caſes pur certaine cauſes, come ſerra dit en apres.

BVt hee that demandeth Fee tayle by Writ of *Formedon* in *diſcender*, ſhall not bee barred by lineall Warrantie, vnleſſe hee hath aſſets by diſcent in fee ſimple by the ſame Anceſtor that made the Warrantie. But collaterall Warrantie is a barre to him that demandeth fee, and alſo to him that demandeth fee Tayle without any other diſcent of fee ſimple, except in caſes which are reſtrained by the Statutes, and, in other caſes for certaine cauſes, as ſhalbe ſaid hereafter.

actuall putting out or diſſeiſin. And in this caſe of Littleton, when one Coparcener entreth into the whole, and maketh a feoffment of the whole, this deueſteth the freehold in Law out of the other Coparcener.

Now ſeeing y entry in this caſe of Lit. deueſted not the eſtate of the other Parcener, if no further proceeding had beene, then it is to bee demanded, that ſeeing the feoffment doth worke the wrong, & bee the wrong either a diſſeiſin or in nature of an abatement, how can the warrantie annexed to that feoffment that wrought the wrong be collaterall or bind the youngeſt Siſter for her part? To this it is anſwered, that when the one ſiſter entreth into the whole, the poſſeſſion being void, and maketh a feoffment in fee, this Act ſubſequent doth ſo explaine the entrie precedent into the whole, that now by conſtruction of Law, ſhee was only ſeiſed of the whole, and this feoffment can bee no diſſeiſin, becauſe the other ſiſter was neuer ſeiſed, nor any abatement, becauſe they both made but one heire to the Anceſtor, and one Freehold and Inheritance diſcended to them. So as in iudgement of Law the warranty doth not commence by diſſeiſin or by abatement, and without queſtion her entrie was no intruſion. *Pl.Com.543.*

Tenant in tayle hath iſſue two daughters, and diſcontinueth in fee the youngeſt diſſeiſeth the diſcontinuee to the vſe of her ſelfe and her ſiſter, the Diſcontinuee ouſteth her, againſt whom ſhe recouereth in an Aſſiſe, the eldeſt agreeth to the Diſſeiſin, as ſhe may againſt her ſiſter, and become Joyntenant with her. And thus is the Booke in the 21. Aſſiſe (n) to be intended, the caſe being no other in effect; but A diſſeiſeth the one to the vſe of himſelfe and B, B agreeth, by this he is Joyntenant with A. (n) 21. Aſſ. 17.

¶ *Et nota que quant a celuy que demanda fee ſimple,&c.* **In theſe two** Sections there are expreſſed foure legall concluſions:

3.E.3.22. 4.E.3.28.30. 6.E.3 56. 7.E.3.54 57. 9.E 4 6 10.E.3.14. 15.e.. *Garran.*27. 20 E.3 *fold* 29. 25.E.3.50. 27.E.7.83.41.E 3.*Garr.*16. *Mich* 38 E.3 *Coram Rege Abbat de Colcheſters caſe.* 45. *Aſſ* 6.Pl.*Com.*554. 19.E.2 10. *Vid.Sect.*703.747.

Firſt, That a lineall Warrantie doth bind the right of a Fee ſimple.

Secondly, That a lineall Warrantie doth not bind the right of an Eſtate taile, for that it is reſtrained by the Statute of Donis conditionalibus.

Thirdly, That a lineall Warrantie and aſſets is a barre of the right in Taile, and is not reſtrained (as hath beene ſayd) by the ſayd Act.

Fourthly, That a Collaterall Warrantie made by a Collaterall Anceſtor of the Donee, doth bind the right of an eſtate taile, albeit there be no Aſſets, and the reaſon thereof is vpon the Statute of Donis conditionalibus, for that it is not made by the Tenant in taile, &c. as the lineall Warranty is.

To this may be added, that the Warranty of the Donee in taile which is collaterall to the Donor, or to him in remainder, being heire to him doth binde them without any aſſets. For though the alienation of the Donee after iſſue doth not barre the Donor, which was the miſchiefe prouided for by the Act, yet the Warranty being collateral doth barre both of them, for the Act reſtraineth not that Warranty, but it remaineth at the Common Law as Littleton after ſaith: and in like manner the Warranty of the Donee doth barre him in the remainder.

¶ *Aſſets.* (id eſt) quod tantundem valet, **ſufficient by diſcent.**

*Fleta lib.*2.ca 65. *Britton* 184. 4 E.3.*Garr.*63. 16.E.3 *Aſſets* 4. 42.E.3.9. 7.H.6.3. 21 H.4 20.

Note Aſſets requiſite to make a lineall Warranty a barre muſt haue fiue qualities. Firſt, it muſt be aſſets (that is) of equall value, or more at the time of the Diſcent. Secondly, it muſt be of diſcent, and not by purchaſe or gift. Thirdly, as Littleton here ſaith, it muſt be aſſets in fee ſimple and not in taile, or for another mans life. Fourthly, it muſt deſcend to him as heire to the ſame Anceſtor that made the Warranty as Littleton alſo here ſaith. Fiftly, it muſt be of lands or tenements, or rents or ſeruices valuable, or other profits iſſuing out of lands or tenements and not perſonall inheritances as Annuities, and the like. Sixtly, it muſt be in ſtate or intereſt, and not in vſe or right of actions or rights of entrie, for they are no aſſets vntill they be brought into poſſeſſion. (a) But if a rent in fee ſimple iſſuing out of the land of the heire deſcend vnto him whereby it is extinct, yet this is aſſets, and to this purpoſe hath in iudgement of Law a continuance.

24.E.3.47.

(a) 21.E 3. *Aſſets* 5. 22.E.3 *Recouery in value* 17. *E.b.2.fo* 31 *Butler & Bakers caſe*

(b) 14.E.2 *Meſne* 7. *Regiſt.*ca 263.

(c) *Fleta lib.*2.ca 65. *Britton,fo.*185. *Ex'ors. mauern.*3.H.7.37. 32.H.6.21. 33.E.3.*Gar.*102

(b) A Seigniory in free Almoigne is no aſſets, becauſe it is not valuable, and therefore not to be extended, and ſo it ſeemeth of a Seigniory of Homage and fealty But an Aduowſon is Aſſets whereof (c) Fleta ſaith; Item de Eccleſiis quæ ad donationem domini pertinent quot ſunt, & quæ, & vbi, & quantum valeat quælibet Eccleſia per annum ſecundum veram ipſius æſtimationem, & pro marca ſolidus extendatur, vt ſi Eccleſia centum marcas valeat per annum, ad centum ſolidos extendatur aduocatio per annum. And herewith agreeth Britton, and others haue reckoned a ſhilling in the pound, and Britton addeth further, Mes ſi la aduowſon duiſt eſtre vendue, adonques ſerr' le reaſonable price ſolonque le value en vn an a cel extent. Wherein it is to be obſerued, that Antiquity did euer reckon by markes.

Sect. 713.

¶ Item ſi terre ſoit done a vn home et a les heires de ſon corps engendres. le quel prent feme, et ont iſſue fits enter eux, & le baron diſcontinua le taile en fee, et deuy, et puis la feme releſſa al diſcontinuee en fee oue garrantie, &c. et mourust, & le garrantie diſcendist a le fits, c'eſt vn collateral garrantie.

ALſo if land bee giuen to a man and to the heires of his body begotten, who taketh wife, and haue iſſue a ſonne betweene them, and the husband diſcontinues the taile in fee and dieth, and after the wife releaſeth to the Diſcontinuee in fee with warranty, &c. & dyeth, and the warrantie diſcends to the ſon, this is a collaterall warranty.

¶ THis caſe ſtandeth vpon the ſame reaſon that diuers other formerly put by our Author, doe, viz. that becauſe the heire claymeth only from the father Per formam doni, and nothing from the wife, that therefore the warrantie of the wife is collaterall, and the warrantie made by any Anceſtor male or female of the wife bindeth, and here the warrantie deſcended after the diſcent of the right.

Sect.

Section 714.

¶ Mes ſi tenements ſoyent dones a le baron et a ſa feme, et a les heires de lour deux corps engendres, queux ont iſſue fits, et le baron diſcontinua le taile et morust, et puis la feme releſſa oue garrantie et morust, ceſt garranty neſt forſque vn lineal garranty a le fits: Car le fits ne ſerra barre en cco cas de ſuer ſon bre de Formedon, ſinon que il ad aſſets per diſcent en fee ſimple per ſa mere, pur ceo que lour iſſue en briefe de Formedon couient conueyer a luy le droit come heire a ſon pere et a ſa mere de lour deux corps engendres, per forme del done, et iſſint en tiel caſe, le garrantie de le pere, et le garrantie de la mere ne ſont forſque lyneal garr al heire, &c.

BVt if lands be giuen to the husband & wife, and to the heires of their two bodies begotten, who haue iſſue a ſon, and the husband diſcontinue the taile and dyeth, and after the wife releaſe with warranty and dieth, this warranty is but a lineall warranty to the ſon: For the ſonne ſhall not be barred in this caſe to ſue his writ of *Formedon*, vnleſſe that he hath Aſſets by diſcent in fee ſimple by his mother, becauſe their iſſue in the writ of *Formd.* ought to conuey to him the right as heire to his father and mother of their two bodies begotten *Per formam doni*, and ſo in this caſe the warranty of the father and the warrantie of the mother are but lineall warranty to the heire, &c.

¶ HEre is a point worthy of obſeruation, that albeit in this caſe the iſſue in taile muſt claime as heire of both their bodyes, yet the warranty of either of them is lineall to the iſſue, and yet the iſſue cannot claime as heire to either of them alone, but of both. 35.H.3.tit. Garr.73.

If lands be giuen to a man and to a woman bamarried, and the heires of their two bodyes, and they entermarry, and are diſſeiſed, and the husband releaſe with warranty, the wife dieth, the husband dieth, albeit the Donees did take by moyties, yet the Warranty is lineall for the whole, becauſe as our Author here ſaith, the iſſue muſt in a Formedon conuey to him the right as heire to his father and his mother of their two bodyes engendred, and therefore it is collaterall for no part.

Sect. 715.

¶ ET nota que en cheſcun cas ou home demanda tenements en fee taile per briefe de Formedon, ſi aſcun del iſſue en le taile que auoit poſſeſſion ou que nauoit aſcun poſſeſſion fait vn garranty, &c. ſi celuy que ſuiſt le briefe ô Formedon puiſſoit per aſcun poſſibility per matter que puiſſoit eſtre en fait, conueyer a luy per my celuy que fiſt le garranty

ANd note that in euery caſe where a man demandeth lands in fee taile by Writ of *Formedon* if any of the iſſue in taile that hath poſſeſſion, or that hath not poſſeſſion make a warranty, &c. if hee which ſueth the writ of *Formedon* might by any poſſibility by matter which might bee in fait, conueye to him, by him that made the warranty *Per formam doni*, this is a li-

ranty perfoꝛme del done, ceo eſt vn lineal garr̄, & nēy collateral.

neall warranty and not collaterall.

35. E. 3. Garr. 73.

¶ Of this ſufficient hath bene ſaid before, Sed nunquam nimis dicitur quod nunquàm ſatis dicitur, for it is a point of great vſe and conſequence.

Sect. 716, 717.

¶ Item ſi home ad iſſue trois fits, et il dona Terre al eigne fits, a auer et tener a luy et a les heires de ſon coꝛps engendꝛes, et pur default de tiel Iſſue, le remainder al mulnes fits a luy, et a les heires de ſon coꝛps engendꝛes, et pur default d tiel iſſue del mulnes, l remainder al puiſne fits et les heires de ſon coꝛps engendꝛes, en ceſt cas ſi leigne diſcontinua le Tayle en fee, et oblige luy et ſes heyꝛes a garrantie, et moꝛuſt ſans Iſſue, ceo eſt vn collaterall Garrantie al mulnes fits, et ſerra barre a demaundeꝛ meſme la Terre per foꝛce del remainder, pur ceo que le remainder eſt ſon title, et ſon eigne frere eſt collaterall a cel title, que commence per foꝛce del remainder. En meſme le maner eſt, ſi le mulnes fits auoit meſme la terre per foꝛce del remainder, pur ceo que ſon eigne frere ne fiſt aſcun diſcontinuance, mes moꝛuſt ſans iſſue de ſon coꝛps et puis l mulnes fait vn diſcontinuance oue garrantie, &c. et moꝛuſt ſans iſſue, ceo eſt vn collaterall Garrantie a le puiſne fits. Et auxy en ceſt caſe ſi aſcun de les dits fits ſoit diſſeiſie, et le pere que fiſt le done, &c. releſſa a le Diſſeiſoꝛ tout ſon dꝛoit oue Garrantie, ceo eſt vn collaterall garrantie a celuy fits ſur que le Garranty diſcendiſt, Cauſa qua ſupra.

ALſo if a man hath Iſſue three ſonnes, and giueth land to the eldeſt ſonne, to haue and to hold to him and to the heires of his bodie begotten, and for default of ſuch iſſue, the remainder to the middle ſonne, to him and to the Heires of his bodie begotten, and for default of ſuch iſſue of the middle ſonne, the remainder to the yongeſt Son and to the heires of his bodie begotten; In this caſe if the eldeſt diſcontinue the taile in fee, & bind him & his heires to Warrantie, and dieth without iſſue, this is a collaterall warrantie to the middle ſon, & ſhal be a bar to demand the ſame land by force of the Rem', for that the remainder is his title, and his elder brother is collaterall to this title, which commenceth by force of the remainder. In the ſame manner it is if the middle ſon hath the ſame land by force of the Remainder, becauſe his eldeſt brother made no diſcontinuance, but died without Iſſue of his bodie, and after the middle make a diſcontinuance with warrantie, &c. and dieth without iſſue, this is a collaterall warrantie to the youngeſt ſon. And alſo in this caſe if any of the ſayd ſonnes be diſſeiſed, and the Father that made the gift, &c. releaſeth to the diſſeiſor all his right with warr', this is a collaterall warranty to that Son vpon whom the warranty diſcendeth, *Cauſa qua ſupra.*

Sect.

Sect. 717.

¶ ET ſic nota, Que lou home que eſt collateral a le Title, et ceo releaſe oue Garrantie, &c. ceo eſt vn Collaterall Garrantie.

AND ſo note, That where a Man that is collaterall to the Title, and releaſeth this with Warrantie,&c. this is a collaterall Warrantie.

¶ HEre it appeareth, That it is not adiudged in Law a Collaterall warrantie, in reſpect of the bloud, for the Warrantie may be collaterall, albeit the bloud be lineall, and the Warrantie may be lineall, albeit the bloud be collaterall, as hath beene ſaid. But it is in Law deemed a Collaterall warrantie, in reſpect that he that maketh the Warrantie is collaterall to the title of him vpon whom the warrantie doth fall, as by the example which Littleton here putteth, and by that which hath beene formerly ſayd, is manifeſt. 8.E.2.Ger.101.*V.Sect.704*

Sect. 718.

¶ ITem ſi Pier dona Terre a ſon eigne fits, a auer & teñ a luy & a ls hẽz Males de ſon corps engendrez, le Remainder a le ſecond fits, &c. ſi leigne fits alienaſt en fee oueſq; Garrantie, &c. et ad iſſue female, et moruſt ſans iſſue male, ceo neſt pas collaterall Garrantie al ſecond fits, car il ne ſerra barre de ſ̃ action de Formedon en le remainder, pur ceo que le Garranty diſcendiſt al file dl eigñ fits, et nemy al ſecond fits. Car cheſcun Garrantie que diſcendiſt, diſcendiſt a celuy que eſt heire a luy que fiſt le Garrantie per le Commõ Ley.

ALſo if a father giueth land to his eldeſt ſonne, to haue and to hold to him and to the Heirs males of his bodie begotten, the remainder to the ſecond ſonne,&c. if the eldeſt ſonne alieneth in fee with warranty,&c. & hath iſſue female, & dieth without Iſſue male, this is no collaterall warrantie to the ſecond Son, for he ſhall not be barred of his Action of *Formedon* in the Remainder, becauſe the warr̃ diſcended to the daughter of the elder ſon,& not to the ſecõd ſon: for euery warrãty which diſcends, diſcẽdeth to him that is heir to him who made the Warrantie by the Common Law.

¶ HEre is rehearſed a Maxime of the Common law, that euerie warrantie doth diſcend vpon him that is heire to him that made the warranty, by the Common Law, as by this example it appeareth. *V.Sect.*3.603.735.736.737.

¶ *A celuy que eſt heire a luy que fiſt le Garrantie per le Commõ ley, &c.* Hereupon many things worthie to bee knowne are to be vnderſtood. (a) Firſt, That if a man infeoffeth another of an acre of ground with warrantie, and hath Iſſue two ſonnes, and dieth ſeiſed of another acre of land, of the nature of Burrough English, the feoffee is impleaded, albeit the warrantie diſcendeth onely vpon the eldeſt ſonne, yet may hee vouch them both; the one as Heyre to the warrantie, & the other as heire to the land: for if he ſhould vouch the eldeſt ſonne onely, then ſhould hee not haue the fruit of his warrantie, viz. a recouerie in value, the yongeſt ſonne only he cannot vouch, becauſe hee is not heire at the Common Law, vpon whom the warrantie diſcendeth. (a) 40.E.3.14.

(b) So it is of heyres in Gauelkind, the eldeſt may be vouched as heire to the warrantie, and the other ſonnes in reſpect of the Inheritance diſcended (b) 22.E.4.ca.4.E.3.35. 27.E.3.c.1.c.18.E.3. Dier.

ded vnto them. (c) And in like ſort, the heire at the Common Law, and the heire of the part of the mother ſhall be vouched. But the heire at the Common Law may bee vouched alone in both theſe caſes, at the election of the Tenant, & ſic de ſimilibus. (d) In the ſame manner if a man dieth ſeiſed of certaine lands in fee, hauing iſſue a ſonne and a daughter by one Venter, and a ſonne by another, the eldeſt ſonne entreth and dieth, the land diſcends to the ſiſter, In this caſe the warrantie diſcendeth on the ſonne, and he may be vouched as heire, and the Siſter as heire of the Land: In which and the other caſe of Burrough English, the ſonne and heyre by the Common Law hauing nothing by diſcent, the whole loſſe of the recouerie in value lieth vpon the heires of the land, albeit they be no heires to the warrantie. Then put the caſe that there is a warrantie paramount, who ſhall deraigne that warrantie? and to whom ſhall the recompence in value goe? Some haue ſayd, That as they are vouched together, ſo ſhall they auouch ouer, and that the recompence in value ſhal enure according to the loſſe, and that the effect muſt purſue the cauſe, as a recouerie in value by a warrantie of the part of the mother ſhall goe to the heire of the part of the mother, &c.

(c) 40.Aſſ.4. 38.E.3.22.

(d) 32.E.3.Vouch.94. 35.H.6.33.

Pl.Com.515.

Some others hold, That it is againſt the Maxime of Law, that they that are not heyres to the warrantie ſhould ioyne in Voucher, or to take benefit of the warrantie which diſcended not to them, but that the heire at the Common Law, to whom the warrantie diſcended ſhall deraigne the warrantie, and recouer in value, and that this doth ſtand with the rule of the Common Law.

Others hold the contrarie, and that this ſhould be both againſt the rule of Law, and againſt reaſon alſo; for by the rule of Law (e) the Vouchee ſhall neuer ſue to haue execution in value, vntill execution be ſued againſt him. But in this caſe Execution can neuer be ſued againſt the heire at the Common Law, therefore he cannot ſue to haue execution ouer in value. Secondly, It ſhould be againſt reaſon, that the heire at the Common Law ſhould haue totum lucrum, and the ſpeciall heires totum damnum. I find in our Bookes, (f) that this reaſon is pœlded, that the ſpeciall heire ſhould not be vouched onely; for (ſay they) if the ſpeciall heires ſhould bee vouched onely, then could not they deraigne the warrantie ouer, which ſhould bee miſchieuous, that they ſhould loſe the benefit of the warrantie, if they ſhould be vouched onely. But if the heire at the Common law were vouched with them, (as by the law he ought) all might bee ſaued; and therefore ſtudie well this poynt how it may be done.

(e) 17 E.2.tit.Recouer.in value 33. 1.E.3.12. 33 Edw.3. Iudgm.222, 14.E.3.tit.160. 10 E.3.52.18.E.3 51. Li.1.fo.96.Shelleys caſe. (f) 32.E.3.Vouch.94. 8 Greene.

(g) Vide Pl.Com fo.514.

(g) If Tenant in generall Taile be, and a common recouerie is had againſt him and his wife, where his wife hath nothing, and they vouch, and haue iudgement to recouer in value, tenant in Taile dieth, and the wife ſurmaieth; for that the Iſſue in Taile had the whole loſſe, the recompence ſhal enure wholly to him, and the wife, albeit ſhe was partie to the iudgement, ſhall haue nothing in the recompence, for that ſhe loſeth nothing.

(h) 17.E.3.59.20.E.3. Vouch.129.32.E.3.Vouch.94 5.H.7.2.

(h) If the Baſtard eigne enter and take the profits, he ſhall be vouched onely, and not the baſtard & the Mulier, becauſe the Baſtard is in apparance heire, and ſhall not diſable himſelfe.

(i) 11.H.7.12. 11.E.3.tit. Det.7.Dy.5.El.238.

(i) If a man be ſeiſed of lands in Gauelkind, and hath iſſue three ſonnes, and by Obligation bindeth himſelfe and his heires, and dieth, an Action of Debt ſhall be maintainable againſt all the three ſonnes, for the heire is not chargeable vnleſſe he hath lands by diſcent.

(k) 11.H.7.12.

(k) So if a man be ſeiſed of Land on the part of his mother, and bind himſelfe and his heirs by Obligation, and dieth, an Action of Debt ſhall lie againſt the heire on the part of the mother, without naming of the heire at the Common Law. And ſo note a diuerſitie betweene a perſonall lien of a Bond, and a reall lien of a warrantie.

Sect. 719.

(l) 24.E.3.36. 27.E.3.age 108. 38.E.3.16. 40.E.3.9. 37.H.8.Br.Nonſuit.1.& 40. & tit.Done & Rem.61.

THere it appeareth, That (l) whenſoeuer the Anceſtor taketh any eſtate of freehold, a limitation after in the ſame Conueyance to any of his heires, are words of limitation, and not of purchaſe, albeit in words it be limitted by way of remainder: and therefore heere the remainder to the heires Females veſteth in the Tenant in Taile himſelfe. And it is good to bee

NOta, ſi fre ſoit done a vn home, et a les heires males de ſon corps engendres, et pur default de tiel Iſſue, le rem ent a ſes heyres females de ſon corps engendres, et puis le Donee

NOte, if Land bee giuen to a man and to the heirs males of his bodie begotten, and for default of ſuch Iſſue the Remainder thereof to his Heires females of his body begotten, and after the

donee en le taile fait feoffment en fee ouesque garrantie accordant, & ad issue fits et file et mourust, cel Garrantie nest forsque lineall Garrantie a le fits a demaunder per briefe ô Formedon en le discender, & auxy il nest forsque lineall a l'fil, a demaunder meisme la terre per briefe de Formedon en le remaynder, sinon frere deuiast sãs issue mak, pur ceo que el claime come heire female de la corps son pere engendres. Mes ẽ cest cas, si son frere en sa vie releasast al discontinuee, &c. oue garranty, &c. & puis mourust sauns issue, ĩ est vn collateral garrantie a le file, pur ĩ q̃ el ne puit conueyer a luy le droit que el ad per force de le remaynder per ascun meane de discent per son frere, pur ceo que le frere est collaterall a le title sa soer, & pur ceo son Garrantie est collaterall, &c.

donee in tayle maketh a feoffment in fee, with warrantie accordingly and hath issue a sonne and a daughter and dieth, this warrantie is but a lineall warrantie to the Son to demand by a Writ of *Formedon* in the discender, and also it is but lineall to the Daughter to demand the same Land by Writ of *Formedon*, in the remaynder, vnlesse the brother dieth without issue male, because shee claymeth as heire female of the bodie of her father ingendred. But in this case, if her brother in his life release to the discontinuee, &c. with warrantie, &c. and after dieth without issue this is a collateral warrantie to the daughter, because shee cannot cõuey to her the right which shee hath by force of the remaynder by any meanes of discent by her brother, for that the brother is collateral to the title of his sister, and therefore his warranty is collaterall, &c.

knowne, that for Learning sake, and to find out the reason of the Law, these limitations to the heires males of the bodie, and after to the heires females of the bodie may bee put, but it is dangerous to vse them in Conueyances, for great inconuentences may arise thereupon, for if such a tenant in tayle hath issue diuers Sonnes, and they haue issue diuers Daughters, and likewise if Tenant in tayle hath issue diuers Daughters, and each of them hath issue Sonnes, none of the Daughters of the Sonnes, nor the Sonnes of the Daughters shall euer inherit to either of the said estates tayle: and so it is of the Issues of the Issues, for that (as hath beene said) the Issues inheritable must make their clayme either only by Males, or only by females, so as the Females of the Males, or Males of the Females are wholy excluded to bee inheritable to eyther of the said Estates tayle: but where the first limitation is to the heires Males, let the limitation be, for default of such issue to the heires of the bodie of the Donee, and then all the Issues, bee they Females of Males, or Males of Females are inheritable.

If a man giue Lands to a man, to haue and to hold to him and the heires Males of his bodie, and to him and to the heires Females of his bodie, the estate to the heires Females is in remaynder, and the Daughters shall not inherit any part, so long as there is Issue Male, for the estate to the heires Males is first limited, and shall bee first serued, and it is as much to say, and after to the heires females, and Males in construction of Law are to bee preferred.

1. H. 6. 4. 11. H. 6. 13. 14. 28. H. 6. *deuise* 18. *Statham. Deuise. Pl. Com.* 414. 20. H. 6. 43. *Vide Litt. cap. taile. Sect.* 24. 27. H. 8. *Br, done & rem.* 61. *& tit. nosme* 1. & 40.

Sect. 720.

¶ Item ieo ay oye dire que en temps le Roy Richard le ſecond, il y fuit vn Juſtice del Common Banke, demurrant en Kent, appel Richel, q̄ auoit iſſue diuers fits, & ſon entent fuit, que ſon eigne fits aueroit certaine terres & tenements a luy, et a les heires de ſon corps engendres, et pur default diſſue, le remainder a le ſecond fits, &c. & iſſint a l' tierce fits, &c. & pur ceo que il voile que nul de ſes fits alieneroit, ou ferroit Garrantie pur barrer ou leder les auters, queux ſerront en le remainder, &c. il fiſt faire tiel Indenture, a tiel effect, ceſtaſcauoir, que les terres & tenements fueront dones a ſon eigne fits ſur tiel condition que ſi leigne fits aliena en fee, ou en fee tayle, &c. ou ſi aſcun de ſes fits alienaſt, &c. que adonque lour eſtate ceſſera, & ſerroit void, et q̄ adonque meſmes les terres & tenements immediate remaindront a le ſecond fits, et a les heires de ſon corps engendres & ſic vltra, le remaind as auters de ſes fits, et liuery de ſeiſin fuit fait accordant.

ALſo I haue heard ſay, that in the time of King *Richard* the ſecond, there was a Iuſtice of the Common Place dwelling in *Kent*, called *Richel*, who had iſſue diuers ſonnes, and his intent was that his eldeſt ſonne ſhould haue certaine Lands and Tenements to him and to the heires of his bodie begotten, and for default of iſſue, the remainder to the ſecond ſonne, &c. and ſo to the third ſonne, &c. and becauſe hee would that none of his ſonnes ſhould alien or make Warrantie to barre or hurt the others that ſhould be in the remainder, &c. he cauſeth an Indenture to be made to this effect, *viz.* That the Lands & Tenements were giuen to his eldeſt Son vpon ſuch condition that if the eldeſt ſonne alien in fee or in fee tayle, &c. or if any of his ſonnes alien &c. that then their eſtate ſhould ceaſe and be void, and that then the ſame Lands and Tenements immediately ſhould remayne to the ſecond ſonne, and to the heires of his bodie begotten, *& ſic vltra*, the remaynder to his other ſonnes, and liuerie of ſeiſin was made accordingly.

¶ *Eo ay oye dire, &c.* Thoſe things that one hath by credible heare ſay, by the example of our Author are worthy of obſeruation. This inuention deuiſed by Juſtice Richel in the Raigne of King Richard the Second, who was an Iriſhman borne, and the like by Thirning Chiefe Juſtice in the Raigne of H.4. were both full of imperfections for Nihil ſimul inuentum eſt & perfectum, and ſæpe viatorem noua non vetus orbita fallit. And therefore new inuentions in Aſſurances are dangerous. And hereby it may appeare, that it is not ſafe for any man (be he neuer ſo learned) to bee of counſell with himſelfe in his owne caſe, but to take aduice of other great and learned men.

21.H.6.fol.33.lib.6.fo.42.b. Sir Anthony Mildmeyes caſe.

Non proſunt Dominis quæ proſunt omnibus, artes.

And the reaſon hereof is, in ſuo quiſque negotio hebetior eſt, quam in alieno.

(m) And the ſame Judge in his owne name, &c. brought an Action vpon his caſe againſt others and obtained a verdict, ſo as the right of the cauſe was tried on his ſide, yet for that vpon his owne ſhewing in his Count the Action did not lie, Ex aſſenſu omnium Iuſticiariorum præter querentem Richel iudgement was giuen againſt him, but let vs now leaue this Judge for example to others, and let vs returne to our Author.

(m) 2.H.4.fo.11.in Allins ſur le caſe.

Sect.

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ſon in fee take wife, now by act in Law is the wife intitled to the third preſentation, if the huſband dye before the huſband grant the third preſentation to another, the huſband die, the heire ſhall preſent twice, the wife ſhall haue the third preſentation, and the Grantee the fourth, for in this caſe it ſhall be taken the third preſentation, which he might lawfully grant, and ſo note a diuerſitie betweene a title by act in Law, and by act of the party, for the act in Law ſhall worke no preiudice to the Grantee.

¶ *Auxi ſi tiel remainder ſerroit bone, &c.* **The force of this argument** is, that ſeeing the eſtate of the Alienee (albeit the words of the Condition be, that the ſtate ſhould ceaſe and be voide) being an eſtate of inheritance in lands or tenements cannot ceaſe or be voide before the ſtate be defeated by entrie, then if this remainder ſhould bee good, then muſt it giue an entrie vpon the Alienee to him that had no right before, which ſhould bee againſt the expreſſe rule of Law, viz. that an entrie cannot be giuen to a ſtranger to auoide a voydable act, as before hath beene ſaid in the Chapter of Conditions.

¶ *Le quel ſerr' enconuenient.* **Here note three things. Firſt, that** whatſoeuer is againſt the rule of Law is inconuenient. Secondly, that an argument Ab inconuenienti is ſtrong to proue it is againſt Law, as often hath beene obſerued. Thirdly, that new inuentions (though of a learned Iudge in his owne profeſſion) are full of inconuenience Periculoſum eſt res nouas & inuſitatas inducere. *Vid. Sect. 87. &c.*

Eventus varios res noua ſemper habet.

Sect. 723.

¶ A tierce cauſe eſt, quant la condition eſt tiel, que ſi leigne fits alienaſt, &c. que ſon eſtate ceſſera, ou ſerroit voide, &c. donqes apres tiel alienation, &c. poit le donor enter per force de tiel condition, coñ il ſemble, & iſſint le donor ou ſes heires en tiel caſe doient pluis toſt auer la fee que le ſecond fits, que nauoit aſcun droit deuant tiel alienation, & iſſint il ſemble que tiels remainders en le cas auantdit ſont voides.

THe third cauſe is, when the condition is ſuch, that if the elder ſonne alien, &c. that his eſtate ſhall ceaſe or be voide, &c. then after ſuch alienation, &c. may the Donor enter by force of ſuch condition as it ſeemeth, and ſo the Donor or his heires in ſuch caſe ought ſooner to haue the land then the ſecond ſonne, that had not any right before ſuch alienation, and ſo it ſeemeth that ſuch remainders in the caſe aforeſaid are voide.

¶ HEre it is to bee obſerued that part of the condition that prohibiteth the alienation made by Tenant in taile is good in Law with ſuch diſtinction as hath beene before ſaid in the Chapter of Conditions. And the conſequent of the Condition, viz. that the lands ſhould remaine to another, &c. is voide in Law, and by the opinion of Littleton the Donor may re-enter for the Condition broken, for vtile per inutile non vitiatur. which being in caſe of a Condition for the defeating of an eſtate, is worthy of obſeruation.

And it is to be noted, that after the death of the Donor, the Condition deſcendeth to the eldeſt ſonne, and conſequently his alienation doth extinguiſh the ſame for euer, wherein the weakeneſſe of this inuention appeareth, and therefore Littleton here ſaith, that it ſeemeth that the Donor may re-enter, and ſpeaketh nothing of his heires. A man hath iſſue two ſonnes, and maketh a Gift in taile to the eldeſt, the Remainder in fee to the puiſne, vpon condition, that the eldeſt ſhall not make any Diſcontinuance with Warranty to barre him in the remainder, and if he doth, that then the puiſne ſonne and his heires ſhall re-enter, the eldeſt make a Feoffment in fee with Warranty, the father dyeth, the eldeſt ſonne dyeth without iſſue, the puiſne may enter, but if the Diſcontinuance had beene after the death of the father, the puiſne could not haue entred. In this caſe foure points are to be obſerued. Firſt, as Littleton here ſaith, the entrie for the breach of the Condition is giuen to the father, and not to the puiſne ſonne. Secondly, that by the death

41. E. 3. fo.

Vi. Sect. 446.

of the father the condition diſcends to the elder ſon, & is but ſuſpended, & is reuiued by the death of the eldeſt ſonne without Iſſue, and diſcendeth to the youngeſt ſonne. Thirdly, That the Feoffement made in the life of the father cannot giue away a Condition that is Collaterall, as it may doe a right. Fourthly, That a Warrantie cannot bind a title of entrie for a Condition broken, (as hath beene ſayd) but if the diſcontinuance had beene made after the death of the father, it had extinct the Condition: which Caſe is put to open the reaſon of our Authors opinion.

In theſe laſt three Sections our Author hath taught vs an excellent point of Learning, That when any innouation or new inuention ſtarts vp, to trie it with the Rules of the Common Law, (as our Author here hath done) for theſe be true Touchſtones to ſeuer the pure gold from the drоſſe & ſophiſtications of nouelties & new inuentions. And by this example you may perceiue, That the rule of the old Common Law being ſoundly (as our Author hath done) applied to ſuch nouelties, it doth vtterly cruſh them and bring them to nothing; and commonly a new inuention doth offend againſt many rules and reaſons (as here it appeareth) of the Common Law; and the antient Judges and Sages of the Law haue euer (as it appeareth* in our Bookes) ſuppreſſed innouations and nouelties in the beginning, as ſoone as they haue offered to creepe vp, leſt the quiet of the Common Law might bee diſturbed: and ſo haue (a) Acts of Parliament done the like, whereof by the authorities quoted in the Margent, you may in ſtead of many others, vpon this occaſion take a little taſte. But our excellent Author in all his three Bookes hath ſayd nothing but Ex veterum ſapientium ore & more.

* 31. E. 3. Gager deliuerance 5. 22 aſſ. 12. 38. E. 3. 1. 2. H. 4. 18. &c.

(a) 1. E. 3. ca. 15. Stat. 3. 18. E. 3. ca. 1. & 6. 4. H. 4. ca. 2. 11. H. 6. ca. 23. 12. E. 4. ca. 8, &c.

Section 724. 725.

¶ Item a le Common ley deuant leſtatute de Glouceſter, ſi tenant p le Curteſie vſt alien en fee oueſque Garrantie, apres ſon deceaſe ceo fuit vn barre al heire, ſicome appiert per les parols de meſme leſtatut, mes il eſt remedy p meſme leſtatute, que le Garrantie de le Tenant per l'Curteſie, ne ſit my bar al hẽ, ſinon que il y ad aſſets per diſcent per le tenant per le curteſie, car deuant le dit eſtatute, ceo fuit vn collaterall Garrantie al hẽ, pur ceo que il ne puiſſoit conueyer aſcun title de diſcent a les tenements per le tenant p l'Curteſie, mes tantſolement per ſa mere, ou auters de ſes anceſtors, et ceo eſt le cauſe pur que il fuit collaterall Garrantie.

ALſo at the Common Law before the Statute of Glouceſter, if Tenant by the Curteſie had aliened in fee with Warrantie, after his deceaſe this was a barre to the heire, as it appeareth by the words of the ſame Statute: but it is remedied by the ſame Statute, That the Warrantie of Tenant by the Curteſie ſhall bee no barre to the heire, vnleſſe that hee hath Aſſets by diſcent by the Tenaunt by the Curteſie, for before the ſayd Statute this was a Collaterall warrantie to the heire, for that hee could not conuey any title of Diſcent to the tenements by the tenant by the Curteſie, but onely by his mother, or other of his Anceſtors, and this is the cauſe why it was a collaterall Warrantie.

Sect. 725.

¶ Mes ſi home enherit p̃et feme, les queux ont fits enter eux, et le piet deuie, et le fits

BVt if a man Inheritor taketh wife, who haue iſſue a ſonne betweene them, and the father di-

Sect. 721.

¶ Mes il semble p reason, que touts tiels remainders en la forme auantdit sont voides et de nul value, et ceo pur trois causes. Un cause est, pur ceo que chescun remainder q̄ cõmence per vn fait, il couient que le remainder soit en luy a que le remainder est taile per force de mesme le fait auant liuerie de seisin est fait a luy que auera le frankstenemẽt, car en tiel case le nessance et le estre de le remainder est per le liuery de seisin a celuy que auera le frankstenement, et tiel remainder ne fuit al second fits, al temps de liuery de seisin en le cas auantdit, &c.

BVt it seemeth by reason, that all such remainders in the forme aforesaid are voide and of no value, and that for three causes. One cause is, for that euery remainder which beginneth by a Deed, it behoooueth that the remainder be in him to whom the remainder is entailed by force of the same deed before the liuery of seisin is made to him which shall haue the freehold, for in such case the growing and the being of the remainder is by the liuery of seisin to him that shall haue the freehold, and such remainder was not to the second sonne at the time of the liuerie of seisin in the case aforesaid, &c.

¶ HEre our Author is of opinion, that these remainders in the forme aforesaid, are void and of no value for three causes.

¶ *Vn cause est, &c.* Here he setteth downe a rule concerning remainders, viz, Euery remainder which commenceth by a Deed ought to vest in him to whom it is limitted, when Liuery of seisin is made to him that hath the particular estate.

First Littleton saith by Deed, (n) because if lands be granted and rendred by Fine for life, the remainder in taile, the remainder in fee, none of these remainders are in them in the remainder vntill the particular estate be executed. (n) 7.R.2. Scire fa.

Secondly, that the remainder be in him, &c. at the time of the Liuery. This is regularly true, but yet it hath diuers exceptions. First, vnlesse the person that is to take the remainder be not in rerum natura, (o) as if a Lease for life be made the remainder to the right heires of I.S. I.S. being then aliue, it sufficeth that the inheritance passeth presently out of the Lessor, but cannot vest in the heire of I.S. for that liuing his father he is not in rerum natura, for non est hæres viuentis, so as the remainder is good vpon this Contingent, viz. if I.S. dye during the life of the Lessee. (o) 32.H.6.tit. Feoffments & faits, 99. 27.E.3.87. 11.R.2. Detinue, 46. 2.H.7.13. 12.H.7.27. 12.E.4.2. 21.H.7.11. 7.H.4.23. 11.H.4.74. 18.H.8.3. 27.H.8.41. 38.E.3.26. 30. Ass. 47. 6.R.2. qu. Imp. dam. 20.

(p) And so it is if a man make a Lease for life to A.B and C. and if B. survive C. then the remainder to B. and his heires. Here is another exception out of the said rule, for albeit the person be certaine, yet inasmuch as it depends vpon the dying of B before C. the remainder cannot vest in C. presently. And the reason of both these cases in effect is, because the remainder is to commence vpon limitation of time, viz vpon the possibility of the death of one man before another, which is a common possibility. (p) Pl. Com. in Colthirst's case, fo. 25.29.

A man letteth lands for life vpon condition to haue fee, and warranteth the land in forma prædicta, afterward the Lessee performeth the Condition, whereby the Lessee hath fee, the warranty shall extend and increase according to the state. And so it is in that case if the Lessor had dyed before the performance of the Condition, the warranty shall rise and increase according to the estate; and yet the Lessor himselfe was neuer bound to the warranty, but it hath relation from the first Liuery. And by this it appeareth that a warranty being a Couenant reall executor may extend to an estate in futuro, hauing an estate, whereupon it may worke in the beginning. But if a man grant a Seigniory for yeares vpon Condition to haue fee with a warranty

warranty in forma prædicta, and after the Condition is performed, this shall not extend to the fee, because the first estate was but for yeares which was not capable of a warranty. And so it is, if a man make a Lease for yeares the remainder in fee, and warrant the land in forma prædicta, he in the remainder cannot take benefit of the warranty, because he is not partie to the Deed, and immediately he cannot take, if he were partie to the Deed, because he is named after the Habendum, and the estate for yeares is not capable of a warranty. And so it is if Land be given to A and B. so long as they joyntly together liue, the remainder to the right heires of him that dyeth first, and warrant the land in forma prædicta. A. dyeth his heire shall haue the warranty, and yet the remainder vested not during the life of A, for the death of A. must precede the remainder, and yet shall the heire of A. haue the land by discent.

Section 722.

¶ *Si le primer fits alienast, &c.* By the alienation of the Donee two things are wrought.

First, the Franktenement and fee is in the Alienee.

Secondly, the Reuersion is deuested out of the Donor. (q) And therefore by the alienation that transferreth the freehold & fee simple to the Alienee there can no remainder be raised and vested in the second sonne. (r) As if a man make a Lease for life vpon condition that if the Lessor grant ouer the reuersion, that then the Lessee shall haue fee, if the Lessor grant the reuersion by Fine, the Lessee shall not haue fee, for when the Fine transferreth the fee to the comusee, it should be absurd, and repugnant to reason, that the same Fine should worke an estate in the Lesse, for one alienation cannot vest an estate of one and the same land to two seuerall persons at one time.

(q) 21.H.7.11. 27.H.8.24

(r) 6.E.2.quidam.20.

Argumentum ex absurdo.

In a mans owne grant, which is euer taken most forcibly against himselfe, the reason of Littleton doth hold, for it hath beene resolued by the Justices (f) that if a man seised of an Aduowson in fee by his Deed granteth the next presentation to A. and before the Church becommeth voide by another Deede grant the next presentation of the same Church to B. the second grant is voide, for A had the same granted to him before, and the Grantee shall not haue the second auoydance by construction, to haue the next auoydance, which the Grantor might lawfully grant, for the grant of the next auoydance doe not import the second presentation, (t) But if a man seised of an Aduowson

(f) 20.H.8.Presentments al Fabser Br.52. 31.H.8 ibid.55. 29.H 8. Dier 35. 11.Eliz.282,283.

(t) 15.H.7.7. 19.E.3.quar.Imp.154.

¶ Le second cause est, si le primer fits alienast les tenements en fee, adonques est le frãktenement, et le fee simple en lalienee, et en nul auter, et si le donour auoit ascun reuersion, per tiel alienation l'reuersion est discontinue, donques coment per ascun reason poit ceo estre, q̃ tiel remainder commencera son estre, & son nessance immediat apres tiel alienation fait a vn estrange, que ad per mesme lalienation franktenement, & fee simple, &c. Et auxy si tiel remainder serroit bone, adonques purroit il enter sur lalienee, lou il nauoit ascun maner d̃ droit auant lalienation, que serra inconuenient.

THe second cause is, if the first son alien the tenements in fee, then is the freehold and the fee simple in the Alienee, and in none other, and if the Donor had any reuersion, by such alienation the reuersion is discontinued, then how by any reason may it be, that such remainder shall commence his being and his growing immediatly after such alienation made to a stranger, that hath by the same alienation a freehold and fee simple, &c. And also if such remainder should bee good, then might hee enter vpon the Alienee, where hee had no manner of right before the alienation, which should bee inconuenient.

son

fits entra en la terre, et endowa ſa mere, et puis le mere alien ceo que el ad en ſa Dower, a vn auter en fee oue Garrantie accordant, et puis mozuſt, et le Garrantie diſcendiſt a le fits, oze le fits ſerra barre a demaunder meſme la terre per cauſe de la dit Garrantie, pur ceo que tiel collaterall Garrantie de Tenaunt en Dower neſt pas remedie per aſcun Eſtatute. Meſme la Ley eſt lou Tenaunt a terme de vie fait vn Alienation oueſque Garrantie, &c. et mozuſt, et le Garrantie diſcendiſt a celuy que auoit le reuerſion ou le remainder, ils ſerront barres per tiel Garrantie.

eth, and the ſonne entreth into the land, and endow his mother, and after the mother alieneth that which ſhee hath in Dower to another in Fee with Warrantie accordant, and after dieth, and the Warrantie diſcendeth to the ſonne, now the ſon ſhall be barred to demand the ſame Land by cauſe of the ſayd Warrantie, becauſe that ſuch Collaterall Warrantie of Tenaunt in Dower is not remedied by any Statute. The ſame Law is it where Tenant for life maketh an Alienation with Warrantie, &c. and dieth, and the warranty diſcendeth to him which hath the reuerſion or the rem̃, they ſhall be barred by ſuch Warrantie.

¶ Of this and the ſubſequent Section ſufficient hath bæne ſayd before in this Chapter Sect. 697.

¶ *Neſt pas remedie per aſcun Statute.* But by a Statute made ſince, this Caſe is remedied, as you ſee before Sect. 697.

Section 726.

¶ Item en le dit Caſe, ſi iſſint fuit que quant le tenant en Dower alienaſt, &c. ſon heire fuit deins age, et auxy al temps que le garrantie diſcendiſt ſur luy, il fuit deins age, en ceſt cas lheire poit apres enter ſur lalienee, nient contriſteant le garranty diſcẽdiſt, &c. p̃ c̃ q̃ nul lacheſſe ſerra adiudg̃ en lheire deins age que il nentra pas ſur lalienee en la vie le tenãt en dower. Mez

ALſo in the Caſe aforeſaid, if it were ſo that when the Tenant in Dower aliened, &c. his heire was within age, and alſo at the time that the warrantie diſcended vpon him hee was within age, In this Caſe the heire may after enter vpon the Alienee, notwithſtanding the warrantie diſcended, &c. becauſe no Lacheſſe ſhal be adiudged in the heire within age, that he did not enter vpon the Alienee in the life

¶ HEere note this diuerſitie, if the heire bee within age at the time of the diſcent of the Warrantie, he may enter and auoyd the Eſtate either within age, or at any time after his full age: And Littleton ſaith well, That the Enfant in this Caſe may enter vpon the Alienee, for if he bring his Action againſt him, he ſhalbe barred by this warrantie, ſo long as the ſtate whercunto the Warrantie is annexed continue, and bee not defeated by entrie of the heire: but if he be within age at the time of the Alienation with warrantie, and become of full age before the diſcent of the Warrantie, the warranty ſhal barre him forever. Our Author putteth his caſes where the entrie of the Infant is lawfull, (a) for where the entrie of the Infant is not lawfull

(u) 18.E.4.13.35.H.6.63. 28.Aſſ.28. 32.Eng.Gar.39.

35.H.6.63.

(a) 3.H.7.9.35.H.6.63. Br.tit.War.54. 33.H.8.Tit. War.Br.84.Li.2.fo.67.a. in Archers caſe, & 140. Cinke lyes caſe.

full when the warrantie diſcendeth, the warrantie doth bind the Enfant, as well as a man of full age, and the reaſon thereof is, becauſe the ſtate whereunto the Warrantie was annexed, continueth and cannot be auoyded but by Action, in which Action the Warrantie is a barre: and for the ſame reaſon likewiſe it is of a Feme Couert, if her entrie be not lawful, a Warrantie diſcending on her during the Couerture, doth bind her.

(w) 18.E.3.3.

(w) And albeit the huſband be within age at the diſcent of the Warrantie, yet if the entry of the wife be take away, the Warrantie ſhal bind the wife.

(q) 20.E.3.Audit. quer.27. F.N.B.104 k. 6.E.3.39. 17.E.3.76. 17.Aſſ.53.17. 21.E.34.13.E 3.Aud.quer. 28.18.E.3.Infant 61.16.H.7 5.15.E 4.5.8.H.6.30. 7.H.7.15.

(q) And herein a diuerſitie is to bee obſerued betweene matters of Record done or ſuffered by an enfant, and matters in Fait, for matters in Fait he ſhal auoid either within age, or at full age, as hath beene ſayd: but matters of Record, as Statutes merchants, & of the ſtaple, Recogniſſances knowledged by him, or a Fine leuied by him, recouerie againſt him by default in a reall Action (ſauing in Dower) muſt bee auoyded by him, viz. Statutes, &c. by Audita querela, and the fine and recouerie by writ of Error during his minoritie, and the like. And the reaſon thereof is, becauſe they are iudiciall Acts, and taken by a Court or a Iudge, therefore the nonage of the partie to auoyd the ſame ſhall be tried by inſpection of Iudges, and not by the Countrie. And for that his nonage muſt be tried by inſpection, this cannot be done after his full age: and ſo is the Law clearely holden at this day, though there be ſome differenc in our Bookes. But if the age be inſpected by the Iudges, and recorded that he is within age, albeit hee come of full age before the reuerſall, yet may it be reuerſed after his full age, * And ſo was it reſolued by the whole Court of Kings Bench in the caſe of Kekewiche.

6.H.8.Sauer de default Br.50 3.H.6.10. 1.Mar.Dy.104.

* Paſch.13.Ia.R. in the Kings Bench.

If lands had beene giuen to the huſband and wife and their heires, and the huſband had made a Feoffement to another, to whom a Collaterall Anceſtor of the wife had releaſed and died, and the huſband died, (and this had beene before the Statute of 32.H.8.) this Warrantie had ſo bound her ſeiſneable right, as ſhee could not ſeiſue her eſtate, and claime Dower. Otherwiſe it is of an Eſtate determined: for if a Diſſeiſor make a Leaſe to the huſband and wife during the life of the huſband, and the huſband dieth, ſhe may diſagree to this Eſtate determined, to ſaue her ſelfe from dammages. And ſo note a diuerſitie betweene an eſtate determined, and and an eſtate bound by Warrantie.

ſi lhẽ fuit deins age al temps del alienation, &c. et puis il deuient al pleine age en la vie de le tenant en Dower, et iſſint eſteant de pleine age, il nentra pas ſur lalienee en la vie de le tenant en Dower, et puis le Tenaunt en Dower morust, &c. la peraduenture lhẽ ſerra barre per tiel Garrantie, pur ceo que il ſerra recte ſa follie, que il eſteant de plein age ne entra pas en la vie de le Tenaunt en Dower, &c.

of Tenant in Dower. But if the Heire were within age at the time of the alienation, &c. and after he commeth to full age in the life of Tenant in Dower, and ſo being of ful age he doth not enter vpon the Alienee in the life of Tenant in Dower, and after the tenant in Dower dieth, &c. there peraduenture the heir ſhal be barred by ſuch Warranty, becauſe it ſhall bee accounted his folly, that hee beeing of full age did not enter in the life of tenãt in dower, &c.

Nul laches ſerra adiudge en le heire deins age. Laches or Laſches is an old French word for ſlackeneſſe, or negligence, or not doing. And the Rule (That no negligence ſhall be adiudged in an Enfant) is true, where he is thereby to be barred of his entry in reſpect of a former right, as by a diſcent, or of his former right, (as Littleton doth heere put an example) by a Warrantie where his entrie is congeable. But otherwiſe it is of Conditions, charges and penalties going out of, or depending vpon the originall Conueyance, for the Laches or negligence ſhall be adiudged in thoſe caſes as well in the Infant as in any other.

(y) Pl.Com.Stowels caſe. 355, &c.

(y) Vide Pl.Com. Stowels Caſe per totum. And ſee further there, where an Infant being tenant for life or yeares, ſhall be puniſhed for doing or ſuffering of waſt; and where he claimeth by purchaſe, a Ceſſauit ſhall lie againſt him, if he pay not his Rent by two yeares. And ſome haue ſayd, If he haue the Tenancie by diſcent, and he himſelfe ceaſe, a Ceſſauit doth lie, and he ſhal not haue his age becauſe it is of his owne Ceſſer, 31.E.3.Age 54. But other Bookes (as ſome conceiue them) be againſt that: Vide 9.Edw.3.50. 28.E.3.99. 14 E.3.Age 88. 2.E.2.Age.132.

and

and others, which Bookes doe not proue that the Ceſſauit doth not lie in that caſe, but the contracte, that he ſhall haue his age to the end, he may at his full age certainly know what to plead, or what arrerages to tender, for the Land was originally charged with the Seignorie and Seruices,

Sect. 727.

¶ MEs ore per le ſtatute fait 11.H.7.cap.10. il eſt ordeine, ſi aſcun feme diſcontinue, alien, releaſe, ou confirme oue Garrantie aſcun terres ou tenements que el tient en dower pur terme de vie, ou en tayle del done ſa primer baron, ou de ſes Anceſters, ou del done daſcun auter ſeiſie al vſe le primer baron, ou de ſes Anceſters, que touts tiels garranties, &c. ſerront voides, & q̄ bñ lirroit a ceſtuy q̄ auoit ceux terres ou tenements apres la mort de ñ ia feme dentrer.

BVt now by the Statute made 11.*H.cap.*10. it is ordained if any woman diſcontinue, alien, releaſe or confirme with warrantie any Lands or Tenements which ſhee holdeth in Dower for tearme of life, or in tayle of the gift of her firſt husband, or of his Anceſtors, or of the gift of any other ſeiſed to the vſe of the firſt Huſband or of his Anceſtors, that all ſuch warranties, &c. ſhall bee void, and that it ſhall be lawfull for him which hath theſe Lands or Tenements after the death of the ſame woman to enter.

¶ This is an addition to Littleton, and therefore to bee paſſed ouer. And hereof ſufficient hath beene ſaid before Sect.607.

Sect. 728.

¶ Item il eſt parle en le fine de l'dit eſtatute de Glouceſt. que parle del alienation oueſque garrantie fait per le tenant per le curteſie en ceſt forme. Enſement, en meſme le manner ne ſoit lheire la feme apres la mort le pere & le mere barre daction, ſil demanda lheritage ou l'mariage, ſa mere per briefe Dentre, que ſon pere aliena en temps ſa mere, dont nul fine eſt leuy en la Court le

ALſo it is ſpoken in the end of the ſaid Statute of *Gloceſt.* which ſpeaketh of the alienation with Warrantie made by the tenant by the curteſie in this forme. Alſo, in the ſame manner, the heire of the woman after the death of the father and mother ſhall not bee barred of action, if hee demandeth the heritage or the marriage of his Mother by Writ of Entry, that his father aliened in his mothers time,

¶ *Dont nul fine eſt leuie en le Court le Roy, &c.* Here are three things worthy of obſeruation concerning the conſtruction of Statutes, Firſt, that (a) it is the moſt naturall and genuine expoſition of a Statute to conſtrue one part of the Statute by another part of the ſame Statute, for that beſt expreſſeth the meaning of the makers. As here the queſtion vpon the generall words of the Statute is, whither a fine leuied only by a husband ſeiſed in the right of his wife with warrantie ſhall barre the heire without Aſſets. And it is well expounded by the former part of the Act, whereby it is enacted, that alienation made by Tenant by the courteſie with warrantie ſhall not bar the heire, vnleſſe Aſſets diſcend,

(a) *Pl.Com.fol.75. 7.E.3.89.*

Vide Bracton lib.4.fol.321. Fleta lib.5.cap.34.

cend. And therefore it ſhould be inconuenient to intend the Statute in ſuch manner, as that he that hath nothing but in the right of his wife ſhould by his fine leuied with warrantie barre the heire without Aſſets. And this expoſition is ex viſceribus actus.

Secondly, The wordes of an Act of Parliament muſt bee taken in a lawfull and rightfull ſence, as here the wordes being (whereof no fine is leuied in the Kings Court) are to be vnderſtood, whereof no fine is lawfully or rightfully leuied in the Kings Court, And therefore (b) a fine leuied by the Husband alone is not within the meaning of the Statute, for that fine ſhould worke a wrong to the wife, but a fine leuied by the husband and wife is intended by the Statute, for that fine is lawfull and worketh no wrong. (c) So the Statute of W.2.cap.5. ſayth (Ita quod Epiſcopus Eccleſiam conferat) is conſtrued Ita quod Epiſcopus Eccleſiam legitime conferat, and the like in a number of other Caſes in our Bookes. And generally the rule is Quod non præſtat impedimentum quod de iure non ſortitur effectum.

Roy: & iſſint p force de m̃ leſtatute, ſi l'baron del feme aliena lheritage, ou mariag̃ ſa feme en fee oue garranty, &c. per ſon fait en pais, ceo eſt clere ley, que ceſt garranty ne barrera my lheir, ſinon que il nad aſſets per diſcent.

whereof no fine is leuied in the kings court And ſo by force of the ſame Statute, if the Husband of the wife alien the heritage or mariage of his wife in fee with warrantie, &c. by his Deed in the Countrey, it is cleere Law, that this warrantie ſhall not barre the heire, vnleſſe hee hath aſſets by Diſcent.

(b) Pl.Com.246.b. 3.ſignior Berkleyes Caſe. bb.9. fol.26. in caſe del Abbot de Strata marcella.

(c) 11.H.4.80.9.E.4.12. 21.H.6.28.4.E.4.31. 12.E.4. Fermedon 15.

Thirdly, That conſtruction muſt be made of a Statute in ſuppreſſion of the miſchiefe, and in aduancement of the remedie, as by this Caſe it appeareth. For a fine leuied by the Husband only is within the letter of the Law, but the miſchiefe was, the heire was barred of the Inheritance of his Mother by the warrantie of his Father without Aſſets, and this Act intended to apply a remedie, viz. that it ſhould not barre vnleſſe there were Aſſets, and therefore the miſchiefe is to be ſuppreſſed, and the remedie aduanced. Et qui hæret in littera, hæret in cortice, as often before hath beene ſaid.

Sect. 729. 730. & 731.

¶ Mes le doubt eſt, ſi le baron alienaſt lheritage ſa feme, per fine leuy en la Court l'Roy ouesque Garrantie, &c. ſi ceo barrera lheire ſans aſcun diſcent en value. Et quant a ceo, ieo voile icy dire certaine reaſons que ieo ay oye dit en ceſt matter. Jeo ay oye mon Maſter Sir Richard Newton iades chief Juſtice de Common Banke dire vn foits en meſme le Banke, que tiel Garrantie que le baron fait per fine leuie en le Court le Roy, barrera lheire, coment que il ad riens per diſcent, pur ceo que leſtatute dit (dont nul fin̄ eſt leuy en le Court le Roy) et iſſint per ſon opinion

BVt the doubt is, if the husbād alien the heritage of his wife by fine leuied in the Kings Court with warrantie, &c. if this ſhall barre the heire without any diſcent in value. And as to this I will here tell certaine reaſons, which I haue heard ſaid in this matter. I haue heard my Maſter Sir *Richard Newton* late Chiefe Iuſtice of the Common Pleas once ſay in the ſame Court, that ſuch Warrantie as the husband maketh by fine leuied in the Kings Court ſhall barre the heire, albeit hee hath nothing by diſcent, becauſe the Statute ſaith (whereof no fine is leuied in the Kings Court) and ſo by his

opinion cel garrantie per fine demurt vncore vn collaterall Garrantie, come il fuit a le common ley, nient remedy per le dit estatute, pur ceo que l'dit estatute except alienations per fine oue garrantie.

opinion this Warrantie by fine remayneth yet a collaterall warrantie as it was at the Common Law not remedied by the said Statute, becauſe the ſaid Statute excepteth alienations by fine with warranty,

Sect. 730.

ET aſcuns auters ont dit, et vncore dient le contrarie, et ceo eſt lour proofe, q̄ come per īn le chapiter de dit eſtatute il eſt ordeine, que le garrantie le tenant per le curteſie ne ſerra my barre al heire, ſinon que il ad aſſets per diſcent, &c. coment que le tenant per le curteſie leuy vn fine de meſmes le tenements oueſque garranty, &c. auxy forment come il poit faire, vncore cel Garranty ne barra my heire ſinon que il ad aſſets per diſcent, &c. & ieo croy que ceo eſt ley, & pur ceo ils dient, que ſerroit inconuenient dentender leſtatute ē tiel forme, que vn home que nad riēs forſque en droit ſa feme purroit per fine leuie p luy de meſmes l'es tenements queux il ad forſq̄ en droit ſa feme oue Garrantie, &c. barre heire de meſmes le tenements ſans aſcun diſcent de fee ſimple, &c. lou le tenant per le curteſie ceo ne puit faire.

AND ſome others haue ſaid, and yet doe ſay the contrarie, and this is their proofe, that as by the ſame Chapter of the ſaid Statute it is ordained that the warrantie of the tenant by the curteſie ſhall bee no bar to the heire, vnleſſe that he hath aſſets by diſcēt, &c. although that the tenant by the curteſie leuy a fine of the ſame tenements with warrantie, &c. as ſtrongly as hee can, yet this warrantie ſhall not bar the heir, vnleſſe that he hath aſſets by diſcent, &c. And I beleeue that this is Law, and therefore they ſay, that it ſhould be inconuenient to intend the Statute in ſuch manner, as a man that hath nothing but in right of his wife might by fine leuied by him of the ſame Tenements which hee hath but in right of his wife with warranty, &c. barre the heire of the ſame tenements without any diſcent of fee ſimple, &c. where the Tenant by the curteſie cannot doe this.

Sect. 731.

MES ils ont dit, que le ſtatute ſerra entend ſolonq̄ cel forme, a lou le Statute dit, dont nul fine q̄ leuie en Court l'Roy, ceo eſt a dire, dont nul loial fine

BVt they haue ſaid that the ſtatute ſhal be intended after this manner, s. where the Statute ſaith, whereof no fine is leuied in the Kings Court, that is to ſay,

fine eſt droiturelment leuy en la Court le Roy, ceo eſt adire, dont nul loial fin eſt droiturelmt leuy en la court le Roy: Et ē eſt dont nul fine de l' baron et ſa feme ſoit leuie en le Court le Roy, car al temps de le feſang del dit eſtatute, cheſcun eſtate de terres ou tenements que aſcun home ou feme auoit, que diſcenderoit a ſon heire, fuit fee ſimple ſans condition, ou ſur certaine conditions en fait, ou en ley. Et pur ceo que adonques tiel fine poit droiturelment eſtre leuie per le baron et ſa feme, et les heires le baron garronteront, &c. tiel garranty barrera lheire, et iſſint ils dient que ceſt lentendement de leſtatute, car ſi le baron et ſa feſm fieront vn feoffment en fee per fait en pais, ſon heire apres le deceaſe le baron et ſa feme auera briefe Dentre ſur Cui in vita, &c. nient obſtant le garrantie de le baron, donque ſi nul tiel exception fuit fait en leſtatute de le fine leuie, &c. donque lheire aueroit le briefe Dentre, &c. nient obſtant le fine leuie per le baron a ſa feſm, pur ceo q̄ les parolx de leſtatute deuant lexception de fine leuie, &c. ſont generals, &c. ceſtaſcauoir que lheire la feme apres le mort le pere et la mere ne ſoit barr̄ daction, ſil demaund lheritage, ou le mariage ſa mere, per briefe Dentre, que ſon pere aliena en temps ſa mere, a iſſint coment que le bazon et la feme alienent per fine, vncore ceo eſt voier, que le baron aliena ē temps la mere, et iſſint il ſerroit en caſe de leſtatute, ſinon que tielx parolx fueront

wherof no lawful fine is rightfully leuied in the Kings Court, and that is, whereof no fine of the huſband and his wife is leuied in the Kings Court, for at the time of the making of the ſaid Statute, euery eſtate of lands or tenements that any man or woman had which ſhould deſcēd to his heire, was fee ſimple without condition, or vpon certaine conditions in Deed or in law. And becauſe that then ſuch fine might rightfully bee leuied by the husband and his wife, & the heires of the husband ſhould warrant, &c ſuch warranty ſhall barre the heire, & ſo they ſay that this is the meaning of the ſtatute, for if the huſbād & his wife ſhould make a feoffment in fee by Deede in the countrie, his heire after the deceaſe of the husband and wife ſhall haue a Writ of entrie *ſur Cui in vita, &c.* notwithſtanding the warranty of the husband, then if no ſuch exception were made in the ſtatute of the fine leuied, &c. then the heire ſhould haue the Writ of entrie, &c. notwithſtanding the fine leuied by the husband and his wife, becauſe the words of the ſtatute before the exception of the fine leuied, &c. are generall, viz. that the heire of the wife after the death of the father and mother is not barred of action, if he demand the heritage or the marriage of his mother by writ of entrie, that his father aliene in the time of his mother, and albeit the husband and wife aliened by fine, yet this is true that the husband aliened in the time of the mother, and ſo ſhould be in that

ront, s. dont nul fine eſt leuie en la Court le Roy, & iſſint ils diont que ceo eſt a entender, dont nul fine per le baron et ſa feme eſt leuy en la Court le Roy, le quel eſt loialment leuie en tiel caſe, car ſi les Juſtices ont conuſans, que home que nad riens forſque en droit ſa feme voile leuier vn fine en ſon noſme ſolement, ils ne voylont, ne vnque deuoient prender tiel fine deſtre leuie per le baron ſolement ſans ſa feme, &c. Ideo Quære de ceſt matter, &c.

caſe of the ſtatute, vnleſſe that ſuch words were, *viz.* whereof no fine is leuied in the Kings Court, and ſo they ſay that this is to be vnderſtood, whereof no fine by the huſband and his wife is leuied in the Kings Court, the which is lawfully leuied in ſuch caſe, for if the Iuſtices haue knowledge that a man that hath nothing but in the right of his wife will leuie a fine in his name only, they will not, neither ought they to take ſuch fine to bee leuied by the husband alone without his wife, &c. *Ideo quære* of this matter, &c.

¶ *Ieo ay oye mon maiſter Sir* R. Newton, *&c.* **Who was a Gentleman** of an ancient family; in Latyn de noua villa, in French de neufe ville, and a reuerend learned Iudge, and worthily aduanced to be chiefe Iuſtice of the Court of Common pleas, whom our Author remembers with great reuerence, as by his words you may perceiue, calling him his maſter, and citeth his opinion deliuered once in the Court of Common pleas which our Author heard and obſerued (whoſe example therein, it is neceſſary for our ſtudent to follow) but the latter opinion (as hath beene before obſerued) being Littletons owne, is againſt the opinion of the Lord Newton (d) and the Law is holden clearely with our Author at this day, and our Author (as in all other caſes) hath good Authority in Law to warrant his opinion, Nullius hominis authoritas tantum apud nos valere debet, vt meliora non ſequeremur ſi quis attulerit.

(d) *Bracton* 321. *Fleta, lib* 5 *cap.* 34. 8. E. 2. *Gar.* 81. 18. E. 3. 51. 7. E. 3. 84. *Pl. Com.* 57.

¶ *Car ſi les Iuſtices ount conuſance, &c.* **Hereby it appeareth** (e) **that** the Iudge, if he knoweth it, ought not to take knowledge of a Fine that worketh a wrong to a third perſon.

Sect. 731.
(e) 33. H. 6. 52. 5. E. 3. 56. 2 Eliz. Dier. 178. 1. H. 7. 9. 1. Mar. 89 4. E. 3. 41. 7. Eliz. Dier 246. *Vid. Sect.* 87 *&c.*

¶ *Que ſerroit inconuenient.* Argumentum ab inconuenienti **is very forcible in Law**, as often hath beene obſerued.

Of the reſt of theſe three Sections ſufficient hath beene ſaid before.

Sect. 732.

¶ Item eſt aſcauoir, que en ceux parolx, ou lheire demande lheritage, ou le mariage ſa mere, ceſt parol (ou) eſt vn diſiunctiue, et eſt autant adire, ſi lheire demande le heritage ſa mere, s. les tenements que ſa mere auoit en fee ſimple per diſcent, ou per purchaſe, ou ſi lheire demaund le mariage ſa mere, ceſt aſcauoir, les tenemẽts que

ALſo it is to bee vnderſtood, that in theſe words where the heire demands the heritage, or the marriage of his mother, this word (or) is a diſiunctiue, and is aſmuch to ſay, if the heire demand the heritage of his mother, *viz.* the tenements that his mother had in fee ſimple by diſcent or by purchaſe, or if the heire demand the mariage of his mother, that is

que fueront dones a ſa mere en frankmariage. to ſay, the tenements that were giuen to his mother in frankmariage.

¶ Some doe expound heritage of the mother to be the lands which the mother hath by diſcent. And that conſtruction is true, but the Statute by the Authority of Littleton extendeth alſo where the mother hath it by purchaſe in fee ſimple, for ſo ſaith Littleton himſelfe, that this word (Inheritance) is not only intended where a man hath lands by diſcent, but where a man hath a fee ſimple by purchaſe, becauſe his heires may inherite him. And albeit it be true, that the Statute extendeth to an eſtate in Frankmariage acquired by purchaſe, yet doth it extend alſo to all eſtates in tayle, as well by diſcent as by purchaſe, for that Frankmariage is put but for an example.

V. Sect. 9.

Sect. 733.

¶ EGo & hæredes mei warrantizabim° & imperpetuũ defendemus. **Where=** in three things are to be obſerued: Firſt, That Hæredes mei are words of neceſſitie, for otherwiſe the heyres are not bound. (a) Secondly, Though in the clauſe of the warrantie it be not mentioned to whome, &c. yet ſhall it bee intended to the Feoffee. (b) Thirdly, That the Feoffor may by expreſſe words warrant the land for the life of the Feoffee, or of the Feoffor, &c. but the recouerie in value ſhall bee in Fee. (c) Of this Bracton writeth in this manner. Et ego & hæred mei warrãtizabim° tali et heredibus ſuis tantum vel tali & hæredibus & aſſignatis, & hæredibus aſſignatorum, vel aſſignatis aſſignatorum, & eorum hæredibus, & acquietabimus & defendemus eos toram terram illam cum pertinentijs, contra omnes gentes, &c. per hoc autem quod dicit (ego & hæredes mei) obligat ſe & hæredes ad warrantiam propinquos, & remotos, præſentes & futuros, & ſuccedentes in infinitum. Per hoc autem quod dicit (Warrantizabimus) ſuſcipit in ſe obligationem ad defendendum ſuum tenementum in poſſeſſione rei datæ & aſſignatos ſuos & eorum hæredes & omnes alios, &c. Per hoc autem quod dicit (acquietabimus) obligat ſe & hæredes ſuos ad acquietandum ſi quis plus petie-

(a) *6.E.2.Vouch.258.12.6.2 ib.262. 14.H.4.15.*

(b) *38.E.3.14.*

(c) *Bract.fo.37.238. & li.5. 380,381. Brit.fo.106.b. Flet. li.5.ca.15. & li 6.ca.23. 35. H.8.Gar.90.F.N.B.134.b*

Brit.vb.ſup. Flet.vb.ſup. 11.H.6.48. 6.E.2.Gar.262.

¶ ITem come eſt moue en diũs faits, ceux parolx en Latyne, Ego & Hæredes mei, warrantizabimus, & imperpetuum defendemus, **il eſt a veier q̃l effect ad cel parol,** Defendemus, **en tiels faits, et il ſemble que il nad pas leffect de Garrantie, ne empzent en luy la cauſe de Garrantie, car ſil iſſint ſerroit, que il pzent effect ou cauſe de Garrantie, donque il ſroit mitte en aſcuns fines leuies en la Court le Roy: Et home ne veiet ceo vnque, que ceſt parol** Defendemus, **fuit en aſcun fine, mes tanſolement ceſt parol** Warrantizabimus, **per que ſemble que ceſt parol et Verbe** Warrantizo, **fait la Garrantie, & eſt la cauſe de**

ALſo where it is contained in diuers Deedes theſe wordes in Latyne, *Ego & Hæredes mei warrantizabimus & imperpetuum defendemus*; it is to be ſeene what effect this word (*Defendemus*) hath in ſuch Deedes: And it ſeemeth that it hath not the effect of Warrantie, nor comprehendeth in it the cauſe of warrantie, for if it ſhould be ſo that it tooke the effect or cauſe of warrantie, then it ſhould bee put into ſome Fines leuied in the Kings court, and a man neuer ſaw, that this word (*Defendemus*) was in any Fine, but onely this word (*Warrantizabimus.*) By which it ſeemeth, That this word and Verbe (*Warrantizo*) maketh the warrantie, and is the

Gar=

Warrantie, et nul auter Verbe en noſtre Ley.

cauſe of warrantie, and no other word in our Law.

rit ſeruitij vel aliud ſeruitium quam in carta donationis continetur. Per hoc autem quod dicit (Defendemus) obligat ſe & hæredes ſuos ad defendendum ſi quis velit ſeruitutem ponere rei datæ contra formam ſuæ donationis. (d) Hereby it appeareth, That neither Defeodere nor Acquietare doth create a warranty, but Warrantizare onely. And as Ego & hæredes mei warrantizabimus, &c. in Latyne doe create a warrantie, ſo, I and my heires ſhall warrant, &c. in Engliſh, doth create a warrantie alſo.

(d) 46.E.3.28.11.H.4.41. 6.E.2.Voucb.262.2.E.4.15.6

(e) If a man be bound to A. in an Obligation, to defend ſuch lands to A. whereof the Obligor had infeoffed him for 12. yeares, &c. in this caſe if he be ouſted by a ſtranger without being impleaded, the Obligation is forfeit: but if hee bee bound to warrant the Land, &c the Bond is not forfeited, vnleſſe the Obligee be impleaded, and then the Obligor muſt bee readie to warrant, &c.

(e) 2.E.4.15.tit.Dett.71.

¶ *Donques il ſerra mit en aſcuns fines, &c.* Heere Littleton draweth an Argument from the forme & words of a Fine, & his reaſon is this, That ſeeing that a Fine is the higheſt and ſureſt kind of aſſurance in Law, if Defendemus had the force of a Warranty it would haue beene contained in Fines: and on the other ſide ſeeing this word Warrantizo is contained in Fines to create a Warrantie, that therefore that word doth implie a Warrantie, and not the other.

¶ *Et nul auter Verbe en noſtre Ley.* Heere it appeareth, That no other Verbe in our Law doth make a Warrantie, but Warrantizo onely, which is onely appropriated to create a Warrantie.

46.E.3.28. *Vi. Sect.*1.

But, Qui bene diſtinguit, bene docet, and here, of neceſſitie you muſt diſtinguiſh, * Firſt, betweene a Warrantie annexed to a Freehold or Inheritance, (whereof Littleton here ſpeaketh) and a Warrantie annexed to a Ward, which is a Chattell reall, for there, Grant, Demiſe, and the like, doe make a Warrantie. And of Warranties annexed to Freeholds and Inheritances, ſome be Warranties in Deed, and ſome be Warranties in Law. A Warrantie in Deed, or an expreſſe Warrantie, (whereof Littleton here ſpeaketh) is created onely by this word Warrantizo, but Warranties in Law are created by many other words; they be therefore called Warranties in Law, becauſe in iudgement of Law they amount to a Warrantie without this verb Warrantizo. (f) As Dedi is a Warrantie in Law to the Feoffee and his heires during the life of the Feoffor, but Conceſſi in a Feoffement or Fine implieth no Warrantie. But before the Statute of Quia emptores terrarum, if a man had giuen lands by this word Dedi, to haue and to hold to him and his heires, of the Donor and his heires, by certaine ſeruices, then not onely the Donor but his heires alſo had beene bound to Warrantie. But if before that Statute a man had giuen lands by this word Dedi, to a man and to his heires for euer, to hold of the chiefe Lord, there the Feoffor had not beene bound to Warrantie, but during his life, as at this day he is.

*Sect.*697.

* 31 E 3 Vouch.24.12.Rich.2 tit Cont.de Vouch 35.29 E.3. 48.10.Edw.3.6.9 Symkins Somerſetcaſe 8.E.3.61.12.Ed 3. Vouch 27.Temps E.1.Vouch. 302. 3.H 6.17.

(f) Leſtat. de Bigamis cap 6. 2.H.7.7.c.11 & 3 48.E.3 3. 21.E 1.tit.Vouch 390 Fitz. N.B.134.b.6.E.2.Fitz.258

And albeit the words of the Statute of Bigamis be, In cartis autem vbi continentur (Dedi & conceſſi, &c.) Yet if Dedi be contained alone, it doth import a Warrantie, for the Statute doth conclude, Ipſe tamen feoffator in vita ſua ratione proprij doni ſui tenetur warrantizare. So as Dedi is the word that implieth Warrantie, and not Conceſſi. Alſo where the words of the Statute be further, ſine clauſula quæ continet Warrantiam, the meaning of the Statute is, That Dedi doth import a Warrantie in Law, albeit there bee an expreſſe Warrantie in the Deede.

For if a man make a Feoffment by Dedi, and in the Deed doth warrant the land againſt I.S. and his heires, yet Dedi is a generall warrantie during the life of the Feoffor, and ſo was the Statute expounded in both poynts, (g) H 1.14.El in the Court of Common Pleas, which I my ſelfe heard and obſerued. (h) And if a man make a Leaſe for life reſeruing a rent, and adde an expreſſe warrantie, here the expreſſe warrantie doth not take away the warrantie in Law, for he hath election to vouch by force of either of them. And in Nokes Caſe note a diuerſity betweene a Warrantie that is a Couenant reall, and a Warrantie concerning a Chattell. (i) Alſo this word Excambium doth implie a Warrantie.

(g) Hil.14.El.in Com.Banc. (h) Li.4 fo.80.in Nokes caſe. 8.E.3 69.9.E.3.15.10.Ed.3 11.20.E.3.Cont.de Gar.7. 31.E 3.Vouch.289.32.Ed.3. 16 102.43.E.3.3.7.E.2.Tit. Cui in vita 17. 3.R.2.Remedon 44.

Alſo a Partition implieth a Warrantie in Law, as in the Chapter of Parceners appeareth. And Homage aunceſtrell doth draw to it ſelfe Warrantie, as hath beene ſayd in the Chapter of Homage Auncestrell.

(i) 4.E.2.Vouch 245.22.E.3 2.14 H 6.2 20.H 6.14. Li.4 fo.122.in Bafards Caſe. 15.E.3 Bar.245.43 Ed 3.3. Li.1 fo 96 Li.5 fol.17 Spencers caſe. Li.8.fo.95.Sr.Staffords caſe.

And it is to be obſerued, That the Warrantie wrought by this word Dedi is a ſpecial warrantie, and extendeth to the heires of the Feoffee during the life of the Donor onely. But vpon the exchange and homage auncestrell the Warrantie extendeth reciprocally to the heires, and againſt the heires of both parties: and in none of the Caſes the Aſſignee ſhall vouch by force of

of nny of theſe warranties, but in the caſe of the exchange and Dedi the Aſſignee ſhall rebutt, but not in the caſe of Homage anceſtrell.

(k) 28.*Aſſ.*33.14.*Hen.*4.5. 18 *E.*3.18 3.*E.*2 *mowr.*201 & 202.19 *E.*3.*mowr.*201, 202.11.*E.*3.*mowr.*100. 30.*H.*6.7. 33.*H.*8.*Dyer* 51. 10.*H.*7.11.*b. F.N.B.*163.*a.*

(k) And ſo no man ſhall haue a Writ of Contra formam collationis, but onely the Feoffee and his heires which be priuie to the Deed, but an Aſſignee may rebutt by force of the Deede.

(l) 6.*E* 3.*Cont. de Vouch* 105. 5.*E.*3.67. 4.*E* 2.*ibid.* 102. 6.*E.*3.11.50.7.*E.*3.6. 18.*E.*3.8 22.*Ed* 3.3.3.*H.*7. 13.6.*H.*7.2.14.*E.*3.*gar* 32. *F.N.B.*134.*g.*5 *E.*3.87. 20.*E.*3.*tit. Cessate plea de Gar.*7.

(l) If a man make a gift in Taple or a Leaſe for life or land, by Deed or without Deed, reſeruing a Rent, or of a Rent ſeruice by Deed, this is a Warrantie in Law, and the Donee or Leſſee being impleaded ſhall vouch and recouer in value. And this Warrantie in Law extendeth not onely againſt the Donor or Leſſor, and his heyres, but alſo againſt his Aſſignees of the reuerſion, and ſo likewiſe the Aſſignee of Leſſee for life ſhall take benefit of this Warrantie in Law.

(m) 4.*E.*3.36.33 *Ed* 3. *tit. Cont. de Vouch.*122.43.*aſſ.*32 50.*E.*3.7.*F.N.B.*149 *m.*

(m) When Dower is aſſigned there is a Warrantie in Law included, that the Tenant in Dower being impleaded, ſhall vouch and recouer in value a third part of the two parts whereof ſhe is dowable.

And it is to be vnderſtood, That a Warrantie in Law and Aſſets is in ſome caſes a good bar.

(n) 14.*H.*6.2.15.*E.*3. *Bar.*255.

(n) In a Formedon in the diſcender the Tenant may plead, That the Auncеſtor of the Demandant exchanged the Land with the Tenant for other Lands taken in exchange, which diſcended to the Demandant, whereunto he hath entred and agreed: or if he hath not entred and agreed vnto th. Lands taken in exchange, then the Tenant may plead the Warrantie in Law, and other Aſſets diſcended.

(o) 38 *E.*3.22.23.24. 13.*E.*3.*Garr.*35.

(o) If Tenant in Taile of Lands make a gift in Taile or a Leaſe for life, rendring a Rent, and dieth, and the Iſſue bringeth a Formedon in the diſcender, the Reuerſion and Rent ſhall not barre the Demandant, becauſe by his Formedon he is to defeat the Reuerſion and Rent, Et non poteſt adduci exceptio eiuſdem rei, cuius petitur diſſolutio.

(p) 16.*E.*3.*Age* 45. 18.*E.*3.8. 31.*E.*3.*Garr.*29.

(p) But if other aſſets in Fee ſimple doe diſcend, then this Warrantie in Law and aſſets is a good barre in the Formedon.

Here foure things are to be obſerued: Firſt, That no Warrantie in Law doth barre any Collaterall title, but is in nature of a Lineall Warrantie: wherein the equitie of the Law is to be obſerued.

Secondly, That an expreſſe Warrantie ſhall neuer binde the heires of him that maketh the Warrantie, vnleſſe (as hath been ſayd) they be named: as for example Littleton here ſayth (Ego & hæredes mei) but in caſe of Warranties in Law, in many caſes the heyres ſhall be bound to Warrantie, albeit they be not named.

*Vide lib.*4. *fol.*121. *Buſſards Caſe.*

Thirdly, That in ſome caſes Warranties in Law doe extend to execution in value, of ſpeciall Lands, and not generally of Lands diſcended in Fee ſimple, as you may ſee at large in my Reports.

(q) 45.*E.*3.20.*b.*

(q) Fourthly, That Warranties in Law may be in ſome caſes created without Deed, as vpon gifts in taile, Leaſes for life, Eſchanges, and the like.

And ſeeing ſome what hath beene ſayd out of Bracton and other antient Authors concerning Aſſignees, it is neceſſarie to ſhew who ſhal take aduantage of a Warrantie as Aſſignee by way of Voucher to haue recompence in value.

(r) 14.*E.*3.*Garr.*33. 13.*E.*2.*Garr.*93.

(r) If a man infeoffe A. and B. to haue and to hold to them and their heires, with a Clauſe of Warrantie, Prædictis A. & B. & eorum hæredibus & aſſignatis: In this caſe if A. dieth, and B. ſurviueth and dieth, and the heire of B. infeoffeth C. hee ſhall vouch as Aſſignee, and yet he is but the Aſſignee of the heyre of one of them, for in iudgement of Law the Aſſignee of the heyre is the Aſſignee of the Auncеſtor, and ſo the Aſſignee of the Aſſignee ſhall vouch in infinitum, within theſe words. (Hys Aſſignes.)

*Lib.*5.*fol.*17.*b.in Spencers caſe.* 38.*E.*3.21.

(f) 12.*E.*2.*Vouch.*263. 19.*E.*2 *gar.*85.13.*E.*1.*ib.*93 *Li.*5.*fo.*17 *Spencers caſe.* 7.*E.*3.34.10.*E.*3.9.14.*E.*3 *Gar.*33.*Bract vb ſup.*9.*Ed.*2 *Gar de Chart.*30. 36.*Edw.*3. *Gar.*1.4.*H.*8.*Dy.*1. *F.N.B.*135.

(f) If a man infeoffeth A. To haue and to hold to him, his heyres and Aſſignes; A infeoffeth B and his heyres, B dieth, the heyre of B ſhall vouch as Aſſignee to A. So as heyres of Aſſignees, and Aſſignees of Aſſignees, and Aſſignees of Heyres are within this word (Aſſignes) which ſeemed to be a queſtion in Bractons time. And the Aſſignee ſhall not onely vouch, but alſo haue a Warrantia Cartæ.

If a man doth warrant Land to another without this word (Heyres,) his heyres ſhal not vouch: and regularly if he warrant Land to a man and his heyres, without naming Aſſignes, his Aſſignee ſhal not vouch.

(t) 43.*E.*3.23.26.*Ed* 3 68. 40.*E.*3.14.24.*E.*3.36. 11 *H.*4.94.30.*E.*3.17. 5.*E.*3.*Age* 19.*Pl.Com.*418

(t) But if the father bee infeoffed with Warrantie to him and his heyres, the father infeoffeth his eldeſt ſon with Warrantie and dieth, the Law giueth to the ſonne aduantage of the Warrantie made to his father, becauſe by act in Law the Warrantie betweene the father and the ſonne is extinct.

But note there is a diuerſitie betweene a Warrantie that is a Couenant reall, which bindeth the partie to yeeld lands or Tenements in recompence, and a Couenant annexed to the Land, which is to yeeld but dammages, for that a Couenant is in many Caſes extended further than the Warrantie. As for example:

(u) 42 *E.*3.*b.*2 *Finchden.*

(u) It hath beene adiudged, That where two Coparceners made partition of Land, and the one made a Couenant with the other, to acquite her and her heires of a Suit that iſſued

out

out of the land, the couenantee alieneth. In that case the assignee shall haue an action of couenant, and yet he was a stranger to the couenant, because the acquitall did runne with the land.

(w) A seised of the Mannor of D whereof a Chappell was parcell, a Prior with the assent of his Conent couenanteth by deed indented with A. and his heires to celebrate Diuine Seruice in his said Chappell weekly for the Lord of the said Mannor, and his Seruants, &c. In this case the assignees shall haue an action of Couenant, albeit they were not named, for that the remedie by couenant doth runne with the land to giue dammages to the partie grieued, and was in a manner appurtenant to the Mannor. (y) But if the couenant had beene with a stranger to celebrate Diuine Seruice in the Chappell of A. and his heires, there the assignee shall not haue an action of couenant, for the couenant cannot bee annexed to the Mannor because the couenantee was not seised of the Mannor. See in Spencers Case before remembred diuers other diuersities betweene Warranties, and Couenants, which yeild but dammages

(w) 42.E.3.3.a. *Laur. Parkehams case.* 2.H.4.6. 6.H.4.1.& 2. *Ranso Brabsons Case. Lib.*5.*fol.*17.18. *Spencers Case.*

(y) 2.H.4.6. *Henry Hornes Case.* 6.H.4.1. *Lib.*5. *fol.*17.18. *Spencers Case.*

And here it is to be obserued, that an assignee of part of the land shall vouche as assignee. (*) As if a man make a feoffment in fee of two Acres to one with warrantie to him his heires and assignes, if he make a feoffment of one Acre, that feoffee shall vouch as Assignee, for there is a diuersitie betweene the whole estate in part, and part of the estate in the whole, or of any part. As if a man hath a warrantie to him his heires and assignes, and he make a lease for life, or a gift in tayle, the Lessee or Donee shall not vouch as assignee because he hath not the estate in fee simple whereunto the warrantie was annexed, but the Lessee for life may pray in ayde, or the Lessee or Donee may vouche the Lessor or Donor, and by this meanes hee shall take aduantage of the warranty. But if a lease for life, or a gift in tayle be made, the Remaynder ouer in fee, such a Lessee or Donee shall vouche as assignee, because the whole estate is out of the Lessor, and the particular estate, and the Remaynder doe in iudgement of Law to this purpose make but one estate.

(*) 18.E.3.52.10.E.3.58. 5.E.3.49. 12.E.3. *Counterplea de Vouch.*42 14.E.3. *Voucher* 108.5.E.3. *ibid.*178. 13.E.3. *ibid.*119.40.E.3.23 41.E.3. *Vouch.*69.& 100. 32.E.3. *ibi l.*96. *And this diuersitie was agreed Hill.*14.*Eliz. in Communi Banco, which I heard and obserued.*

(a) If a man infeoffe three with warrantie to them and their heires, and one of them release to the other two, they shall vouche, but if he had released to one of the other, the warrantie had beene extinct for that part, for he is an assignee.

(a) 40.E.3.14.40. *Ass.*5. 33.H.6.4.37.H.8. *alienation sans licence* 31.2.H.4.8.

(b) If a man doth warrant Land to two men and their heires, and the one make a feoffment in fee, yet the other shall vouch for his moitie. If a man at this day bee infeoffed with warrantie to him, his heires, and assignes, and he make a gift in tayle, the Remaynder in fee, the Donee make a feoffment in fee, that feoffee shall not vouche as assignee, because no man shall vouche as assignee, but hee that commeth in in priuitie of estate, but hee must vouche his feoffor, and he to vouche as assignee, but such an assignee may rebutte. If the Warrantie be made to a man and his heires without this word (assignes) yet the assignee, or any tenant of the Land may rebutte. And albeit no man shall vouche or haue a Warrantia cartæ either as partie, heire, or assignee, but in priuity of estate, yet any that is in of another estate, beeing by disseisin, abatement, intrusion, vsurpation or otherwise, shall rebutte by force of the warrantie as a thing annexed to the Land which sometime was doubted (c) in our Bookes. But herein is a diuersitie to be obserued when in the Cases aforesaid, hee that rebutteth claymeth vnder the Warranty. And when hee that would rebutte claymeth aboue the Warranty, for there hee shall not rebutte. And therefore if Lands bee giuen to two Brethren in fee simple with a Warranty to the eldest and his heires, the eldest dieth without issue, the Suruiuor albeit he bee heire to him, yet shall he neyther vouche nor rebutt, nor haue a Warrantia cartæ, because his title to the Land is by relation aboue the fact of the Warrantie, and hee commeth not vnder the estate of him, to whom the warranty is made, as the Disseisor, &c. doth.

(b) 11.*R.*2. *Dauncy* 46. 7.E.3.35.46.E.3.4.

(c) 38.E.3.21.26.E.3.56. *Lib.*10.*fo.*96.*b. Seymors case.* 7.E.3.34.35.8.E.3.10. 46.E.3.4.10.E.3.42. 45.E.3.18. 10. *Ass.*5.35. *Ass.*9.22. *Ass.* 39. 88.31. *Ass.*13.

(d) If a man make a gift in tayle at this day, and warrant the Land to him his heires and assignes, and after the Donee make a feoffment and dieth without issue, the warrantie is expired as to any Voucher or Rebutter, for that the estate in tayle whereunto it was knit is spent: otherwise it is, if the gift and feoffment had beene made before the Statute of Donis conditionalibus, for then both the Donee and Feoffee had a fee simple, and so are our Bookes to be intended in this and the like Cases.

(d) *Lib.*3.*fol.*62.63. *Lincolne Colledge Case.*

(e) If A. be seised of Lands in fee, and B. releaseth vnto him or confirmeth his estate in fee with warrantie to him his heires and assignes; all men agree this warrantie to be good: but some haue holden, that no Warranty can be raysed vpon a bare Release or Confirmation without passing some estate or transmutation of possession. (f) But the Law as it appeareth by Littleton himselfe is to the contrarie, and that both the partie, and (as some do hold) his assignee shall vouche, but he that is vouched in that case must be present in Court, and ready to enter into the Warrantie and to answere, and the Tenant must shew forth the Deed of Release or Confirmation with warrantie, to the intent the Demaundant may haue an answere thereunto and either denie the deed or auoid it, for that at the time of the Confirmation made, he to whom it was made, had nothing in the Land, &c. for otherwise the Demaundant may counterplead the

(e) 14.E.3.*Garr.*108. 12.H.7.1.

(f) 11.H.4.22. 10.E.3.52. 21.E.3.27. *Vide Sect.*706. 738.& 745.

W.1.cap.40.

Vide 20.E.1.Statute de vocat. ad warant.
(g) 22.H.6.15.19.H.6.73. 20.H.6.73. 2.H.4.13. 41.E.3.Garr.15.43.E.3.17. 43.Ass 42.12.Ass.17. 12.E.3.tayle 3.23.E.4.16.b. 44 E.3.10.44.Ass. Basingborns Ass. Lib.10.fol 97. Seymers Case.
(h) Lib.3.fol.63.Lincolne Colledge Case.
(i) 29.E.3.30.17.E.2. Voucher in action.1.11.E.4.8.

(k) 14.H.4.3.

Voucher by the Statute of W.1.viz. that neither Vouchee nor any of his Anceſtors had any ſeiſin whereof he might make a feoffment. And this is grounded vpon the ſaid Statute of W.1 the words whereof be, Sil nen ſon garrantie en præſent, que lun voile garranter de ſon gree, & maintenant enter en reſpons. Otherwiſe the Tenant muſt be driuen to his Warrantia cartæ.

(g) But a warrantie of it ſelfe cannot enlarge an eſtate, as if the Leſſor by Deed releaſe to his Leſſee for life, and warrant the Land to the Leſſee and his heires, yet doth not this enlarge his eſtate.

(h) If a man make a feoffment in fee with warrantie to him his heires and Aſſignes by Deed (as it muſt bee) and the Feoffee enfeoffeth another by paroll, the ſecond Feoffee ſhall vouche, or haue a Warrantia cartæ (as hath beene ſaid) as aſſignee, albeit hee hath no deed of the aſſignement, becauſe the deed comprehending the warrantie doth extend to the Aſſignees of the Land, and he is a ſufficient aſſignee albeit he hath no Deed.

(i) If a man infeoffe two, their heires and aſſignes, and one of them make a feoffment in fee, that Feoffee ſhall not vouch as Aſſignee.

If a man make a feoffment in fee to A. his heires and aſſignes. A. infeoffeth B. in fee, who reenfeoffeth A. He or his aſſignes ſhall neuer vouche, for A. cannot be his owne Aſſignee. But if B. had infeoffed the heire of A. he may vouche as aſſignee, for the heire of A. may be aſſignee to A, in as much as he claymeth not as heire.

(k) If a man make a feoffment by deed of Lands to A. To haue and to hold to him and his heires, and bind him and his heires to warrant the Land in forma prædicta, this warrantie ſhall extend to the feoffee and his heires. But if he had warranted the Land to the feoffee, the warranty had not extended to his heires, except the words had beene to him and his heires.

If a man letteth Lands for life the Remaynder in tayle, the Remaynder eadem forma, this is a good eſtate tayle, quia idem ſemper refertur proximo præcedenti.

Section 734.

ITem ſi tenant en taile ſoit ſeiſie des terres deuiſables per teſtament ſolonque le cuſtome, &c. et le tenant en tayle alien meſmes les tenements a ſon frere en fee, et ad iſſue, et deuie, & puis ſon frere deuiſa per ſon teſtament meſmes les tenements a vn auter en fee, et oblig̃ luy et ſes heires a garranty, &c. et mourſt ſans iſſue, il ſemble que ceſt Garrantie ne barrera my iſſue en tayle, ſil voit ſues ſon briefe de Formedon, pur ceo que ceſt Garrantie ne diſcend̃ my al iſſue en le tayle, entant q̃ le vncle del iſſue ne fuit my oblige a le Garrantie en ſa vie: ne que il ne puiſſoit Garranter les tenemẽts en ſa vie, entant que le deuiſe ne puiſſoit prender aſcun execution ou effect, forſque apres ſon deceaſe. Et entant que le vncle en ſon vie ne fuit tenus de Garranter, tiel Garrantie ne poit diſcender

ALſo, if tenant in taile be ſeiſed of Lands deuiſable by Teſtament after the cuſtome &c. and the tenant in the taile alieneth the ſame tenements to his brother in fee, and hath iſſue and dieth, and after his brother deuiſeth by his Teſtament the ſame tenements to another in fee, and bindeth him and his heires to warrantie, &c. and dieth without iſſue, it ſeemeth that this Warrantie ſhall not barre the iſſue in the taile, if he will ſue his Writ of *Formedon*, becauſe that this Warrantie ſhall not deſcend to the iſſue in taile, inſomuch as the Vncle of the iſſue was not bound to the ſame warrantie in his life time: neither could hee warrant the tenements in his life, Inſomuch as the Deuiſe could not take any execution or effect vntill after his deceaſe. And inſomuch as the Vncle in his life was not

der de luy al iſſue en le taple, &c. car nul choſe poit diſcender del auncеſter a ſon heire, ſinon que meſme ceo fuit en launceſter.

held to warrantie, ſuch warrantie may not diſcend from him to the iſſue in the taile, &c. for nothing can diſcend from the Anceſtor to his heire, vnleſſe the ſame were in the Anceſtor.

CHere our Author declareth one of the Maxims of the Common Law, that the heire ſhall neuer be bound to any expreſſe Warranty, but where the Anceſtor was bound by the ſame warranty, for if the Anceſtor were not bound, it cannot deſcend vpon the heire, which is the reaſon here yelded by Littleton. (l) If a man make a Feoffment in fee, and binde his heires to warranty, this is voyde by the Warrant of this Maxime, as to the heire, becauſe the Anceſtor himſelfe was not bound. Alſo if a man binde his heires to pay a ſumme of money, this is voide. And of the other ſide if a man binde himſelfe to Warranty, and binde not his heires, they be not bound, for he muſt ſay, as it appeareth before, Ego & hæredes mei warrantizabimus, &c. (m) And Fleta ſaith, Nota quod hæres non tenetur in Anglia ad debita anteceſſoris reddenda, niſi per anteceſſorem ad hoc fuerit obligatus, præterquam debita regis tantum: A fortiori in caſe of Warranty, which is in the realty.

But a warranty in Law may binde the heire, although it neuer bound the Anceſtor, and may be created by a Laſt will and teſtament. (n) As if a man deuiſe lands to a man for life or in taile reſeruing a rent, the Deuiſee for life or in taile ſhall take aduantage of this Warrantie in Law, albeit the Anceſtor was not bounden, and ſhall binde his heires alſo to Warrantie although they be not named. Alſo an expreſſe Warrantie cannot bee created without Deede, and a will in writing is no Deede, and therefore an expreſſe Warrantie cannot bee created by will.

(l) 31.E.1.*Grant* 85.

*Bracton, lib.*2.*fo.*37.238. *Britton, fo.*106.*b.*

(m) *Fleta, lib.*2.*ca.*55. *Britton, fo* 65.*b.* 21.*H.*6.48.

(n) 18.E.3.*b.*

Sect. 735.736.

CAr̃y vn garrantie ne poit aler ſolonque la nature des tenements per le cuſtome, &c. mes tantſolement ſolonque le forme del Common ley. Car ſi le tenant en taile ſoit ſeiſie des tenements en Burgh Engliſh, lou le cuſtome eſt, que touts les tenemẽts deins meſm̃ le Borough, deuoyent diſcender a le fits puiſne, et il diſcontinua le tayle oue garrantie, &c. et ad iſſue deux fits, et moruit ſeiſie des auters terres ou tenements en meſme le burgh en fee ſimple a le value, ou pluis de les tenements tailes, &c. uncore le puiſn̄ fits auera vn Formedon de les terres tailes, et ne ſerra my barr̃ per le garranty ſon pere, coment que aſſets a luy diſcendiſt en fee ſimple de meſme le pere, ſolonq̃ le

ALſo a Warranty cannot goe according to the nature of the tenements by the cuſtome, &c. but only according to the forme of the Common Law. For if the tenant in taile bee ſeiſed of tenements in Borough Engliſh, where the cuſtome is, that all the tenements within the ſame Borough ought to diſcend to the youngeſt ſonne, and hee diſcontinueth the taile with warranty, &c. and hath iſſue two ſonnes, and dyeth ſeiſed of other lands or tenements in the ſame Borough in fee ſimple to the value or more of the lands entailed, &c. yet the youngeſt ſonne ſhall haue a *Formedon* of the lands tailed, and ſhall not bee barred by the warranty of his father, albeit aſſets diſcended to him in fee ſimple from his ſaid father

le cuſtome,&c. pur ceo que le garrantie diſcendiſt a ſon eigne frer̃ que eſt en pleine vie, et nemy ſur le puiſne. Et en meſme le maner eſt de collaterall garrantie fait de tiels tenements, lou le garrãtie diſcendiſt ſur leigne fits,&c. ceo ne barrera my le puiſne fits,&c.

according to the cuſtome,&c. becauſe the wartanty diſcendeth vpon his elder brother who is in full life, and not vpon the youngeſt. And in the ſame manner is it of collaterall warrantie made of ſuch tenements where the warranty diſcendeth vpõ the eldeſt ſon,&c. this ſhal not barre the younger ſon,&c.

Sect.736.

¶ En meſne le maner eſt de tenements en le Countie de Kent, queux ſont appelles Gaulkind, les queux tenemẽts ſont departibles enter les freẽs, &c. ſolonque la cuſtome, ſi aſcun tiel garrantie ſoit fait per ſon auncеſter, tiel garrantie diſcendera tantſolement al heire que eſt heire al common ley, ceſtaſcauoir al eigne frere, ſolonque la conuſans del common ley, et nemy a touts les heirs queux ſont heires de tiels tenements ſolonque le cuſtome.

¶ In the ſame manner is it of lands in the County of Kent, that are called Gauelkinde, which lands are deuidable betweene the brothers,&c. according to the cuſtome, if any ſuch warranty bee made by his Anceſtor, ſuch warranty ſhall deſcend only to the heire which is heire at the Common law, that is to ſay, to the elder brother, according to the conuſance of the Common Law, and not to all the heires that are heires of ſuch tenements according to the cuſtome.

vid Sect.603.718.& 737.

¶ Hereupon a diuerſitie is to be obſerued betweene the Lien reall, and the Lien perſonall. For the Lien reall, as the Warranty, doth euer diſcend to the heire at the Common Law, (a) but the Lien perſonall doth binde the ſpeciall heires, as all the heires in Gauelkinde, and the heire on the part of the mother, as hath beene ſaid.

(o) If two men make a Feoffment in fee with a warranty, and the one die, the Feoffee cannot vouche the ſuruiuor only, but the heire of him that is dead alſo, but otherwiſe if two ioyntly binde themſelues in an Obligation, and the one die, the ſuruiuor only ſhall be charged.

(a) 11.E.3.Det.7. 11.H.7.12.
(o) 17.E.3.Iount.41. 16.H.7.13. 29.E.3.46. 12.H.7.3. 22.E.3.1. 17.E.3.8. 30.E.3.40. 19.H.6.55. *lib.3.fo.14. Mathew Herbert's caſe.*

Sect. 737.

¶ Item, ſi tenant en le taile ad iſſue deux files per diuers venters, et mozuſt, & les files entront, et vn eſtrange eux diſſeiſiſt de meſmes les tenements, et lun de eux releſſa per ſon fait a le diſſeiſor tout ſon droit, et oblige luy et ſes heires a garranty, et mozuſt ſans iſſue, en ceſt caſe la ſoer

ALſo if Tenant in taile hath iſſue two daughters by diuers venters and dieth, & the daughters enter, & a ſtranger diſſeiſeth them of the ſame tenements, and one of them releaſeth by her Deed to the diſſeiſor all her right, and binde her and her heires to warranty, and die without iſſue. In this caſe the

ſoer que ſuruiſquiſt poit bien enter et ouſter le diſſeiſor de touts les tenements, pur ceo que ticl garranty neſt pas diſcontinuance, ne collateral garrantie a la ſoer que ſuruiſquiſt, pur ceo que ils ſont de demy ſanke, et lun ne poit eſtre heire a lauter, ſolonque le cours del Common ley. Mes auterment eſt, lou p ſont files del tenant en taile per vn meſme venter.

ſiſter which ſuruiueth may well enter, and ouſt the diſſeiſor of all the tenements, becauſe ſuch warrantie is no diſcontinuance nor collaterall warrantie to the ſiſter that ſuruiueth, for that they are of halfe blood, and the one cannot bee heire to the other according to the courſe of the Common Lawe. But otherwiſe it is where there bee daughters of tenant in taile by one venter.

¶ The reaſon of this is in reſpect of the halfe blood, whereof ſufficient hath beene ſaid in the firſt booke in the Chapter of fee ſimple.

Two brothers bee by demy venters, the eldeſt releaſeth with Warranty to the Diſſeiſor of the Vncle, and dyeth without iſſue, the Vncle dyeth, the Warranty is removed, and the younger brother may enter into the land.

Section 738.

¶ Item ſi tenant en taile leſſa les tenements a vn home pur terme de vie, le remainder a vn auter en fee, et vn collaterall aunceſter confirma le ſtate del tenant a term̃ de vie, & oblige luy & ſes heires a garranty pur terme de vie del tenant a terme de vie & morust, & le tenant en taile ad iſſue, & deuie, ore liſſue eſt barre a demander les tenements per briefe de Formedon, durant le vie le tenant a terme de vie, per cauſe del collateral garrantie diſcendu ſur le iſſue en le taile. Mes apres le deceaſe de le

ALſo if tenant in taile letteth the Lands to a man for terme of life, the remainder to another in fee, and a collaterall Anceſtor confirmeth the ſtate of the tenant for life, and bindeth him and his heires to warranty for terme of the life of the tenant for life, and dyeth, and the tenant in taile hath iſſue & dies, now the iſſue is barred to demand the tenements by writ of *Formedon* during the life of tenant for life, becauſe of the collaterall warranty diſcended vpon the iſſue in taile. But after the deceaſe of the tenant for life,

¶ HEre it appeareth that a Warrantie may be rapſed by a Confirmation which tranſferreth neither eſtate nor right, whereof ſufficient hath beene ſaid before. *Vid. Sect* 733. & 7?

¶ *A garranty pur terme de vie, &c.* (p) This proueth that a Warranty may bee limitted, and that a man may warrant Lands aſwell for terme of life, or in taile, as in fee. (p) 38. E. 3. 16. E. 3. *Vouch.* 87

If Tenant in fee ſimple that hath a Warrantie for life either by an expreſſe Warranty, or by Dedi, be impleaded and vouche, hee ſhall recouer a fee ſimple in value albeit his Warranty were but for terme of life, becauſe the Warranty extended in that caſe to the whole eſtate of the Feffee in fee ſimple, but in the caſe that Littleton here putteth, the Tenant for life ſhall recouer in value but an eſtate for life, becauſe the Warranty doth extend to that eſtate only.

¶ *Vn briefe de Formedon, &c.* Here is implyed that a Collaterall Warranty

Warrantie giueth no right, but ſhall barre onely for life, and after the partie is reſtored to his Action.

tenant a term de vie, liſſue auera vn briefe de Formedon,&c.

the iſſue ſhall haue a Writ of *Formedon*, &c.

It is alſo to bee obſerued, That a Warrantie may diſcend to the heyres of him that made it during the life of another.

Section 739.

CEt ſur ceo ieo aye oye vn reaſon, que cel caſe proua vn auter caſe, ſ, ſi vn home leſſa ſes terres a vn auter, A auer et tener a luy et a ſes heires pur terme dauter vie, et le Leſſee morust viuant celuy a que vie, &c. et vn Eſtrange enter en la Terre que le heire le Leſſee luy poit ouſter, &c. pur ceo que en le caſe procheine auantdit, entant que home poit obliger luy et ſes heyres a Garranty al Tenant a terme de vie tantſolement durant la vie le Tenant a terme de vie, & cel Garrantie diſcendiſt al heyre celuy, que fiſt le Garrantie, le quel Garrantie neſt pas Garrantie denheritance, mes tantſolement pur terme dauter vie, per meſme le reaſon lou Tenements ſont leſſes a vn Home, A auer et tener a luy et a ſes heyres pur terme dauter vie, ſi le Leſſee morust, viuant celuy a que vie, ſon heire auera les Tenements, viuant celuy a que vie, &c. car ont dit, Que ſi home grãt vn annuitie a vn auter, A auer et perceiuer a luy et a ſes heyres pur terme dauter vie, ſi le Grantee morust, &c. que apres ſon mort ſon Heyre auera lannuitie durant la vie celuy a que vie, &c. Quære de iſta materia.

AND vpon this I haue heard a reaſon, That this Caſe will prooue another Caſe, *viz.* If a man letteth his Lands to another, To haue and to hold to him and to his heires for terme of anothers life, and the Leſſee dieth, liuing *Celuy a que vie, &c.* and a ſtranger entreth into the land, That the Heyre of the Leſſee may put him out, &c. becauſe in the caſe next aforeſayd, in as much as a man may bind him and his heires to warrantie to Tenant for life onely, during the life of the Tenant for life, and this warrantie diſcendeth to the Heire of him which made the warranty, the which Warrantie is no Warrantie of Inheritance, but only for terme of anothers life. By the ſame reaſon where Lands are let to a man, To haue and to hold to him and his Heires for terme of anothers life, if the Leſſee die, liuing *Celuy a que vie*, his Heyres ſhall haue the Lands, liuing *Celuy a que vie, &c.* For they haue ſayd, That if a man grant an Annuitie to another, To haue and to take to him and his Heyres for terme of anothers life, if the Grantee die, &c. That after his death his heyre ſhall haue the Annuitie during the life of *Celuy a que vie, &c. Quare de iſta materia.*

¶ *Eo ay oye vn reason.* Here our Student is taught after the example of our Author, to obserue euery thing that is worthy the noting.

¶ *Si vn home lessa terres a vn auter, &c.* This case is without question, (q) That the heyre of the Lessee shall haue the land to preuent an Occupant. And so it is (as Littleton here sayth) in case of an Annuitie, or of any other thing that lieth in Grant, whereof there can be no Occupant. And of this somewhat hath beene sayd in the Chapter of Discents.

(q) 17.E.3.48.18.Ed.3.12. 11.H.4.42.7.H.4.46. 8.H.4.15. Dy.8.El.253. 18.H.8.3.27.H.8. 21.H.8. tit Estates Br. 50.19.Ed.3. tit. Account 56. 33. Ass.p.17. 22.H.6.33. 39.E.3.37. Vid. Sect.387.

Sect. 740.

¶ Mes lou tiel Lease ou Grant est fait a vn home et a ses heires pur terme dans, en cest Case lheire le Lessee ou le Grantee nauera vnques ags la mort le Lessee, ou le Grantee ceo que est issint lesse ou grant, pur ceo que est chattel real, et chateux realx per l'common Ley viendra al Executors del grantee, ou del Lessee, et nemy al heyre.

BVt where such Lease or Grant is made to a man and to his heyrs for terme of yeares; In this case the heire of the Lessee or the Grauntee shall not after the death of the Lessee or the grantee haue that which is so let or granted, because it is a Chattel reall, and Chattels realls by the Common Law shall come to the Executors of the grantee, or of the Lessee, and not to the Heire.

¶ HEre is a generall rule, That Chattels realls as wel as Chattels personalls shall goe to the Executors or Administrators of the Lessee, and not to his heyres. For as Estates of Inheritance or Frœhold discendible shall goe to the heyre, so Chattells, as well reall as personall, shall goe to the Executors or Administrators.

11.E.3.tit.Ass.88. 11.ass.21 10.El.Dy.276.

(r) But if the Kings Tenant by Knights seruice in Capite be seised of a Mannor, whereunto an Aduowson is appendant, and the church become voyd, the Tenant dieth, his heyre within age, the king shall present to the Church, and not the Executor or Administrator: but if the land be holden of a Common Person, in that Case the Executor shall present, and not the Gardein.

(r) 24.E.3.26. F.N.B.33.b. F.N.B.34.a.

(s) If a Bishop hath a ward laine and dieth, the King shall not haue the ward nor the Successor, but the Executor, and the ward shall be Assets in his hands. So it is of Heriot, Reliefe, and the like. (t) But if a Church become voyd in the life of a Bishop, and so remain vntill after his decease, the King shall present thereunto, and not the Executor or Administrator, for nothing can be taken for a presentment, and therefore it is no assets.

(s) 40 Ed.3.14.

(t) 9.H.6.58. 11.H.4.7.

Sect. 741.

¶ ITem en ascuns cases il poit estre, que coment que vn collateral Garrantie soit fait en fee, &c. vncore tiel Garrantie poit estre defeat, et auient. Si come te-

ALso in some cases it may be, That albeit a collateral warrantie be made in Fee, &c. yet such a Warranty may be defeated and taken away: As if Tenant in Tayle discontinue the Tayle

¶ *ET moruſt ſans Iſſue, &c.* Here (as before in this Chapter hath beene noted) the Collaterall Warrantie doth discend vpon the Issue in Tayle, before any right doth discend vnto him, wherein this Diuersitie is to bee obserued: where the right is in esse in any of the Ancestors of the heyre, at the time of the discent

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cent of the Collaterall Warrantie, there albeit the Warranty diſcend firſt, & after the right doth diſcend, the Collateral Warrantie ſhall binde, as here in this caſe of our Author expreſly appeareth. But where the right is not in eſſe in the heire, or any of his Anceſtors, at the time of the fall of the Warrantie, there it ſhall not binde.

nant en taile diſcontinue le taile en fee, et le diſcontinuee eſt diſſeiſie, et le frere del tenãt en le taile releſſa per ſon fait a le diſſeiſor tout ſon droit, &c. oue garrantie en fee, & morust ſans iſſue, & le tenant en taile ad iſſue et deuie, ore iſſue eſt barr̃ de ſon action per force d collateral garrantie diſcendue ſur luy, mes ſi apres ceo le diſcontinuee enter ſur le diſſeiſor, donque poit lheire en le taile auer bien ſon action de Formedon, &c. pur ceo que l' garrantie eſt aniente et defeat, car quãt garranty eſt fait a vn home ſur eſtate que adonques il auoit, ſi leſtate ſoit defeate le Garrantie eſt defeate.

in fee, and the Diſcontinuee is diſſeiſed, and the brother of the tenant in taile releaſeth by his Deed to the Diſſeiſor all his right, &c. with warranty in fee, and dyeth without iſſue, and the tenant in taile hath iſſue and die, now the iſſue is barred of his action by force of the collaterall warrantie deſcended vpon him. But if afterwards the Diſcontinuee entreth vpon the Diſſeiſor, then may the heire in taile haue well his action of *Formedon, &c.* becauſe the warranty is taken away and defeated, for when a warrantie is made to a man vpon an eſtate which hee then had, if the eſtate be defeated the Warranty is defeated.

(u) 7.E.3.48. 30.H.8.42.

(u) Aſſiſe Lord and Tenant be; and the Tenant make a Feoffment in fee with Warrantie, and after the Feoffee purchaſe the Seigniory, and after the Tenant ceaſe, the Lord ſhall haue a Ceſſauit, for a Warrantie doth extend to Rights precedent, and neuer to any right that cõmenceth after the warranty, whereof more ſhall be ſaid in this Section. Alſo a warranty ſhall neuer barre any eſtate that is in poſſeſſion, reuerſion or remainder; that is not deueſted, diſplaced, or turned to a right before, or at the time of the fall of the Warrantie.

(w) Lib.1.fo.67. Archers caſe.

(w) If a Leaſe for life be made to the Father, the remainder to his next heire, the Father is diſſeiſed and releaſeth with Warranty and dyeth, this ſhall barre the heire, although the warranty doth fall, and the remainder commeth in eſſe at one time.

(y) Temps E.1. Voucher 296. 31.Aſſ.13. 22.Aſſ.36. 41.Aſſ 6. 33.E.3. tit. Garr.74. lib.10.fo.97. E.Seymors caſe.

(y) If there be Father and Sonne, and the Sonne hath a Rent ſeruice, ſuite to a Mill, Rent charge, Rent Seeke, Common of paſture, or other profit apprender out of the land of the Father, and the Father maketh a Feoffment in fee with Warranty, and dyeth, this ſhall not barre the Sonne of the Rent, common, or other profit apprender, quamuis clauſula ſpecialis warrantie vel acquietancie in cartis tenentium, inſeratur quia in tali caſu tranſit terra cum onere: and he that is in ſeiſin or poſſeſſion need not to make any Entrie or Claime: and albeit the Sonne after the Feoffment with warranty, and before the death of the Father had beene diſſeiſed, and ſo being out of poſſeſſion the warrantie diſcended vpon him, yet the Warranty ſhould not binde him, becauſe at the time of the warrantie made, the Sonne was in poſſeſſion.

(*) 45.E.3.31. 21.H.7.11.

(*) So if my Collaterall Anceſtor releaſe to my Tenant for life, this ſhall not binde my Reuerſion or Remainder, becauſe that the Reuerſion or Remainder continued in me. But if he that hath a Rent Common, or any profit out of the Land in taſle, diſſeiſe the Tenant of the land, and maketh a Feoffment of the land, and warrant the land to the Feoffee and his heires,

Vtd.Sect.698.

(a) 21.E.4.26. 21.H.7.9. 3.H.7.4. 7.H.4 17. 30.H.8.Dier 42. 30.E.3.30. 9.E.3.78. 45.E.3.Voucher 72. F.N.B.125. 14.H.8.6.

(a) regularly the Warranty doth extend to all things iſſuing out of the land, that is to ſay, to warrant the land in ſuch plight and manner, as it was at in the hand of the Feoffor, at the time of the Feoffment with Warranty, and the Feoffee ſhall vouche, as of lands diſcharged of the rent, &c. at the time of the Feoffment made.

A woman that hath a Rent charge in fee entermarieth with the Tenant of the Land, an eſtranger releaſeth to the Tenant of the Land with warrantie, he ſhall not take aduantage of this warrantie eyther by Voucher or Warrantia cartæ, for the Wife, if her husband die, or the heire of the Wife liuing the husband, cannot haue an action for the Rent vpon a Title before the

the Warrantie made, for if the heire of the wife bring an Aſſiſe of Mordanceſter, this action is grounded after the Warrantie, whereunto as hath beene ſaid, the Warrantie ſhall not extend.

So it is if the Grantee of the Rent grant it to the Tenant of the Land vpon condition, which maketh a feoffment of the Land with warrantie, this Warrantie cannot extend to the Rent, albeit the feoffment was made of the Land diſcharged of the Rent, for if the condition be broken, and the Grantor be intituled to an Action, this muſt of neceſſitie bee grounded after the Warrantie made.

But in the Caſe aforeſaid, when the woman Grantee of the Rent marrieth with the Tenant, and the Tenant maketh a feoffment in fee with Warrantie, and dieth, in a Cui in vita brought by the wife (as by Law ſhe may) (b) the feoffee ſhall vouche as of Lands diſcharged at the time of the warranty made for that her title is Paramount, ſo if tenant in tayle of a Rent charge purchaſe the Land, and make a feoffment with Warrantie, if the iſſue bring a Formedon of the Rent, the Tenant ſhall vouche Cauſa qua ſupra.

(b) 7.H.4.17.

(*) But ſome doe hold, that a man ſhall not vouche, &c. as of Land diſcharged of a Rent Service.

(*) 10.E.4.9.b. 18.E.3.55 44.E.3.19.

(c) Alſo no warrantie doth extend vnto meere and naked Titles, as by force of a condition with clauſe of re-entrie, Exchange, Mortmaine, conſent to the rauiſher and the like, becauſe that for theſe no action doth lie, and if no action can bee brought, there can bee neither Voucher, Writ of Warrantia cartæ, nor Rebutter, and they continue in ſuch plight and eſſence as they were by their originall creation, and by no Act can be diſplaced or deueſted out of their originall eſſence, and therefore cannot be bound by any Warrantie.

(c) Lib.10.fo.97. E.Stymores caſe. 22.Aſſ.pl.38. 31.Aſſ.p.13. 41.Aſſ.p.6. 33.E.3.garr.74.

(d) And albeit a woman may haue a Writ of Dower to recouer her Dower, yet becauſe her title of Dower cannot be deueſted out of the originall eſſence, a collaterall warrantie of the Anceſtor of the woman ſhall not barre her. So it is of a feoffment Cauſa matrimonij prælocuti.

(d) 34.E.3.tit.droit 72. 21.E.4.82.

(e) A Warranty doth not extend to any Leaſe though it be for many thouſand yeares, or to eſtates of Tenant by Statute Staple, or Merchant, or Elegit, or any other Chattle, but only to Freehold or Inheritances, as it appeareth in all Littletons Caſes which hee putteth in this Chapter. And this is the reaſon, that in all Actions which Leſſee for yeares may haue, a warranty cannot be pleaded in barre, as in an Action of Treſpaſſe, or vpon the Statute of 5.R.2. and the like. But in thoſe Actions when the Freehold or Inheritances doe come in queſtion, there the Warranty may be pleaded. But in ſuch Actions which none but a Tenant of the Freehold can haue, as vpon the Statute of 8.H.6. Aſſiſe, or the like, there a Warrantie may be pleaded in barre.

(e) 21.E.4.18.82. 1.H.7.12.22. 11.H.7.15.16 20.H.7.2.b. 14.H.7.22. 43.E.3.25.per Finch.in quer.Imp.15.H.7.9. Lib.10.fo.97.

¶ *Quant Garrantie eſt fait a vn home ſur eſtate, que adonques il auoit, ſi leſtate ſoit defeat, le Garrantie eſt defeat.* Here it appeareth, that although a collaterall Warrantie be diſcended, (f) yet if the ſtate whereunto the warranty was annexed be defeated, albeit it be by a meere ſtranger, (as in this caſe that Littleton here put by the diſcontinuee) the warranty is defeated, and although the Diſcontinuance remaine and no remitter wrought to the heire, yet the warrantie is defeated, and barre remoued, ſo as the iſſue in tayle may haue his Formedon and recouer the Land. Sublato Principali tollitur adiunctum.

(f) 3.H.7.9.b. 16.E.3. tit.Continuall Claime 10. 9.H.4.8. Pl.Com.158.

Sect. 742.

¶ E meſme le manner eſt, ſi le diſcontinuee fait feoffement en fee, reſeruant a luy vn certaine rent, & pur default de payment vn re-entry, &c. & vn collaterall Garranty de anceſter eſt fait a celuy feoffee q̄ ad eſtate ſur condition, &c. & mourust ſans iſſue, coment que cel Garrantie diſcendeth ſur liſſue e̅ taile, vncore ſi apres le rent ſoit arere̅ et le diſ-

IN the ſame manner it is if the diſcontinuee make a feoffmẽt in fee reſeruing to him a certain rent, and for default of payment a re-entrie, &c. and a collateral warrantie of the Anceſtor is made to the feoffee that hath the eſtate vpon condition, &c. and dieth without iſſue, albeit that this warranty ſhall diſcend vpon the iſſue in tayle, yet if after the rent be behind, and the

diſcontinuee entra en la terre, adonque auera iſſue en tayle ſon recouery per briefe de Formedon, pur ceo que le collaterall garrantie eſt defeat. Et iſſint ſi aſcun tiel collateral garranty ſoit pleé enuers iſſue en le tayle, en ſon action de Formedon, il poit mẽer le matter come eſt auantdit, coment le garrantie eſt defeat, &c. & iſſint il poit bien maintener ſon action, &c.

diſcontinuee enter into the Land, then ſhall the iſſue in taile haue his recouery by Writ of *Formedon*, becauſe the collaterall warranty is defeated. And ſo if any ſuch collateral warranty be pleaded againſt the iſſue in tayle in his action of *Formedon* he may ſhew the matter as is aforeſaid, how the warrantie is defeated, &c. and ſo he may wel mayntaine his action, &c.

¶ HEre Littleton putteth another caſe vpon the ſame ground and reaſon, viz. where the ſtate whereunto the Warranty is annexed, is defeated, there the Warranty it ſelfe is defeated alſo, which is one of the maximes of the Common Law.

Sect. 743.

¶ Item ſi teñ en taile fait vn feoffment a ſon vncle, & puis luncle fait vn feoffment en fee oueſq; garranty, &c. a vn auter, et puis le feoffee del vncle enfeoffa areremaine luncle en fee, & puis luncle enfeoffa vn eſtrange ẽ fee ſans garranty & mozuſt ſauns iſſue, & le tenant en tayle mozuſt, ſi iſſue en le tayle voyle pozſ ſon bẽ de Formedon, enuers leſtrange q̃ fuit le darrein feoffee, & ceo per luncle, iſſue ne ſerra vnque barre per le garranty que fuit fait per le vncle al dit primer feoffee de ſon vncle, pur ceo que le dit garrantie fuit defeat & anient, p̃ ceo que luncle a luy repriſt cy grand eſtate de ſon primer feoffee a que le garranty fuit fait, ſicome ñ le feoffee auoit de luy. Et la cauſe p̃ que le garranty eſt anient en ceo cas, eſt ceo, ſ. que ſi le garranty eſtoieroit en ſa force, donq; luncle garrantẽ a luy meſm̃, q̃ ne poit eſtre.

ALſo if Tenant in tayle make a feoffment to his vncle, and after the vncle make a feoffment in fee with warrantie, &c. to another, and after the feoffee of the Vncle doth re-enfeoffe againe the Vncle in fee, and after the Vncle enfeoffeth a ſtranger in fee without warrantie, and dieth without iſſue, and the Tenant in tayle dieth, if the iſſue in tayle will bring his Writ of *Formedon* againſt the ſtranger that was the laſt feoffee, and that by the Vncle, the iſſue ſhall not be barred by the warranty that was made by the Vncle to the firſt feoffee of his Vncle, for that the ſaid warrantie was defeated and taken away becauſe the Vncle tooke backe to him as great an eſtate from his firſt feoffee to whom the Warranty was made, as the ſame feoffee had from him. And the cauſe why the warrantie is defeated, is this, *viz.* that if the Warrantie ſhould ſtand in his force, then the Vncle ſhould warrant to himſelfe which cannot bee.

THere Littleton putteth another caſe, where a warranty may be defeated, as when the Vncle taketh backe as large an eſtate, as he had made, the Warrantie is defeated becauſe he cannot warrant land to himſelfe. (g) And ſo it is if the Vncle had made the Warrantie to the feoffee his heires and aſſignes, and taken backe an eſtate in fee, and after infeoffed another, yet the warrantie is defeated for that he cannot be aſſignee to himſelfe, and a man ſhall not regulary vouche himſelfe as aſſignee of a fee ſimple, and the Law will not ſuffer things inutile and vnprofitable. (h) And yet if the father be infeoffed with warrantie to him and his heires, the father infeoffeth his heire apparant in fee and dieth, he (as it hath been ſaid) ſhall vouch himſelfe, and the heire in boſow Engliſh by reaſon the act in Law determined the warrantie betweene the Father and the Sonne.

(i) But if a man maketh a feoffment in fee with warranty to the feoffee his heires and aſſignes, and the feoffee re-enfeoffeth the feoffor and his wife, or the feoffor and any other ſtranger, the warrantie remayneth ſtill, or if two doe make a feoffment with warrantie to one and his heires and aſſignes, and the feoffee re-enfeoffe one of the feoffors, the warrantie doth alſo remayne.

(g) *Temps E.*1. *Voucher* 266. 40.*E.*3.14. 44.*E.*3.38. 25.*E.*3.43.*b.* 26.*E.*3.68. 14.*E.*3.*Vouch.*106. 16.*E.*3.*Voucher* 87. 19.*E.*3.*Vouchee* 122. 17.*E.*3.73.74. 20.*H.*6.29.

(h) 40.*E.*3.14.*a.* 41.*E.*3.25.*a.*

(i) 11.*H.*4.20.42. 17.*E.*3.47.59. 18.*E.*3.56. 29.*E.*3.46. 39.*E.*3.9.

Section 744.

¶ Mes ſi le feoffee feiſoit eſtate al vncle pur terme de vie, ou en taile, ſauant le reuerſion, &c. ou que il fait done en taile al vncle, ou vn leas pur term̃ de vie, le remainder ouſter, &c. en ceſt cas le garrantie neſt pas tout ouſterment anient, meſt eſt mis en ſuſpence durant leſtate que luncle ad. Car apres ceo que luncle eſt mort ſans iſſue, &c. donques celuy en le reuerſion, ou celuy en le remainder barreroit iſſue en taile en ſon briefe de Formedon per le collateral garranty en tiel cas, &c. Mes auterment eſt lou luncle auoit aury graund eſtate en la terre de le feoffee, a que le garBVt if the feoffee had made an eſtate to his vncle for terme of life, or in taile, ſauing the reuerſion, &c. or a gift in Tayle to the vncle, or a leaſe for terme of life, the remainder ouer, &c. In this caſe the warranty is not altogether taken away, but is put in ſuſpence during the eſtate that the vncle hath. For after that, that the vncle is dead without iſſue, &c. then he in the Reuerſion, or he in the Remainder ſhall barre the iſſue in taile in his writ of *Formedon* by the collaterall warrantie in ſuch caſe, &c. But otherwiſe it is where the vncle hath as great eſtate in the land of the Feoffee to whom the Warrantie was made, as the Feoffee

¶ *Vr terme de vie, ou en taile.* Here it appeareth (k) that by taking a (l) Leaſe for life, or a gift in taile, the warranty is ſuſpended.

A man enfeoffeth a woman with warranty, they intermarry and are impleaded, vpon the default of the husband the wife is receiued, ſhee ſhall vouche her husband &c. notwithſtanding the warranty was put in ſuſpence. (m) And ſo on the other ſide, if a woman infeoffe a man with warranty, and they intermarry and are impleaded, the husband ſhall vouch himſelfe and his wife by force of the ſaid warranty.

(n) An infant en ventre ſa mere may bee vouched if God giue him a birth, and if not, ſuch a one heire to the warranty, but he cannot be vouched alone without the heire at the Common Law, for Proces ſhall be preſently awarded againſt him.

(k) 16.*E.*3.*Vouch.*87. 44.*E.*3.38. 26.*E.*3.56. 17 *E.*3.47. 10.*E.*3.30. 12.*E.*3.*Counterple de vouch* 42 14.*E.*3.*Ibid.*12

(l) 6.*E.*2.*vouch.*257. 3.*E.*3.*Ibid.*201. 5.*E.*3.*ibid.*178. 18.*E.*3.52. 14.*E.*3.*vouch.*109. 31.*E.*3.*ibid.*25. 43.*E.*3.7. 44.*E.*3.38. 32.*E.*3.*Voucher* 102.

(m) 4.*E.*2.*Voucher* 243.246

(n) *Temps E.*1.*Gard.*153. 31.*E.*1.*briefe* 873. 8.*E.*2.*vouch.*237. 11.*E.*3.*ibid.*13. 11.*E.*3.*quar.imp.*158. 38.*E.*3.7.*&* 29. 41.*E.*3.*in dower.* 9.*H.*6.34. *Pl. Com. Stowells caſe per. Saunders & Browne*

¶ *Mes eſt miſe en ſuſpence.* (o) Tenant in taile maketh a feoffment in fee with warranty, and diſſeiſeth the Diſcontinuee, and dyeth ſeiſed, leauing aſſets to his iſſue. Some hold that in reſpect of this ſuſpended warranty and aſſets, the iſſue

(o) 21.*E.*3.36.*a.* & *b.* 38.*E.*3.21. 44.*E.*3.25. 45.*E.*3.*title* 32. 44.*E.*3.*ibid.*31. 33.*E.*3.*ibid.*4.

iſſue in taile ſhall not bee remitted, but that the Diſcontinuee ſhall recouer againſt the iſſue in taile, and he take aduantage of his Warranty, if any he hath, and after in a Formedon brought by the iſſue, the Diſcontinuee ſhall barre him in reſpect of the Warranty and Aſſets, and ſo euery mans right ſaued.

ranty fuit fait, come le feoffee auoit d luy, *patet*. Cauſa patet.

hath himſelfe. *Cauſa*

Sect.745.

¶ *Or releaſe fait per luy oue garranty.* Note a Warranty grounded vpon a Releaſe. Hereof you ſhall reade before in this chapter.

Sect.733.704.

¶ Item ſi luncle apres tiel feoffment fait oue garrantie, ou releaſe fait per luy oue garranty ſoit attaint de felony, ou vtlage de felony, tiel collateral garrantie ne barreſ my, ne greuera iſſue en le taile, pur ceo que per le attainder de felonie, le ſanke eſt corrupt enter eux, &c.

ALſo if the vncle after ſuch feoffment made with warrantie, or a releaſe made by him with warrantie, be attaint of felony, or outlawed of felony, ſuch collaterall warranty ſhall not barre nor grieue the iſſue in the taile, for this that by the attainder of felony, the blood is corrupted betweene them, &c.

¶ *Soit attaint de felony, ou vtlage, &c.* Note according to Littleton here, there be two manner of Attainders, the one is after apparance, and that in three manners, by Confeſſion, by Battell, or by Verdict, the other vpon Proces to bee Outlawed, which is an Attainder in Law. But (as hath beene ſaid) there is a great diuerſitie, as to the forfeiture of Land, betweene an Attainder of felony by Outlawry vpon an Appeale, and vpon an Inditement: for in the caſe of an Appeale, the Defendant ſhall forfeit no lands, but ſuch as he had at the time of the Outlawry pronounced, but in caſe of Inditement, ſuch as he had at the time of the felony committed, and the reaſon of this diuerſity is euident, for that in the caſe of Appeale there is no time alledged in the Writ when the felony was done, and therefore of neceſſitie it muſt relate in that caſe only to the iudgement of the Outlawry: but in the caſe of Inditement, there is a certaine time alledged, and therefore in that caſe it ſhall relate to the time alledged in the Inditement when the felony was committed. But in the caſe of the Inditement there is alſo a diuerſitie to be obſerued, (o) for as hath beene ſaid, it ſhall relate to the time alledged in the Inditement for auoyding of eſtates, charges, and incumbrances, made by the Felon after the felony committed, but for the meane profits of the land it ſhall relate only to the iudgement, aſwell in this caſe of Outlawry as in other caſes. And where Littleton ſaith, (Attaint de felony) if a man be conuicted of felony by verdict, and deliuered to the Ordinary to make Purgation (p) he cannot be vouched, for that the time of his purgation (if any ſhould be) is vncertaine, and the Demandant cannot be delayed vpon ſuch an vncertaintie, but the Tenant is not without remedy, for he may haue his Warrantia cartæ.

8.E.2. Voucher 237.

(o) 39.E.3. Forfeiture 30. 38.E.3.31. 3.E.4.25. 19.E.4.2. Pl.Com.488.b.

(p) 8.E.2. Voucher 237. Vid.38.E.3.29.b Simile.

¶ *Attaint.* Of this word hath beene ſpoken in the ſecond booke in the chapter of Villenage.

Vpon ſeuerall Attainders of Felonyes, there lye three ſeuerall Writs of Eſcheate, viz. (*) Firſt, when he hath iudgement to be hanged. Secondly, when hee is outlawed. Thirdly, when he abiureth the Realme.

(*) Dame Hales caſe in Pl.Com.fo.262.

(q) 8.E.3. Iudgement 225.

(r) 15.E.3. Petition 2.

(q) The Defendant in an appeale of death did wage battaile, and was ſlaine in the field, per Iudgement was giuen that he ſhould be hanged, and the Iuſtices ſaid, that it is altogether neceſſary, that ſuch a Iudgement be giuen, for otherwiſe the Lord could not haue a Writ of Eſcheate. (r) And in Eire it hath beene ſeene, that a man hath beene attainted after his death by preſentment, &c. The difference betweene a man Attainted and Conuicted is, that a man is ſaid Conuict before hee hath iudgement, as if a man bee conuict by Confeſſion, Verdict, or Recreancy. And when he hath his iudgement vpon the Verdict, Confeſſion, or Recreancy,

Recreancy; or vpon the Outlawry, or Abiuration, then is he ſaid to be Attaint. And thus is the Law taken at this day, notwithſtanding (f) ſome diuerſitie of opinions in our bookes.

(f) 40 E.3.12. 3.E.3. Coron 365. 8.E.2.ibid.293. 21.H.7.

If a Felon be conuicted by Verdict, Confeſſion, or Recreancy, he doth forfeit his goods and chattels, &c. preſently. (t) For where a reaſon hath beene yeelded in our bookes, that the prayeing of his Clergie, was a refuſall of the iudgement of the Law, and a flight in Law, and for that cauſe he forfeited his goods and chattells, that doth not hold, for if a man bee Conuict of petite treaſon, or murder, or any other crime for which he cannot haue his Clergie, yet by the very Conuiction he forfeiteth his goods and chattells before Attainder. And (u) Stanford (ſpeaking of a Felon conuict by Verdict) ſaith, that he ſhall forfeit his goods, which he had at the time of the Verdict giuen, which is the conuiction in that caſe, and by the Statute of 1.R.3. cap.3. no Sheriffe, Baylife, &c. ſhall ſeiſe the goods of a Felon before he bee conuicted of the felony, whereby it appeareth, that the goods may be ſeiſed as forfeit after conuiction. And the (x) old Statute is worthy of noting, Prouiſum eſt in curia noſtra coram Iuſticiarijs noſtris quod de cetero nullus homo captus pro morte hominis vel alia felonia pro qua debet impriſonari, diſſeiſietur de terris & tenementis vel catallis ſuis quouſque conuictus fuerit. So as by a conuiction of a Felon, his goods and chattells are forfeited, but by Attainder, that is by iudgement giuen, his Lands and Tenements are forfeited, and his blood corrupted and not before.

(t) Dame Hales caſe, Vbi ſupra. 8.H.4.2.

(u) Stanford Lib. 1. fo.110. Foxleys caſe. Vid 7.H.4 41. 1.R.3.ca.3.

(x) Statute de catallis felonum vet Magna Carta, fo.66. 2.part.

(y) If the partie vpon his Arraignement refuſe to anſwer according to Law, or ſay nothing, he ſhall not be adiudged to be hanged, but for his contempt, to paine fort & dure, which worke no Attainder for the felony, nor forfeiture of his lands or corruption of blood. But in caſe of high treaſon if the party refuſe to anſwer according to Law, or ſay nothing, hee ſhall haue ſuch iudgement by attainder, as if he had beene conuicted by verdict or confeſſion.

(y) Stanf.Pl.Co.139.185.

¶ *Felony.* (*) Ex vi termini ſignificat quodlibet capitale crimen felleo animo perpetratum, in which ſence murder is ſaid to be done per feloniam, and is ſo appropriated by Law, as felonice cannot be expreſſed by any other word. (a) And in ancient times this word (felonice) was of ſo large an extent as it included high treaſon; and therefore in our ancient bookes, by the pardon of all felonies, high treaſon, or counterfeiting of the great Seale, and of the Kings coine, &c. was pardoned. (b) But afterwards it was reſolued, that in the Kings Pardon or Charter, this word (felony) ſhould only extend to common felonyes, and that high treaſon ſhould not be comprehended vnder the ſame, and therefore ought to be ſpecially named. And yet that a pardon of all felonyes ſhould extend to petite treaſon, wherefore by the Law at this day vnder the word (Felony) in commiſſions, &c. is included Petite treaſon, Murder, Homicide, burning of houſes, Burglary, Robbery, Rape, &c. Chance-medly, ſe defendendo, and petite Larceny. (c) For ſuch of theſe crimes for the which any ſhall haue this iudgement to be hanged by the necke till he be dead, hee ſhall forfeit all his lands in fee ſimple, and his goods and chattells: for Felony by chance-meddly or ſe defendendo, or petite Larceny, he ſhall forfeit his goods and chattells, and no lands of any eſtate of freehold or inheritance. And all felonyes puniſhable according to the courſe of the Common Law, are either by the Common Law, or by Statute. There is alſo a Felony puniſhable by the Ciuill Law, becauſe it is done vpon the high Sea, as Pyracie, Robbery, or Murder, whereof the Common Law did take no notice, becauſe it could not be tried by twelue men. If this Pyracy be tryed before the Lord Admirall in the Court of the Admiraltie according to the Ciuill Law, and the Delinquents there attainted, yet ſhall it worke no corruption of blood, nor forfeiture of his lands, otherwiſe it is if he be attainted before Commiſſioners by force of the Statute of (d) 28.H.8. By the expreſſe purview of that Statute about the end of the raigne of Queene Elizabeth certaine Engliſh Pyrats that had robbed on the Sea, Merchants of Venice in amity with the Queene being not knowne, obtained a Coronation pardon, whereby amongſt other things the King pardoned them all felonies. It was (e) reſolued by all the Iudges of England vpon conference and aduiſement that this did not pardon the Pyracy, for ſeeing it was no felony whereof the Common Law tooke Conuſance, and the Statute of 28.H.8. did not alter the offence, but ordaine a tryall and inflict puniſhment, therefore it ought to be pardoned ſpecially, or by words which tant amount, and not by the generall name of Felony, and according to this reſolution the delinquents were attainted and executed.

(*) Glanvill, lib.14 ca.25. Mirror. ca.25.W.1.ca 15.
(a) 3.E 4.14. 18.E.4.10. 23.Aſſ 49. 1.E.3.13. Stanf.Pl.Cor.102.E. Stanf Pl.Cor.102.E. 8 H.4.2.
(b) 22 Aſſ.49.

(c) Stanf prer.45.b. 16.E.3.Coron 116.& 3.E.3 Coron.302.

(d) 28.H.8.cap.15.

(e) Hill.2.Ia.Regis. Vid.Mich.7.& 8.Eliz. Dier 241. 24.Eliz.Dier 308.

Pirata cõmeth of the word πειράω which ſignifieth a Rouer at ſea. Attainder of hereſie, or Præmunire worketh no corruption of blood, nor hereſie, forfeiture of lands, but in caſe of Præmunire forfeiture of lands in fee ſimple, but not of lands in taile as formerly hath beene ſaid. (f) By ſome Statutes it is ſaid, Sur forfeiture de corps & de auoire, or Sub foriſfactura omnium quæ in poteſtate ſua obtiner, or to be at the Kings will, body, lands and goods, and the like, theſe are not extended to the loſſe of life or member, but to impriſonment, lands and goods. (g) But if an Act of Parliament ſaith, Eeit iudgement de vie & member, or ſubeat iudicium vitæ vel membrorum, in that caſe iudgement of death ſhall be giuen as in caſe of felony, viz. that he be

(f) Statute de Magna mo. de tempore E.1. 35.E.1. de Carliſle 20.F.3 ca.4.
(g) W.2.Ca 34. Rot Parliam. 25.E.1. I.E.2. de frang. priſonam. 14.E.3.cap.10. Stanf.Pl.Coron.30.31. 3.E.3.Coron.153. Brookes it. Coron.203. 9.E.4.26.

hanged by the necke till he be dead, and conſequently his bloud is corrupted, (as our Authour here ſaith) and ſhall forfeit as in caſe of Felonie.

(h) *Bract.li.4.fo.248. 48.E.3.3.13.R.2.ca.2. Rot. Parl.21.Ric.2.nu.19.1.H.4. c.14.13.H.4.4.& 5.37.H.6 21.Rotul.Parl.8.R.2.nu.31. Forteſc.ca.32.Rot.Par.2.H.4 74.11.H.4.24.30.Hen.6.6. Stanf.Pl.Cor.65.Stat de Aſſignat.4.E.1.Br.Cor.196. Rot.Par. 2.H.6.nu 9. Rot. Par.5.H.4.nu.39. Rot.Vaſt. 9.H.4.nu.14.8.H.6. nu. 38. 21.E.4.17.b.Catelby.10.H.7 p Vauaſor.18.E.2. Quar.imp. 175 6.E.3.41.Paſc.14.E.3. in Srac.le Count.de Kents caſe. p.39.Ed.3.cor.Reg.Rot.49.le Count.de Lanc.caſe.Rot.Parl. 28.E.3.nu.8.Mortimers caſe. Rot.Parl.28.E.3.nu.13. Le Counte de Arundels caſe.*

(h) There is alſo a Court of the Conſtable and Marſhall, who haue Conuſance of Contracts, of Deedes of Armes, and of warre out of the Realme, and alſo of things touching warre within the Realme, which may not be determined or diſcuſſed by the Common Law, and alſo all Appeales of offences done out of the Realme, and they proceed according to the Ciuile Law: but theſe things more properly pertaine to another kind of Treatiſe, and therefore I ſhall ſpeake no more thereof in this place, but onely for the ſatisfaction of the ſtudious reader, to quote ſome Authorities of Law touching the iuriſdiction of that Court, that he may haue ſome taſt thereof.

In the ſame manner it is if a man be attainted of High Treaſon, the warrantie is alſo defeated.

¶ *Le ſanke eſt corrupt enter eux, &c.* *Aptly is a man ſayd to be attainted, attinctus, for that by his attainder of Treaſon or Felonie his bloud is ſo ſtained and corrupted, as firſt, His Children cannot be heyres to him nor to any other Anceſtor, and therefore the warrantie cannot bind, for thereby heyres onely are to be bound.

Secondly, If he were nobie or gentle before, he and all his children and poſteritie are by this Attainder made baſe and ignobile, in reſpect of any Nobilitie or Gentrie which they had by their birth.

Thirdly, This corruption of bloud is ſo high, that regularly it cannot bee abſolutely ſained but by authoritie of Parliament: All which is implied in the ſame (&c.)

Stanf.li.3.Pl.Cor.195.b. 27.E.3.77.13.H.4.8. F.Lit.li.1.in the Chap. of Dower.

*Sect.*746.747.

¶ *LE iſſue in Tayle poet enter.* And the reaſon is, For that by the attainder of the father, it is now in iudgment of Law but a releaſe without warrantie, for albeit the warranty at the time of the Releaſe was effectuall, yet it worketh no diſcontinuance vnleſſe it diſcendeth vpon the Iſſue in Tayle, ſo as if it be defeated, extinct, or determined in the life of the tenant in Tayle, then no diſcontinuance is wrought: and ſo it is if Tenant in Tayle hath Iſſue, and releaſeth to the Diſſeiſor with Warrantie, and after is attainted of felonie, and after obtaineth his pardon and dieth, the Iſſue in Taile may enter; *for the Pardon doth not reſtore the Bloud, as to the Warranty nor maketh the Iſſue in that caſe inheritable to the warrantie. But if the Iſſue in Taile in that caſe had been attainted of Felonie in the life of his father, and obtained his Charter of pardon, and then his father had died, the iſſue cannot enter into the

27.E.3.77.1.E.3.4.6.E.3. 55.9.H.5.9.31.E.1.Diſcont. 17.46.E.3.Petit.20.26.aſſ.2 49.Aſſ.4.29.aſſ.11.13.H.4. 8. 13.H.7.17. Pl.Com.in Walſingbams caſe.3.E.2.Diſcent.Br.64.Stanf.Pl.Cor.195 196.See in the Chapter of Tenant by the Curteſie, touching this matter.

¶ Item ſi Tenãt en Taile ſoyt diſſeiſie, et puis fait releaſe al Diſſeiſor oue Garrantie en fee, et puis le Tenãt en taile eſt attaint, ou vtlage de felonie, et ad iſſue et mozuſt, en ceſt caſe liſſue en taile poet enter ſur le Diſſeiſor. Et la cauſe eſt, pur ceo que rien fait diſcontinuance ẽ ceſt caſe forſque le Garrantie, et Garrantie ne poit diſcender al Iſſue en tayle, pur ceo que le ſanke eſt corrupt perenter celuy que fiſt le Garrantie et Iſſue en Taile.

ALſo if Tenant in Tayle bee diſſeiſed, and after make a Releaſe to the Diſſeiſor with Warranty in Fee, and after the Tenant in Taile is attaint or outlawed of felony, and hath iſſue & dieth; In this caſe the Iſſue in Taile may enter vpon the Diſſeiſor: and the cauſe is, for this, That nothing maketh Diſcontinuance in this caſe but the warranty, and warranty may not diſcend to the Iſſue in Taile, for this, that the bloud is corrupt betweene him that made the Warrantie, and the Iſſue in Tayle.

*Sect.*747.

¶ Cest Garrãty touts foits demurt a l'Common Ley, et la Common Ley est, Que quant home est attaint ou vtlage de Felonie, quel vtlagarie est vn attainder en Ley, que le sanke perenter luy et son fits, et touts auters queux serra dits ses heires est corrupt, issint que riens per discent poit discender a ascun q̃ poit estre dit son hẽre per le Common Ley. Et la Feme de tiel home que issint est attaint de felonie, ne serra iammes endow de les Tenements sa Baron issint attaint. Et la cause est pur ceo que homes pluis eschuerent de fait ascuns felonies. Mes lissue en Taile quant a les Tenements tayles nest pas en tiel cas bar, pur ceo que est enherit̃ per force de le Statute, et nemy p le course de Common Ley, et pur ceo tiel attainder de son pier ou de son ancestor en le Tayle, ne luy ouster de son droit p force de le taile, &c.

FOr the Warrantie alwayes abideth at the Common Law, and the Common law is such, That when a man is attaint or outlaw'd of felony, which Outlawrie is an Attainder in Law, that the bloud betweene him and his sonne, and all others which shall be sayd his heyres, is corrupt, so that nothing by discent may discẽd to any that may bee said his heyre by the Common Law: And the wife of such a man that is so attaint shal neuer be indowed of the Tenements of her husband so attainted. And the cause is, For that men should more eschew to commit Felonies. But the Issue in Taile as to the Tenements tayled is not in such Case barred, because he is inheritable by force of the Statute, and not by the course of the Common law: And therefore such attainder of his Father or of his Auncestor in the Taile, shall not put him out of his Right by force of the Taile, &c.

land in respect of the corruption of bloud vpon the Attainder of himselfe. (h) And it is a generall rule, That hauing respect to all those whose bloud was corrupted at the time of the attainder, the Pardon doth not remoue the corruption of Bloud neither vpward nor downward. As if there bee Grandfather, father, & son, & the Grandfather and father haue diuers other sonnes, if the father bee attainted of Felonie and pardoned, yet doth the bloud remaine corrupted not onely aboue him and abont him, but also to all his children borne at the time of his attainder. But in the case of Littleton, if Tenant in Taile at the time of his attainder had no Issue, & after the obtaining of his pardon had issue, that Issue should haue bin bound by the Warrantie, for by the pardon he was as a new creature, Tanquam filius terræ, whose bloud vpwards remaine corrupted, but for the Issue had after the Pardon, he is inheritable to his Father, and if his father had Issue before the Pardon, and had issue also after and dieth, nothing can discend to the youngest, for that the eldest is liuing and disabled. But if the eldest sonne had died in the life of the father without Issue, then the youngest should inherit.

(h) *Bract li.*3. *fo.*132 133. 276 & *li.*5. 374. *Brit. f.*215. 6. *Flet. li.*1. *c.*38.

¶ *Le Garrantie demurt al Common Ley.* The Collaterall Warrantie is not restrained by the Statute of Donis Conditionalibus, but a lineall Warrantie is restrained by the Statute, vnlesse there be Assets, as formerly at large hath beene sayd.

*Vi. Sect.*711. 715.

¶ *Et la Feme de tiel home que issint est attaint, &c. ne serra iammes endow, &c.* It is to be obserued, That the iudgment against a man for felonie, is, That hee bee hanged by the necke vntil he be dead, but implicatiue, (as hath bin sayd)

ſayd) he is puniſhed firſt in his Wife, That ſhe ſhall loſe her Dower. Secondly, In his children, That they ſhall become baſe and ignoble, as hath beene ſayd. Thirdly, That hee ſhall loſe his poſteritie, for his bloud is ſtained and corrupted, that they cannot inherit vnto him or any other Anceſtor. Fourthly, That he ſhall forfeit all his lands and tenements which hee hath in Fee, and which he hath in Tayle, for terme of his life. And fiftly, All his Goods and Chattels. And thus ſeuere it was at the Common Law, and the reaſon hereof was, That men ſhould feare to commit felonie, Vt pœna ad paucos, metus ad omnes perueniat. And it is truly ſayd, Etſi meliores ſunt quos ducit amor, tamen plures ſunt quos corrigit timor. And ſo it is à fortiori in caſe of High Treaſon. But ſome Acts of Parliament haue altered the Common Law in ſome of theſe points: Firſt, By the Statute of Donis conditionalibus, Lands intailed were not forfeited neither for Felonie nor for Treaſon, but for the life of Tenant in Tayle: This Act was made by King Edw. the firſt, who (as our Bookes (i) ſpeake) was the moſt ſage King that euer was: (k) and the cauſe wherefore this Stat. was made, was to preſerue the Inheritance in the bloud of them to whom the gift was made, notwithſtanding any attainder of Felonie or Treaſon. And this Act in Hiſtorie is called Gentilitium municipale, for that by this Act the families of many Noblemen & Gentlemen were continued & preſerued to their poſteritties. And this Law continued in force from the thirteenth yere of King Edward the firſt, vntill the (l) twentie firth yeare of King Henrie the eighth, when by Act of Parliament Eſtates in Taile are forfeited by attainder of high Treaſon. But as to Felonies (whereof our Author here ſpeaketh) the Statute of Donis Conditionalibus doth yet remaine in force, ſo as for attainder of Felonie Lands or Tenements entailed are not forfeited, but only (as hath beene ſayd) during the life of Tenant in Tayle, but the Inheritance is preſerued for the Iſſues.

(i) 5.E.3.14.9.E.3.22.
(k) 7.H.4.32.19.H.6.71. See Lit.li.1.ca.Dow.Sect.55

(l) 26.H.8.ca.13.33.H.8. ca.20. 5.E.6.ca.11.

(m) Stanf.Pl.Cor.195.

(m) The wife of a man attainted of high Treaſon or petit Treaſon, ſhall not bee receiued to demand Dower, vnleſſe it be in certaine caſes ſpecially prouided for. But the wife of a perſon attainted of Miſpriſion of Treaſon, Murther, or Felonie, is dowable ſince our Author wrote, (n) by the Statute in that caſe made and prouided, which is more fauourable to the woman than the Common Law was.

(n) 1.E.6.ca.13. 5.E.6.c.11 5.El.ca.1.& 11. 18.El.ca.1. 12 H.4.3. V.Sect.55.

(o) If a Seigniorie be granted with Warrantie, and the Tenancie eſcheate, the Seigniorie whereunto the Warrantie was annexed is extinct, and conſequently the Warranty defeated, and it ſhall not extend to the Land, & ſic in ſimilibus.

(o) 6.H.4.1.45.E.3.Vouch. 72.Pl.Com.292. 16.Edw.3. Age 46.18.H.3.Vouch.281. 23.E.3 Garr.77. See in the Chapter of Villenag Sect.200.

If a Collaterall Anceſtor releaſe with Warrantie, and enter into Religion, now the Warranty doth bind; but if after he be deraigned, now it is defeated.

Sect. 748.

LIttleton hauing ſpoken in what Caſes Warranties may be defeated and extinguiſhed by matter in Law; now he ſheweth how a Warrantie may bee diſcharged or defeated by matter in Deed: and hereupon he putteth an example of a Releaſe in 2 ſeuerall manners:

Vid Lib.8.fo.153.154. Altham Caſe. 46.E.3.2. 45.E.3.23. Vid. before in the Chapter of Releaſes.Sect.508

First, By a releaſe of all warranties.

Secondly, By a Releaſe of all Couenants reall.

And thirdly, By a Releaſe of all demands.

(q) 14.Aſſ.pl.2. 3.Eliz.Dyer.188.9.F.4.52.b

(q) If a man make a gift in Taile with warranty, this warrantie is alſo intayled, and therefore a Releaſe made by Tenant in Tayle of the warrantie, ſhal not bar the iſſue, no more than his Releaſe ſhal bar the iſſue to bring an attaint vpon a falſe verdict, or a writ of error vpõ an erroneous

¶ Item ſi Tenant en le Taile enfeoffa ſon Uncle, & quel enfeoffa vn auter en fee oue garr̃ ac. ſi apres le feoffee pr̃s fait releſſa a ſ̃ Uncle touts manners des garranties, ou touts manners de Couenants reall, ou touts manners de dões, p tiel Releaſe le Garrantie eſt extinct. Et ſi le Garrantie en cel caſe ſoit pleade enuers le heire en taile, que porta ſon Briefe de

ALſo if Tenant in Taile infeoffe his Vncle, which infeofs another in fee with warr̃, if after the feoffee by his Deed releas to his Vncle all manner of Warranties, or all manner of Couenants realls, or all manner of Demaunds, by ſuch Releaſe the Warrantie is extinct. And if the Warranty in this caſe bee pleaded againſt the heire in Tayle that bringeth his writ of *Forme-*

de Formedō p̄ barrer le heire de son action, si lheire auoit le dit releas & ceo pledast, il defetera le plee en barre, &c. Et mults auters cases et matters y sont, p̄ q̄uꝰ hōe poit defeater garrantie, &c.

don, to barre the heire of his action, if the heire haue and plead the said releasé, &c. he shall defeat the plee in barre, &c. and many other cases and matters there be whereby a man may defeate a warrantie, &c.

iudgement giuen against the Father, nor his gift can barre the issue of the Donee that create the estate taile, nor of any other Deede necessary for defence of the title.

¶ *Apres le feoffee releſſa.* Littleton here putteth his case where one is bound to warrant: put the case (r) then that two make a Feoffment in fee, and warrant the land to the Feoffee and his heires, and the Feoffee releaſe to one of the Feoffors the warranty, yet hee shall vouche the other for the moytie. And so it is if one infeoffe two with warranty, and the one releaſe the warranty, yet the other shall vouch for his moytie. (r) 45.E.3.23.

¶ *Si le heire auoit le dit releaſe, &c.* Here it appeareth that the releaſe being made to the vncle being his Ancestor, the Deed doth after the deceaſe of the vncle belong to him, and therefore he cannot plead it, vnleſſe he sheweth it forth.

¶ *Et mults auters caſes & matters y ſont per queux home poet defeater garranty, &c.* As namely by a Defeasance, as other things executory may. Also a Warranty may loſe his force by taking benefit of the same. In a Præcipe the Tenant voucheth, and at the Sequatur ſub ſuo periculo, the Tenant and the Vouchee make default, whereupon the Demandant hath iudgement against the Tenant. And afterwards the Demandant brings a Scire facias against the Tenant to haue Execution, in this case the Tenant may haue a Warrantia Cartæ And if in that case a ſtranger had brought a Præcipe against the Tenant, he might haue vouched againe, for by the iudgement giuen against the Tenant the warranty loſt not his force, but if the Tenant had Iudgement to recouer in value against the Vouchee, he should neuer vouche againe by reaſon of that Warranty, becauſe hee had taken aduantage of the Warranty. And it is to be obſerued that vpon the proces of Sommoneas ad warrantizandum, if the Sherife returne the Vouchee ſummoned and he make Default, the Tenant ſhall haue a Capias ad valentiam, but if he returne that the Vouchee had nothing, then after the ſicut alias & plures a ſequatur ſub ſuo periculo ſhall iſſue, and there if the Vouchee make default, the Tenant ſhall not haue Iudgement to recouer in value, for hee was neuer ſummoned, and it appeareth of Record that he hath nothing, but in the Capias ad valentiam it appeareth that he had Aſſets, and he had beene ſummoned before, But in ſome ſpeciall caſes there ſhall be two recoueries in value vpon one warrantie. As if a Diſſeiſor giue lands to the husband and wife, and to the heires of the husband, the husband alieneth in fee with warranty and dieth, the wife bringeth a Cui in vita, the Tenant vouche and recouereth in value if after the death of the wife, the Diſſeiſee bring a Præcipe against the Alienee, hee ſhall vouch and recouer in value againe. 43.E.3.17. Pl.Com.in Browning's caſe.

(f) So it is where the wife bringeth a writ of Dower against the Alienee hee ſhall recouer in value, and after her death he ſhall recouer in value againe, vpon the ſame warrantie. (f) 45.E.3.Voucher 72.

In the ſame manner it is if a man be ſeiſed of a rent by a defeaſible title, and releaſeth to the Tenant of the land all his right in the land, and warranteth the land to him and his heires, if he be impleaded for the rent, he ſhall vouch & recouer in value for the rent, and if after he be impleaded for the land, he ſhall vouche and recouer in value againe for the land: but in theſe and the like caſes, the reaſon is in reſpect of the ſeuerall eſtates recouered, but for one and the ſame eſtate he ſhall neuer recouer but once in value, and though the land recouered in value be euicted, yet ſhall he neuer take benefit of that warranty after. And as Warranties may bee defeated in the whole, ſo they may be defeated as to part of the benefit that may be taken of the ſame. (t) As hee that hath a warranty may make a Defeaſance not to take any benefit by way of Voucher: In the like manner that he ſhall take no aduantage by way of Warrantia Cartæ or by way of Rebutter. (t) 7.H.6.43. 13.Aſſ.8. 13.E.3. Gar.94.25.37. 22.H.6.51. 8.H.7.6.

Sect. 749.

¶ Here Littleton sheweth that in the same manner that a collaterall warrantie may be defeated by matter in Deede, or by matter in Law, so may to all intents and purposes a lineall warrantie, whereof hee putteth an example of a lineall warranty and assets.

¶ *Et vn lineal garranty, &c. oueſque ceo que aſſets a luy diſcendiſt, &c.* Here it appeareth by Littleton, that a lineall warranty and assets is a good plea in a Formedon in the Discender; wherein it is to be knowne that if Tenant in taile alieneth with warranty, and leaue assets to discend, if the issue in taile doth alien the assets, and die, the issue of that issue shall recouer the land, because the lineall warranty discendeth only to him without assets, for neither the pleading of the warranty without the assets, nor the assets without the warranty is any barre in the Formedon in the Discender. But if the issue to whom the warranty and Assets discended had brought a Formedon, and by Iudgement had beene barred by reason of the warranty and Assets. In that case albeit he alieneth the Assets, yet the estate Tayle is barred for euer: for a barre in a Formedon in the Discender, which is a writ of the highest nature that an issue in tayle can haue, is a good barre in any other Formedon in the Discender, brought afterwards vpon the same gift.

*Temps E.*1.*Garr.*89. 34.*E.*1. *ibi.*88. 11.*E.*2.*ibid.*83. 4.*E.*3.24. 5.*E.*3.14. 40.*E.*3.9. 14.*H.*4.39. 24.*H.*8.*Taile Br.*33. 4.*Mar. Dier* 139. *Lib.*10 *fo.*37.38. *in Mary Portingtons case.*

¶ Et eſt aſcauoir, que en meſme le maner come garranty collateral poit eſtre defeate pur matter en fait, ou en ley, en meſme le maner poit lineal garranty eſtre defeat, &c. Car ſi lheire en taile porta brieſe de Formedon, & vn lineal garranty, de ſon anceſter enheritable per force de le taile, ſoit plede enuers luy, oue ceo que aſſets a luy diſcendiſt de fee ſimple, que il ad per meſme launceſter que fiſt le garranty, ſi lheire que eſt demandant poit adnuller, & defeater le garrãty, ceo ſuffiſt a luy. Car le diſcent des auters tenements de fee ſimple ne fait riens p̃ barrer lheire ſans le garranty, &c.

And it is to be vnderstood, that in the same manner as the collaterall Warranty may bee defeated, by matter in Deed, or in Law; In the same manner may a Lineall warranty be defeated, &c. For if the heire in taile bringeth a writ of *Formedon*, and a lineall warranty of his Ancestor inheritable by force of the Tayle, be pleaded against him, with this that Assets discended to him of fee simple, which he hath by the same Ancestor that made the warrantie, if the heire that is demandant may adnull and defeate the warranty, that sufficeth him; For the discent of other tenements of fee simple maketh nothing to barre the heire without the warranty, &c.

¶ A Toy mon fitz, *&c.* Here our Author calleth (as many times in these bookes hee hath done) not only his sonne Richard, but euery Student of the Law to be accounted his sonne, and worthily, for that seeing our Author had the honour to be in his time the Father of the Law, and all good Students in the Law iustly account themselues the sonnes of the Law, (for otherwise they are not worthy of the profession) our author, as a carefull and prouident Father, as it hath manifestly appeared, gaue excellent instructions in these his bookes both to his owne son, and to his adopted sons, to make them from age to age the more apt and able to vnderstand the arguments and reasons of the Law.

¶ Ore ieo ay fait a toy mon fits trois liures.

Now I haue made to thee my sonne three bookes.

¶ Le prim̃er Liure eſt de Eſtates que homes ount en terres ou tenements: ceſtaſcauoire,

The firſt Booke is of Eſtates which men haue in Lands and Tenements: That is to ſay,

Le ſecond Liure.

¶ Et ceux deux petits lieurs ieo ay fait a toy pur le melior entender de certaine Chapters de les antiēt Liures de Tenures.

And theſe two little Bookes I haue made to thee for the better vnderſtanding of certain Chapters of the antient Booke of Tenures.

¶ *Meliour entender, &c.* And theſe Inſtitutes haue I collected and publiſhed to the end that theſe three Bookes of our Author may be the better vnderſtood of the ſtudious Reader.

¶ *Antient Liure des Tenures.* This Booke may well be accounted antient, for it was compoſed in the raigne of King Edward the third, (as Iuſtice Fitzherbert ſaith) by a graue and diſcreet man. *Fitz. lib. Preface to his N. B.*

Le tierce Liure.

Epilogus.

Epilogus.

IEo ne voile enprender ne presumer, &c. Here obserue the great modestie and mildenesse of our Author, which is worthie of imitation, for nulla virtus, nulla scientia locum suum & dignitatem conseruare potest sine modestia. And herein our Author followed the example of Moses, who was a Judge, and the first writer of Law, for he was Mitissimus omnium hominum qui fuit in terris, as the holy Historie testifieth of him.

¶ *Les arguments & les reasons del Ley, &c.* Ratio est anima Legis, for then are we sayd to know the Law, when we apprehend the reason of the Law, that is, when we bring the reason of the Law so to our owne reason, that we perfectly vnderstand it as our own, and then and neuer before, we haue such an excellent and inseperable propertie and ownership therin, as we can neither lose it, nor any man take it from vs, and will direct vs (the learning of the Law is so chayned together) in many other Cases. But if by your studie and industrie you make not the reason of the Law your owne, it is not possible for you

¶ E T saches mon fits, Que ieo ne voil' que tu croies, que tout ceo q̄ ieo ay dit en les dits liures soit Ley, car ieo ne ceo voile enprender ne presumer ꝑ moy. Mes de tiels choses que ne sont pas Ley enquires, et apprendres de mes sages Masters apprises ẽ la Ley. Nient meins coment que certaines choses, queux sont motes et specifies en les dits Liures, ne sont pas ley, uncore tiels choses ferra toy plus apt et able de entender et apprender les arguments, et les reasons d̄ ley, &c. Car p les arguments et les reasō̄s en la Ley home pluꝯ toft auiendra a le ver-

AND know my son, That I would not haue thee beleeue, that all which I haue sayd in these Bookes is Law, for I will not presume to take this vpon me, but of those things that are not Law, enquire & learne of my wise masters learned in the law; notwithstanding albeit that certaine things which are mooued & specified in the sayde Bookes, are not altogether Law, yet such things shall make thee more apt, and able to vnderstand and apprehend the Arguments and the reasons of the Law, &c. For by the Arguments and Reasons in the Law, a man more sooner shall come to the certain-

certaintie & a la conusans de la ley. tie and knowledge of the Law.

Lex plus laudatur quando ratione probatur.

long to retaine it in your memorie. And well doth our Author couple arguments and reasons together, Quia argumenta ignota & obscura ad lucem rationis proferunt & reddunt splendida: and therefore argumentari & ratiocinari are many times taken for one. And that our Author may not speake any thing without Authority (which in these Institutes we haue as we take it manifested) his opinion herein also agreeth with that of the learned and reuerend chiefe Iustice of the Court of Common pleas Sir Richard Hankford, (y) Home ne scauera de quel mettal vn campane est, si ne soit bien bate, ne le ley bien conus sans disputation. And another saith, (*) Ieo aye dispute ceste matter pur la apprender la ley. So as our Author hath made a most excellent Epilogue or Conclusion with a graue aduice and councell, together with the reason thereof, which all good students are to know and follow, and with teire and sequi I will conclude our Authors Epilogue.

(y) 11. H. 4. 37.

(*) 41. E. 3. 22. Kuten. *Vid. Sect.* 377.

¶ *Lex plus laudatur quando ratione probatur.*

This is the fourth time that our Author hath cited verses. *Vid. Sect.* 384. 443. 350.

When I had finished this worke of the first part of the Institutes, and looked backe and considered the multitude of the conclusions in Law, the manifold diuersities betweene cases and points of learning, the variety almost infinite of Authorities, Ancient, Constant and Modern, and with all their amiable, and admirable consent in so many successions of ages, the many changes and alterations of the Common Law & additions to the same, euen since our Author wrote, by many Acts of Parliament, and that the like worke of Institutes had not bin attempted by any of our profession whom I might imitate, I thought it safe for me to follow the graue and prudent example of our worthy Author, not to take vpon me, or presume that the reader should think, that all that I haue said herein to be Law: yet this I may safely affirm, that there is nothing herein, but may either open some windowes of the Law, to let in more light to the student by diligent search to see the secrets of the Law, or to moue him to doubt, & withall to inable him to inquire, & learne of the Sages, what the Law together with the true reason thereof in these cases is: Or lastly vpon consideration had of our old Bookes, Lawes, and Records, (which are full of venerable Dignity and Antiquitie) to finde out where any alteration hath beene, vpon what ground the Law hath beene since changed; knowing for certaine, that the Law is vnknowne to him that knoweth not the reason thereof, and that the knowne certaintie of the Law is the safety of all. I had once intended for the ease of our Student to haue made a Table to these Institutes, but when I considered that Tables and Abridgements are most profitable to them that make them, I haue left that worke to euery studious Reader. And for a farewell to our Iurisprudent I wish vnto him the gladsome light of Iurisprudence, the louelinesse of Temperance, the stability of Fortitude. and the soliditie of Iustice.

FINIS.

Errata.

FOlio 2.a. Linea 41. For *Gratiuta*, read *Gratuita*. fo.3.b. lin.2. *for* no heire, *read* no heire but of his body. l.18. *omit*, Baſtards. l.41. *after* coſens, *adde*, Mes. l.58. for *brugam*, r. *brigam*. l.62. cauiat, *r.* caueat. f.4.a.l.31. *after* Lammas *adde* to her. *and to the notet in the marg. there*, add *Vi.li.1.f.87. per walmſl.* f.4.b.l.8 *quarum*, r. *quare*. l.49. *for* of higher, *read* or higher. f.5.b.l.35. *metiebant*, r. *metebant*. l.41. *Birqualia*, r. *Berquarium*. l.44. after *Domeſday*, adde, It ſignifieth alſo, & more legally, a Sheep-coat, of the French word *Bergerie*. l.50. *Arpeu*, r. *Arpen*. l.61. Iug. *r.* Ing. f.6.a. l.29. *for* where, *r.* whereof. f.7.b.l.6. *Audigauiæ*, r. *Andigauiæ*. f.9. b.l.38. in writ, *r.* in the writ. f.10.a.l. 1. owcetie, *r.* oweltie. fol.13.a.l.34. ſtall, *r.* ſhall. l.19. in marg.19. *Et.* r. 19. *E.*1. f.13.b.l.10. ſeuerſl, *r.* ſeuerall. l.23. with, *r.* which. f.15.a.l.5. as, *r.* or. f.15.b.l.16. in marg. 23. *E.*3. r. 25. *E.*3. f.16.b. l.44. *for* the degree, *r.* vnder the degree. f.17.a. l.43. *ſeitus*, r. *ſeiſitus*. fo.18.a.l.41. two ſimples, *r.* two fee ſimples. f.20 a l.11. *in the text*, their, *r.* her. fo.21.a l.6. *after* for euer, *adde* It hath been holden that. l.10. *after* expectant, *adde* but *Vid. lib.* ?. *fo* 154. *b.* otherwiſe reſolued, *vt patet ibi*. f.21.b.l.23. *for* not the, *r.* not of the. fo.22.b.l.6. *in the text*, Donors, *r.* Donees. f.23.b. l.18. *in the text*, *for* Iſſue, *r.* Iſſues. l.34. ib.21. *E.*3. r. 31. *E.*3. fo.24.a. l.49 and to exclude, *r.* and not to exclude. f.26.b.l.40. *Matilda*, r. *matildæ*. l.41. *proereata*, r. *procreatæ* f.30.a.l.44. But, *r.* By. l.13. in marg. to 29. *E.*3. adde *f.*27. f.31.a.l.31. *tallegys*, r. *tallagys*. f.31.b.l.30. Northampt. *r.* Northumb. l.48. generall, *r* ſpecial. f.32.a.l.55. *omit*, during the couerture. lin.22. in marg. *Hillingſtons*, r. *Lillingſtons*. f.33.a.l.36. *iun'*, r *iunior. præmer'*, r. *promerere*. *vtlum ſuſtin'* r. *virum ſuſtinere*. l.37 *viz.* r. *viri*. l.7. in marg. 13. *E.*1. *Dower*. r. 3. *E.*1. *Dower*, 172. f.34.b.l.26. habitatirn, r. habitation. l.29 riuen, *r.* driuen. fol.35.a.l.1. this companions, *r.* his companions. f.38.a.l.8. to ends, *r.* to no end. f.39.a.l.59. he, *r.* ſhe. f.42.a.l.6.of, *r.* or. l.8. foreiture, *r.* forfeiture. f.44.a.l.4. in marg. 3. *Ia.* r. 1. *Ia.* f 44 b.l.31. owne, *r.* one. l.36. tenant *r.* tenants. f.46.a l.3. for, *r.* of. l 25. *Thraing*, r. *Thirning*. f.46.b.l.60. caſe, *r.* leaſe. f.47.a.l.11. chattell, *r.* cattell. f.47 b.l.17. if they diſtreyned, *r.* if they be diſtreyned. f.48 a.l.30. deuiſe, *r.* demiſe. f.48,b.l.45.46 *for* make writing of leaſe, *r.* make a writing of a leaſe f.49.a. l.15. *omit*, in. l.55. liuery the, *r* liuery to the. f.49 b. l.4. remainder, *r* remainders. l.50. *omit*, as. f.50.b.l.9. *periphraſis*, r. *periphraſis* f 53.b l.20. fell, *r.* ſell. f.54.a. l 45. and terme, *r.* and the terme. f.58.b. l.13. diſſeiſors, *r.* diſſeiſees. f.59.b.l.33. concuſion, *r.* concluſion. fo.61.b. l.vlt. in marg. to *cap.*67. adde *&* 69. f 62.a l.3. *appruatore plegiatu*, r. *appruatore cognitus plegiatus*. l.4. for *electus*, r. *Clericus*. *moribus & legibus*, r. *communioribus legibus*. l.7. *puer*, r. *piger*. fol.63.a.lin.33. *libris*, r. *libri* f.65.a.l.26. faith, *r.* faith. f.66.a.l.23. reords, *r.* records. f.67.a. l.vlt *for* they within, *r.* they be within. 67.b. *the latter part of the Text of the* 91. *Sect. is to be added*. l.2. *fœdum*, r. *feodum*. f.68. l.37. *ſiue*, r. *ſiue*. f.69.a.l.59. theſe, *r.* this. f.71.a. l.20. *diuinet*, r. *dimiſet*. l 41. *omit* that. fo.71.b. l 47. but, *r.* and. f 73.b.l.2. *in the text*, were by, *r.* were giuen by. f.74 b.l.18. 19. *fœdum*, r. *feodum*. f.75.b. l.29.34. 56. *fœdi*, r. *feodi*. f 77.b. l.24. ſaid office, *r.* ſayd offices. f.78. b.l.6. in marg. to 27. *H.*8. add *fo.*10 f.80.a.lin.28 in the text, *matrimonium*, r. *matrimonio*. f.81.a.l.11. in marg. *ea.*3. r. *ea.*1. f.83.b.l.6. *fœdũ*, r. *feodum*. l 39 hy, *r.* of. f.84.a.l.31.of, *r.* to. f.85.b.l.11. Sxe, *r* Six. lin.27. Sheep-men, *r.* Sheepe men. f 88.b.l.10. *ſæcus*, r. *cæcus*. l.43. *for* a, *r.* of. f.90.a.lin. vlt. in marg to *Sect.* adde 740. f.91.b. l.3. as preſently as conueniently may, *r.* as preſently and as conueniently as he may. fo.93.b.l.vlt. voluntaries, *r.* votaries. f.94.a l.29. Dioceſſe, *r.* dioceſſes. and l vlt for *fœdum*, r. *feodum*. fol.95.a. l.38. take ſucceſſion, *r.* take in ſucceſſion. *ſic*, r. *ſid*. f.97.a. l.2. in marg to 33. *H.*6. adde, *fo.*6.l.30. put out the * before *Stephen*, and place it, l.28. *before* And of them. f.100 a. l.4. for *medio*, r. *medij*. f.100. b.l.9. to the diſherſon, *r.* or the diſherſon. f.107. a.l.44. *Seriantiæ*, r. *Seriantiam*. f.110.a.l.39. *Comities*, r. Counties. f.111.a.l 52. of deuiſor, *r.* of the deuiſor. f 114.b.l.30 ceſſor, *r.* ceſſer. l.44 ſuſpenſation, *r.* ſuſpenſion. f.115.a.l 9. to be a formdon, *r.* to a formdon. fo.116.a.l.43.47. beund, *r.* bond. 119.b. l.15. *for* may claime, *r.* may not claime. f.120.b. l.38. *coppe*, r. *cep*. f.121.a.l.55. tenure, *r.* tenancy. f.122.b. l 41.46. *vtlegat*, r. *vtlagat'*. f.123 a.l.29. *dominus*, r. *dominum*. f.128 b.l.29 vntill and a good, *r.* vntill a good. f.129. a l 58. indelibilitie, *r.* indebilitie. l.59. Priors, *r.* Prioreſſe. f.130.b.l.2 *for* garniſh, *r.* garniſhee. f.131 b.l 413. to 13. *R.*2. adde, *ca.*16. f 133.a l.11. *aſſeri, tidem*, r. *aſſerit idem*. f.133.b,l.40. *quandaque* r. *quandoque*. fol.135.a l.17. diſcouenables, *r.* couenables. l.48. *aut*, r. *&*. f.138.b.l 44. be, *r.* is. f 141.b.l.27. *vt*, r. *&*. f.142.a.l.12. *liberas*, r. *libras*. l.13. *Cometi* r. *Comiti*. 146.a.l.7. in mar. in *H.*8. *r.* in 11. *H.*8. f.146.b.l.35. *for* grantee, *r.* grantor. f.148.b.l.50. is wholly apportioned, *r.* is to be apportioned. fol.150.c.l.47. *omit*, and ſo it is. f.150.b.l.13. of the grantee, *r.* of the grantor. f.155.a. l.50. bound, *r.* bond. fo.155.b. l.27.28. and this, *r.* and how this. fol. 157.a. l.53. it not, *r.* it is not. f.157.b. l.21. change, *r.* charge. l.38. pincipal, *r.* principal. l.39. one, *r.* owne. f.158 a.l.vlt. tie, *r.* trie. fol.159.a.l.44. Cambr. *r.* Cambridge. f.159.b.l.19. *Cieareden*, r. *Claredon*. l.15 in the text, *auoit*, r. *nauoit*. fol. 160. b.l.13. as the poynt, *r.* as to the poynt. f.164 a.l.5. of full age, *r.* within age. f.164.b.l.13. in mar. to 2. *H.*6. add *fo.*11. f.165.b.l.9. *in the text*, Aunt, *r.* Aunts. fol.172.a.l.36. ſhal be allowed, *r.* ſhal not be allowed. f.176.b,l.3. remant, *r.* remnant.

Errata.

nant. Folio 178.a lin. *vlt. for*, is, *reade* it. fol. 179 b.l. 30. for his, *r.* her. f. 180.a.l. 24. *for*, if 1 *r.* if it. f. 180.b.l. 5. Saile, *r.* Sale. l. 47. 48. *Cætirabitio*, r. *ratihabitio*. f. 181.b.l. 39. tenants, *r.* ioyntenants. f. 186.a.l. 40. *in the text*, for her, *r.* him. fol. 187. b.lin. 59. Feoffee or Deuisee, *r.* Feoffor, or Deuisor. line 11. in marg. 11. *H.* 7. r. 10. *H.* 7. 20. f. 188.a.l. 25. for deuiseth *r.* demiseth. f. 189.a. l. 2. inheritance, *r.* estate f. 192.a.l. 26. a lease, *r.* a lease for life. f. 194.b.l 23. after Feoffees, *adde* is for that the Feoffees. f. 199.a.l 2. in mar. *tit.* 8 r. *Vit.* aide. f. 200.a.l. 36 37. right lands, *r.* right of lãds. f. 201.a.l. 3. omit (so it is) & after parsonals adde *virtute cuius fuit inde possessionatus*. lin. 21. 22. for an equalitie, *r.* a quality. fo. 202.a.l. 42. possibility, *r.* impossibilitie. f. 202 b. 6. after escheate, omit (be) f. 206.a.l. 2 for morgagor, *r.* morgageor. f. 206.b.l. 13. whereof, *r.* wherfore. f. 207.a.l. 1. 2. for morgage, *r* morgagee. and lin. 2. morgagee, *r.* morgageor. f. 213.b.l. 28. before *Littleton*, place (*d*) f. 214 b l. 40. the lease, *r.* the gift or lease. f. 220.b.l. 42 *omit*, so. f. 221.b. in marg. to *Iulius Winningtons case*, adde, *Lib.* 2. *fo.* 59. 60. f. 223.b.l. 9. for *directo*, r. *ex directo*. fol. f. 226.a.l. 30. morgagee, *r.* morgageor. f. 230.a. l. 38. r. *inuentum est, & perfectum*. fol. 230 b. l. 36. euery, *r.* any. f. 232.b.l. 32. is, *r. est*. f. 234 a. l. 31. then, *r.* the. l. 38. *officio*, r. *officia*. l. 46. for example, *r.* certainely. f. 238, b.l. 2. in marg. for 15. *H.* 4. r. 13. *H.* 4. fol. 241.a.l. 11. Coment, *r.* Commentarie. f. 247.a.l. 26. shall take, *r.* shall not take. f. 250, b.l. 26. doe, *r.* enter. f. 252.a. l. 1. and 2. actually, *r.* actiuely. f. 253.a.l. 38. tenures, *r.* view. f. 258.a.l. 38. limitation, *r.* limitations. f. 261.b.l. 29. 33. *H.* 8. r. 35. *H.* 8 *& sic in marg.* f. 264.b.l. 49. debt, *r.* action. f. 268.b.l. 16 lands, *r.* hands. fo. 272.a.l. 33. or, *r.* and. f. 275. a. 14. if the Disseisor, *r.* if the Disseisee. f. 275. b.l. 21. the actions, r. all actions. f. 276.a.l. 9. *for* Lessee, *r.* Donee. lin. 44. after *Companion*, adde *out*. fo. 285.b. 10. in marg. 13. *E.* 4. r. 13. *H.* 4. f. 290.a.l. 33. to 23. *H.* 8. adde, *cap.* 6. and *lin.* 1. in marg. to 44. *E.* 3. adde, *fo.* 10. f. 292.a.l. 38. for *derivantur*, r. *deriuatur*. fol. 293.a.l. 2. in marg. to *ca.* adde, 2. f. 295.a.l. 11. *for*, without, *r.* with. lin. 36. for debt rent, *r.* debt for a rent. and for Indowment, *r.* Indenture. fol. 297.a.l. 25. *for*, forty, *r.* forty acres. lin. 47. to fee, *r.* to the fee. f. 297, b.l. 36. shall haue, *r.* shall not haue. fol. 298.a. against the 10. 11. lines place in the marg. *reported by Sir Iohn Popham chiefe Iustice*. f. 298 b. to the note in the margent, adde, *Pl.* 15. f. 299.b.l. 14. in marg. to *Caryes* case, adde. *lib.* 5. *fo.* 76. *b.* f. 300.b.l. 58. *for*, Prior Couent, *r.* Prior and Couent. f. 307.a.l. *vlt.* in marg. 3. *E.* 12. *Ass.* 7. r. 3. *E.* 3. 12. *&* 3. *Ass.* 7. f. 307.b, in the margent to 34. *H.* 6. adde, *fo.* 41. f. 309 b.l. 47. after, attorne, *r.* to the Grantee by Deede. and lin. 51. *omit*, in a barre. f. 310.a l. 13. after, Grantee, *adde*, the Lessee attorne to the husband. And in the margent against the same line, adde to the note there, *Lib.* 4. *fo.* 61. *Hemlings* case. f. 310, b.l. 2. in marg. adde, *Hemlings case vbi supra*. f. 312.b. 17. for rent charge, *r.* rent charge in fee. f. 343.b.l. 16. adde in marg. 44 E. 3. 21. 22. f. 349.a. l. 30. heire, *r.* heire apparant. f. 352.a. 45. heire, *r.* here f. 355.a l 31. after giuen, *adde*, by default. f. 361.a.l 3. in the margent, for, 14. *H.* 7. 11, r 14 *H* 7. 10. 11. lin. 5. *ibid.* for, 21. *H.* 6. 13. r. 19. *H.* 6 39. and adde to the notes there, 22. *H.* 6. 27. 36 *H.* 6. 32. 36. *H.* 6. *fauxer de recouery* 27. fol. 361.b.l. 5. in marg. *for*, 10. *H.* 5. *r.* 10. *H.* 6. lin. ult. to *fol.* adde 106. f. 362. a.l. 11. in marg. non reape, *r.* non-tenure l. 12. *ib.* to *lib.* adde 5. and for 331. *r.* 431. fol. 363. a.l. 14. *for*, against, *r.* for, line 17. *omit*, on the other side. f. 363, b. 10. in marg. to 22. *Ass.* 9. adde 33. f. 364.b.l. 2. in marg. to *Entr. Cong.* adde 54. fol. 365.b.l. 21. in marg. to student, adde. 55. fol. 368.a.l. 2. in marg. to *Ass.* adde, *p.* 23. fol. 368.b. 39. *for*, nether other, *r.* no other than. lin. 51. *for*, so, *reade*, it.

The case 360. of [illegible], is void & Wray Disseised it. Sect 440

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of good Pleading sect: 534th — Boston 1785